

INTELLECTUAL PROPERTY LITIGATION NEWSLETTER

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Case Highlights

Jury Verdict Form with a Single Infringement Question in a Multipatent Case Is Improper

Optis Cellular Technology LLC v. Apple Inc., No. 22-1904 (Fed. Cir. June 16, 2025) (Judge Prost, joined by Judges Reyna and Stark) (appeal from E.D. Tex.).

The jury's infringement verdict and damages award were vacated due to the use of an improper jury verdict form. The Federal Circuit found that "the verdict form improperly combined all asserted patents into a single infringement question and permitted the jury to find [the defendant] liable for infringement regardless of whether all jurors agreed that [the defendant] was infringing the same patent." The Federal Circuit ruled that the single infringement question "deprived [the defendant] of its right to a unanimous verdict on each legal claim against it related to infringement," violating the Seventh Amendment and Federal Rule of Civil Procedure 48(b).

Heightened Nexus Standard Not Required for License Evidence Offered as Objective Indicia of Nonobviousness

Ancora Technologies Inc. v. Roku Inc., No. 23-1674 (Fed. Cir. June 16, 2025) (Per curiam, Judges Lourie, Reyna, and Hughes) (appeal from PTAB).

The Federal Circuit ruled that the Patent Trial and Appeal Board (PTAB) erred in applying the heightened nexus standard to the license evidence offered as objective indicia of nonobviousness. The Federal Circuit found that "[u]nlike products, which may incorporate numerous features beyond those claimed or described in a patent and therefore may require careful parsing to establish a nexus, actual licenses to the subject patent do not demand the same, as they are, by their nature, directly tied to the patented technology." Accordingly, the Federal Circuit concluded that the licenses to the challenged patent, "unlike products or other forms of objective evidence of nonobviousness, do not require a nexus with respect to the specific claims at issue, nor does our nexus law require that a particular patent be the only patent being licensed or the sole motivation for entering into a license."

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Other Notable Cases

Nominal Damages of One Dollar Entered After Vacating Jury's Damages Award of More Than \$315 Million

SPEX Technologies Inc. v. Western Digital Corp., No. 8:16-cv-01799 (C.D. Cal. June 16, 2025) (Judge Selna).

The district court vacated the damages of \$315,715,900 awarded by a jury and instead entered nominal damages of \$1. The district court found that substantial evidence did not support the jury's damages award because the plaintiff failed to present evidence of proper apportionment. In particular, the plaintiff failed to apportion out noninfringing features and technology that were not part of the claimed invention. The district court observed that "[t]hroughout this litigation, [the plaintiff's] damages theory changed as certain evidence and theories became unavailable." Because there was insufficient evidence from which the court could determine a reasonable royalty, the court entered nominal damages of \$1.

Sharing Litigation Analyses with Litigation Funder or Potential Litigation Funders Under a Nondisclosure Agreement Does Not Waive Work-Product Privilege

Haptic Inc. v. Apple Inc., No. 3:24-cv-02296 (N.D. Cal. Jun 3, 2025) (Judge Corley).

The court denied the defendant's motion to compel production of infringement, invalidity, and damages analyses prepared in anticipation of litigation shared with the plaintiff's litigation funder and potential litigation funders. Although the court found that there was no common-interest privilege between the plaintiff and the funders, the work-product privilege was not waived in sharing the work-product analyses with the funders. This is because the plaintiff shared the analyses under the nondisclosure and common-interest agreements, where there was a reasonable basis for believing that the funders would keep the information confidential. Simply, the plaintiff had not disclosed attorney work product "to an adversary in litigation" nor had it "substantially increased the opportunities for potential adversaries to obtain the information."

Courtroom Clean Sweep

Alston & Bird secured a major courtroom win, defeating a \$253 million patent infringement claim brought by General Access against T-Mobile and Ericsson. A Texas jury found no infringement on either patent, delivering a complete defense verdict and awarding zero damages. This is the third Alston & Bird defense victory in the past 12 months.