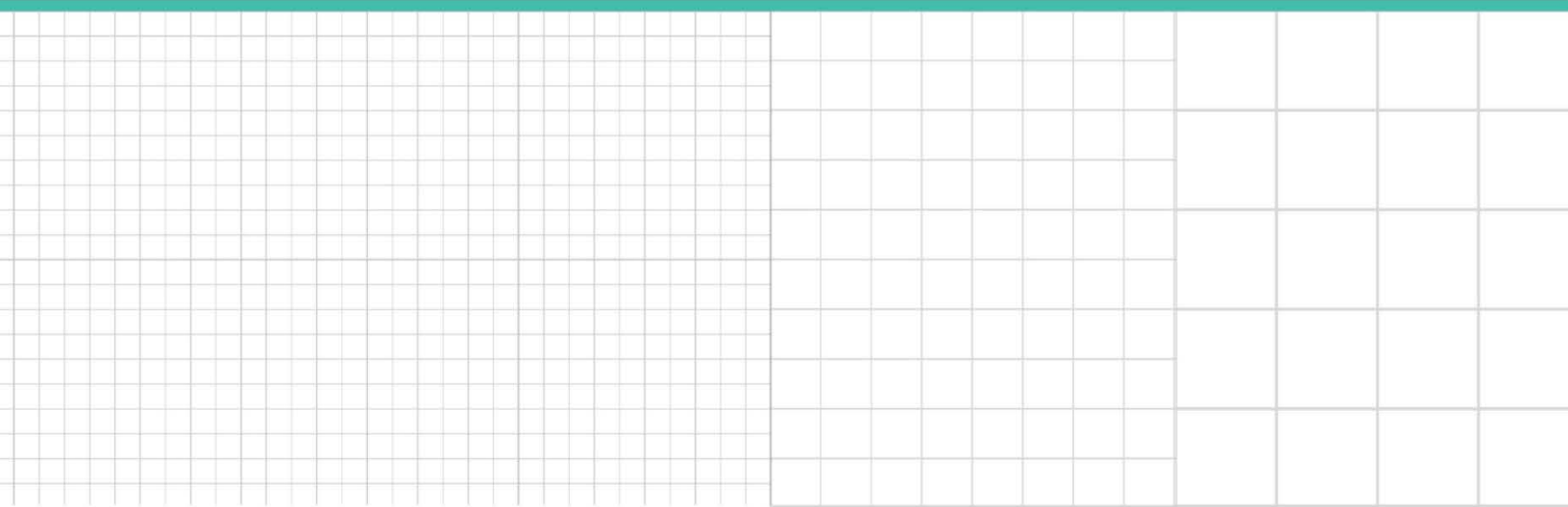


Overview

Litigation Finance for IP Cases

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Litigation Finance for IP Cases

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Intellectual property (IP) cases can be extremely valuable, but can take a long time to resolve, with many risks to recovery along the way. Such cases typically require specialized counsel and involve costly discovery and experts, and claimants can expect to face seasoned opponents ready to lodge multi-fora attacks on their IP. If successful, claimants may be entitled to large damages awards—sometimes totaling hundreds of millions of dollars or more—as compensation for the unlawful use of their IP. And in some cases, claimants may be able to obtain valuable injunctive relief. The relatively high risk and expense of IP cases, combined with their relatively high potential rewards, makes such cases particularly suitable for litigation funding. Case financing can provide claimants with the resources they need to unlock the value of their most important IP.

Typically, IP cases are brought to a funder by a company or individual who believes their IP has been used unlawfully, or their counsel. As part of the diligence process, funders review relevant documents describing the IP, evaluate the evidence of alleged infringement or misappropriation, and interview knowledgeable witnesses such as inventors. Funders may also engage external counsel or consultants who are specialized in the relevant technology area in order to help them assess the strength of the IP and the claims.

Of course, not all IP is created equal. In the context of patents, for instance, it is quite possible to have a very strong and infringed patent that confers only incremental benefits to consumers or users of the invention. While such a patent may support a strong liability case, it is unlikely to generate large damages awards or settlements. On the other hand, a patent with meaningful and quantifiable benefits, a high established royalty rate, and for which there are few acceptable alternatives in the marketplace, can drive substantial recoveries. Other forms of IP such as trade secrets, copyrights, and trademarks likewise can vary significantly in economic value. Accordingly, in assessing the merits of an IP case for funding, it is particularly important for a funder to consider the strength of both the damages case as well as the liability case.

A track record of success is also important when assessing a patent. Thus, patents that have achieved prior litigation milestones such as a favorable claim construction or *inter partes* review result, as well as those that have led to non-nominal licenses or successful commercialization, are among the most attractive candidates from a funding perspective.

Another critical aspect of an IP case is the counsel who will litigate it. IP is a highly specialized practice area, and it is crucial that the lawyers handling a case have a proven record of success for claimants in the applicable technology area, forum (e.g., district court or International Trade Commission), and venue. In particular, for the many IP claimants with portfolios of assets spanning multiple geographical areas, counsel experienced at formulating global enforcement strategies which take advantage of the unique injunctive remedies available for IP infringement in certain jurisdictions are particularly well-suited to achieve the level of recoveries that make litigation funding a sensible solution for their clients.