



## News

### David Levitt Authors Article, "IP: The Trend to End 'Shortcuts' in IP Litigation" in InsideCounsel

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The U.S. Court of Appeals for the Federal Circuit recently affirmed the vacation of a \$388 million judgment in favor of plaintiff, Uniloc, in a patent infringement case, and remanded for a new trial on damages. But what really raised eyebrows was the court's rejection of the "25 percent rule of thumb" for patent royalties, which continues a trend in the courts to eliminate "shortcuts" in proving various elements that arise in IP litigation.

In Uniloc, the plaintiff sought a reasonable royalty using the traditional factors laid out in Georgia Pacific. However, its expert applied a "25 percent rule of thumb" as his starting point, and then adjusted it up and down depending on the relative weight of the various Georgia Pacific factors. In the end, he found that the factors generally balanced out and did not change the royalty rate and testified that the reasonable royalty was 25 percent of his asserted "product key" value of \$10, multiplied by the nearly 226 million products sold. In other words, the damages model introduced in evidence was \$2.50 per product, and the expert testified to a reasonable warranty of nearly \$565 million. The jury ultimately awarded \$388 million.

The Federal Circuit ruled:

"This court now holds as a matter of Federal Circuit law that the 25 percent rule of thumb is a fundamentally flawed tool for determining a baseline royalty rate in a hypothetical negotiation. Evidence relying on the 25 percent rule of thumb is thus inadmissible under Daubert and the Federal Rules of Evidence, because it fails to tie a reasonable royalty base to the facts of the case at issue."

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