

OCEAN TOMO

FINANCIAL DAMAGES



Litigants and their counsel have a number of options when engaging financial expert and litigation support services. For more than 30 years, Ocean Tomo professionals have been at the forefront of intellectual property (IP) damages issues and analysis.

Our financial expert professionals have industry-leading experience across all types of disputes and are particularly skilled in the determination of damages in matters involving intellectual property. Our clients benefit when our financial experts apply their decades of experience to considering the complex financial data, qualitative facts, supporting testimony, and damages-related case law that are pertinent to the determination of economic damages.

Financial Damages Testimony Experience

Determining the proper measure of economic harm requires a detailed understanding and evaluation of relevant damage theories and causation issues.

Our experts have testified regarding virtually all damage elements, including, among others:

- » lost profits
- » reasonable royalties
- » unjust enrichment
- » convoyed sales
- » incremental costs and profits
- » price erosion and elasticity
- » "but-for" causation and market analysis
- » commercial success
- » future damages
- » accelerated market entry
- » corrective advertising
- » creditor allocations

Our evaluation of damages elements has related to a wide range of legal actions, agreements, transactions, and other circumstances, including, but not limited to the following:

- » patent infringement
- » trademark infringement
- » copyright infringement
- » trade secret misappropriation
- » breach of contract claims
- » false advertising claims
- » lost business value
- » licensing disputes
- » wage and hour disputes
- » royalty compliance
- » injury analyses (337 investigations)
- » irreparable harm analyses

Our economic damages experts have or continue to serve on leading thought leadership think tanks and professional associations, related to economic damages, such as The Sedona Conference Working Group 9 Patent Damages and Remedies.

Featured Engagements

For expertise specific to accounting, financial reporting, and internal controls, and economic damages, Ocean Tomo has no peer. Our services are built upon more than three decades of experience in the most rigorous venues – state, federal, and international courts – and spans more than 150 different industry segments. Because our past success provides the best indication of our capabilities, we are proud to feature a few representative engagements and encourage potential clients to seek references from both past clients and opposing counsel.

Idenix Pharmaceuticals Inc. et al. v. Gilead Sciences Inc.

Ocean Tomo provided deposition and trial testimony related to patent infringement damages. On December 15, 2016 a Delaware jury awarded Ocean Tomo Managing Director, Andrew Carter's claim for 10% (\$2.5B), resulting in the largest patent verdict in history, at the time.

Centripetal Networks, Inc. v Cisco Systems, Inc.

Centripetal Networks, Inc. retained Ocean Tomo to provide expert opinion and testimony in conjunction with Centripetal's allegation of patent infringement of their cybersecurity technology by Cisco Systems, Inc. Centripetal called two economic witnesses at trial. The first presented an accounting of the apportioned revenues accused of infringement as well as the applicable reasonable royalty rate. Ocean Tomo's CEO James E. Malackowski testified as the plaintiff's final witness and addressed the options Centripetal held pre-infringement for monetizing its proprietary technology, including through licensing, commercializing or selling the asserted patents. Mr. Malackowski then addressed the adverse impact of Cisco's infringement on Centripetal's ability to realize the true value of its innovations. This evidence was presented to both put the damages claim into context and provide an economic foundation for Centripetal's claim of irreparable harm.

Following a twenty-two-day bench trial and hearing on damage evidence, the Court returned a decision on both past damages and interest totaling \$1.9 Billion (\$1,903,239,288) as well as future royalties, in a range of \$700 Million (\$754,701,723) to \$1.3 Billion (\$1,305,345,753).

SecurityPoint v United States Government

SecurityPoint Holdings, LLC retained Ocean Tomo to opine on economic damages in conjunction with alleged patent infringement claims against the Transportation Security Administration (TSA) related to a system of recycling trays through security screening checkpoints by use of movable carts.

On August 31, 2021, the United States Court of Federal Claims issued an opinion containing one of the largest, if not the largest, damages award ever against the United States. Judge Eric G. Bruggink found the TSA's use of carts to move around trays at airport security screenings would cost the agency 2 cents for every passenger, dating to 2008, as the agency was infringing a SecurityPoint patent. The total amount owed by the government was calculated at just under \$133.8 million. Ocean Tomo Managing Director James E. Malackowski opined as to the damages in the case and found evidence that the TSA had gone through over a decade of failed efforts at moving bins around quicker and more efficiently before it began using SecurityPoint's method as outlined in its' U.S. Patent No. 6,888,460.

Huawei Technologies co. ltd. v. Verizon Communications, Inc., et al

Ocean Tomo was retained by counsel for Huawei Technologies Co. Ltd. to prepare expert report and provide deposition testimony. The matter settled three days into the jury trial before U.S. District Judge Rodney Gilstrap.

Dalmatia Import Group, Inc., et al., v. FOODMatch, Inc., et al.

The jury awarded Dalmatia \$2,567,000 in compensatory damages related to trade secret misappropriation, along with trademark infringement and counterfeiting. The final award was increased for statutory damages and trebling. Ocean Tomo Managing Director James E. Malackowski opined as to the damages in the case.

CPU Sockets and Accompanying Accessories, Memory Sockets

Ocean Tomo, on behalf of Hon Hai and Foxconn, calculated three measures of damages caused by Lotes: reasonable royalty damages for patent infringement, unpaid royalty damages under the license agreement, and breach of contract damages incurred defending against patent validity challenges initiated by Lotes. In addition, Ocean Tomo rebutted damages opinions put forth by Lotes' damages expert.



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Mr. Schoettelkotte leads the Expert Opinion group. He is a Senior Managing Director in the Intellectual Property Disputes practice and has significant ITC experience.



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Ms. Keelan's efforts at Ocean Tomo are concentrated in the practice of business development, sales relationship growth and maintenance within the expert testimony and valuation practices.



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About Ocean Tomo

Ocean Tomo, a part of J.S. Held provides Expert Opinion, Management Consulting, Advisory, and Specialty Services focused on matters involving intellectual property (IP) and other intangible assets. Practice offerings address economic damage calculations and testimony; business licensing strategy and contract interpretation; patent-focused business intelligence; portfolio development strategy; litigation support; trade secret reasonable measures; asset and business valuation; strategy and risk management consulting; merger and acquisition advisory; debt and equity private placement; and IP brokerage.

Our experts are routinely qualified in U.S. District Courts, U.S. Bankruptcy Courts, U.S. Tax Court, U.S. Court of Federal Claims, state courts, the U.S. Patent and Trademark Office Patent Trial and Appeal Board, international courts, and arbitration tribunals on questions relating to intellectual property economics. Our professionals have provided expert opinions on IP valuation, reasonable royalty, lost profits, price erosion, commercial success, corrective advertising, creditor allocations, Hatch-Waxman Act market exclusivity, business licensing terms including RAND obligations, venture financing, and equities of a potential injunction. The firm's experience extends to general business valuation and commercial disputes, domestic and foreign, as well as policy issues affecting international technology transfer and economic matters before the International Trade Commission.

Intangible assets comprise 90 percent of business value but are also subject to significant impairment due to enterprise and regulatory compliance risk. Our services are built upon more than three decades of experience assessing intellectual property in the most rigorous of venues. Our financial, market, scientific, and technical experts have deep experience with tangible and intangible assets protected by intellectual property. We bring a unique understanding of the contributory value of proprietary innovation to every engagement. This is the cornerstone of our business.

Subsidiaries of the firm include Ocean Tomo Investments Group, LLC, a registered broker-dealer.

As a part of J.S. Held, Ocean Tomo works alongside more than 1500 professionals globally and assists clients – corporations, insurers, law firms, governments, and institutional investors – on complex technical, scientific, financial, and strategic matters across all assets and value at risk.

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About J.S. Held

J.S. Held is a global consulting firm that combines technical, scientific, financial, and strategic expertise to advise clients seeking to realize value and mitigate risk. Our professionals serve as trusted advisors to organizations facing high stakes matters demanding urgent attention, staunch integrity, proven experience, clear-cut analysis, and an understanding of both tangible and intangible assets. The firm provides a comprehensive suite of services, products, and data that enable clients to navigate complex, contentious, and often catastrophic situations.

More than 1,500 professionals serve organizations across six continents, including 81% of the Global 200 Law Firms, 70% of the Forbes Top 20 Insurance Companies (85% of the NAIC Top 50 Property & Casualty Insurers), and 65% of the Fortune 100 Companies.

Headquartered in New York, J.S. Held has offices across the United States, Canada, Latin America, Europe, Asia Pacific, and the Middle East.

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