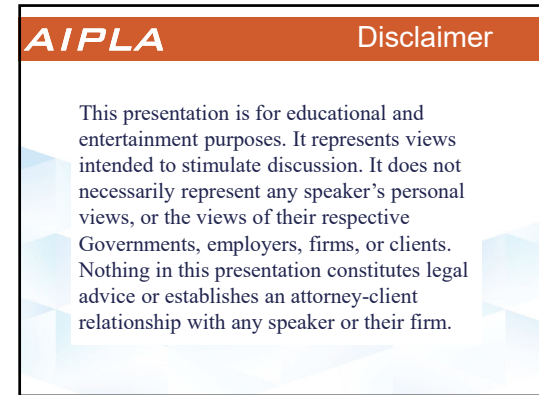




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AIPPLA	What?
<p>“Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court. When the damages are not found by a jury, the court shall assess them. . . .”</p>	
<p>35 U.S.C. § 284.</p>	

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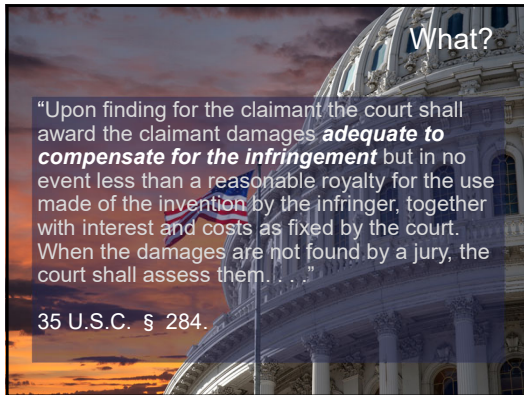
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What?

"Upon finding for the claimant the court shall award the claimant damages **adequate to compensate for the infringement** but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court. When the damages are not found by a jury, the court shall assess them. . . ."

35 U.S.C. § 284.

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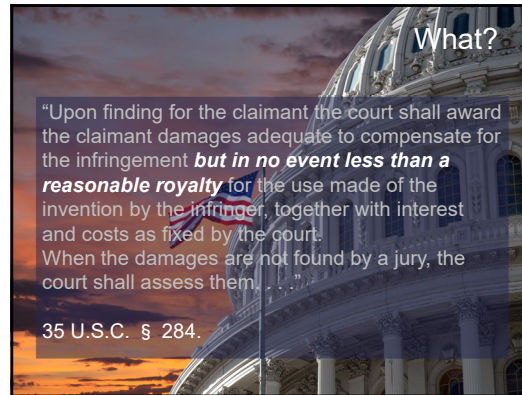
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What?

"Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement **but in no event less than a reasonable royalty** for the use made of the invention by the infringer, together with interest and costs as fixed by the court. When the damages are not found by a jury, the court shall assess them. . . ."

35 U.S.C. § 284.

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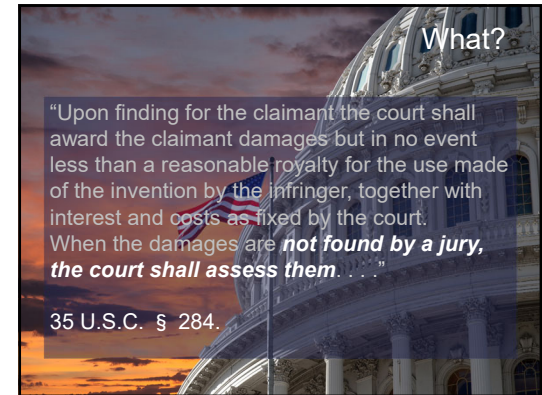
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What?

"Upon finding for the claimant the court shall award the claimant damages but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court. When the damages are **not found by a jury, the court shall assess them. . . .**"

35 U.S.C. § 284.

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AIPLA

What?

☐ Compensatory  
☐ Economic harm  
☐ Caused by the infringement

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How?

“In either event the court may increase the damages up to three times the amount found or assessed. . . .”

35 U.S.C. § 284

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AIPLA

How?

Further case-law requirements to enhance:

☐ Willfulness  
☐ Bad Faith  
☐ Bad Behavior

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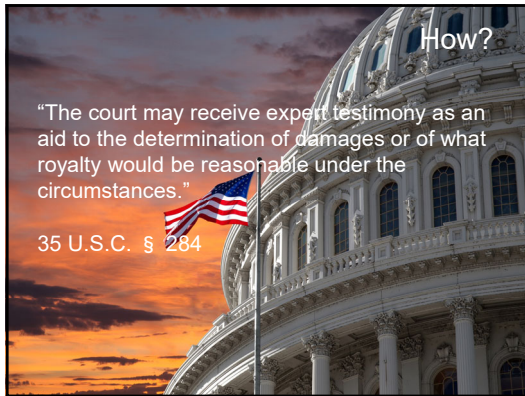
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**Damages Theories**

**Lost Profits**

1. Patentee's Profits
2. Price Erosion
3. Convoyed Sales
4. Increased Costs
5. Loss of Asset Value
6. Early Competitive Entry

**Royalty**

1. Established Royalty
2. Reasonable Royalty

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**Damages Theories**

**Lost Profits**

1. Patentee's Profits
2. Price Erosion
3. Increased Costs
4. Convoyed Sales
5. Loss of Asset Value
6. Early Competitive Entry

**Royalty**

1. Established Royalty
2. Reasonable Royalty

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**AIPLA** **1. Lost Profits**

But for the Infringement:

- a. Demand for Patented Product
- b. No Non-infringing, Acceptable Substitutes – or Market Share Approach
- c. Capacity to Meet Demand
- d. Profit – Incremental

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**AIPLA**

1. Lost Profits

*Panduit v. Stahl Bros.*, 575 F.2d 1152 (6th Cir. 1978);

*State Indus., Inc. v. Mor-Flo Indus., Inc.*, 883 F.2d 1573, 1577 (Fed. Cir. 1989) (adopting 6th Circuit test).

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1. Lost Profits

a. Demand for Patented Product



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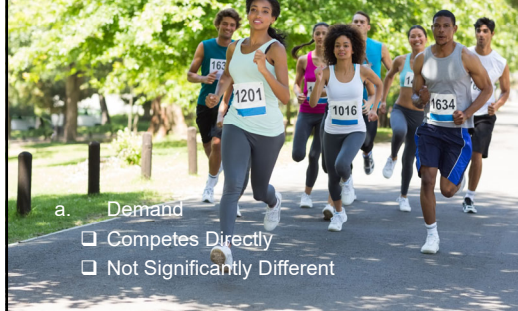
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1. Lost Profits

a. Demand

☐ Competes Directly

☐ Not Significantly Different



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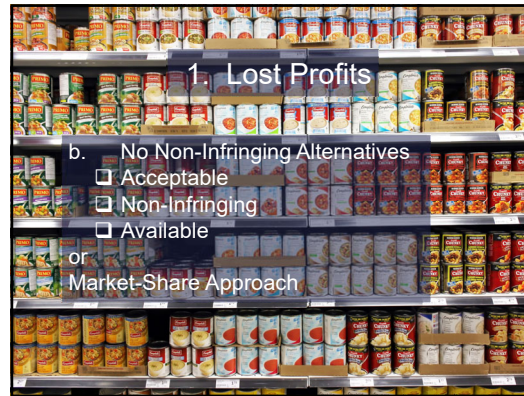
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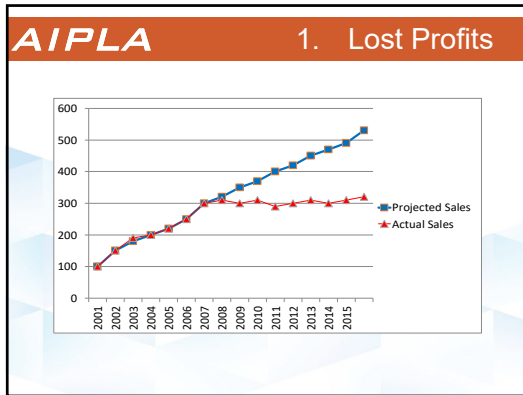
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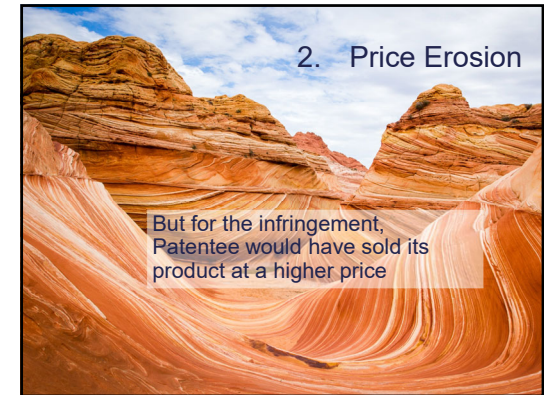
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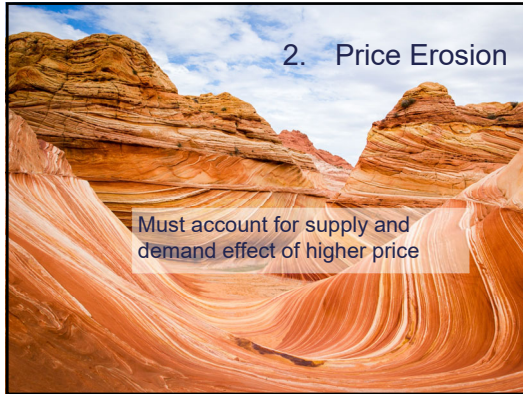
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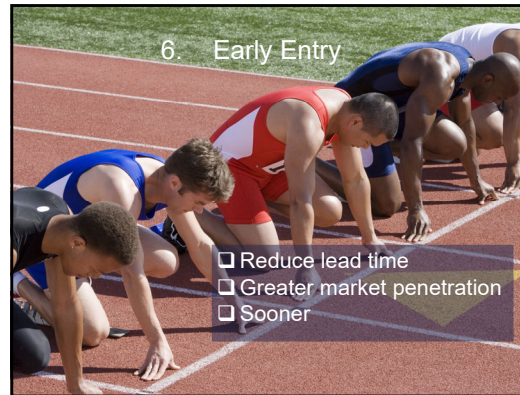
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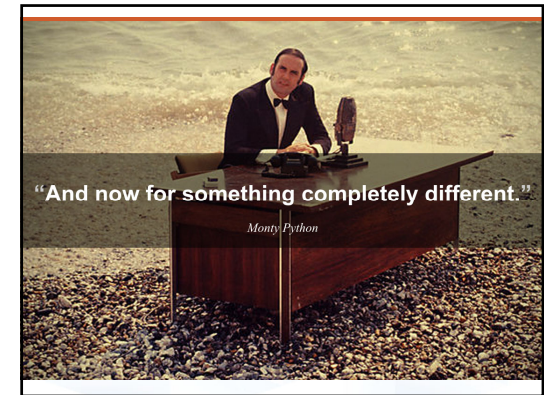
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**AIPLA** Profits

But for the Infringement

- a. Demand for Patented Product
- b. No Non-infringing, Acceptable Substitutes – or Market Share
- c. Capacity to Meet Demand
- d. Profit – Incremental Income

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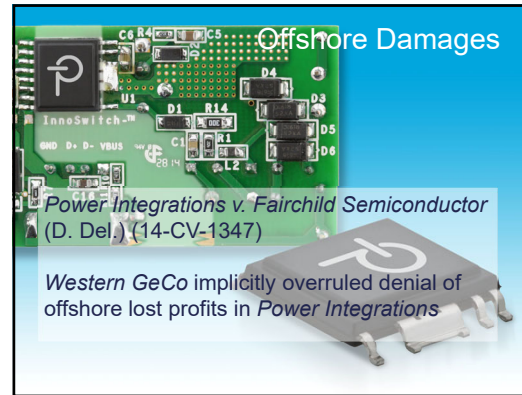
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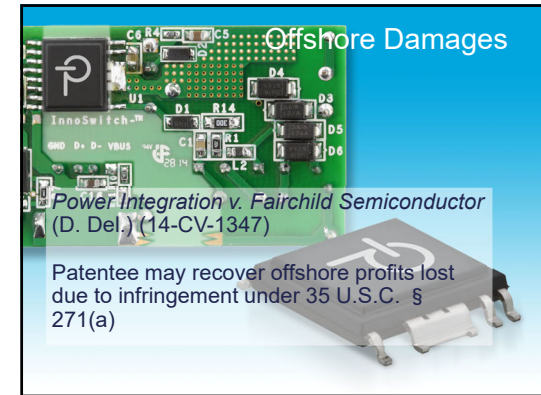
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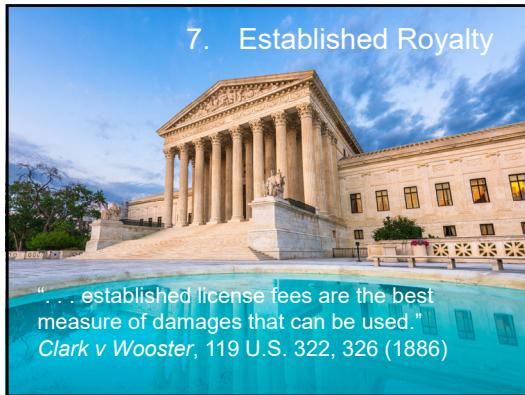
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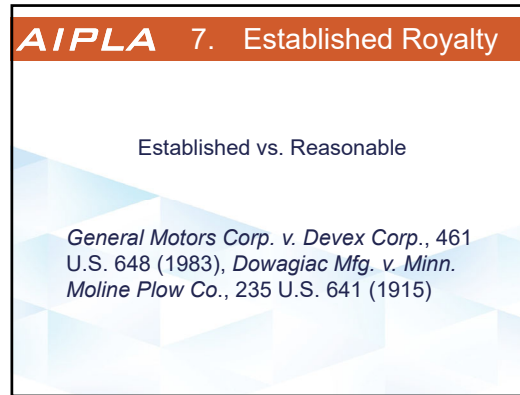
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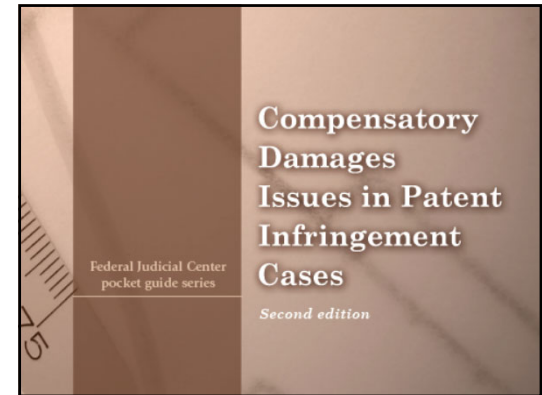
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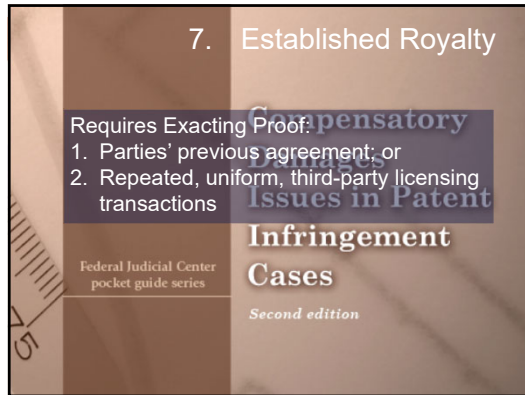
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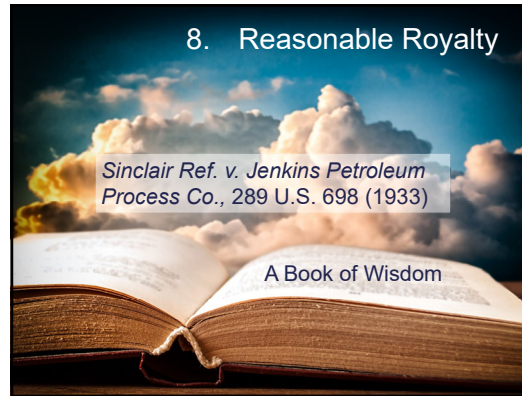
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**AIPLA** 8. Reasonable Royalty

Amount

*Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F.Supp. 1116, (S.D.N.Y. 1970)

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*Georgia-Pacific*

1. Established royalty rate



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*Georgia-Pacific*

2. Rates paid by licensee for comparable patents



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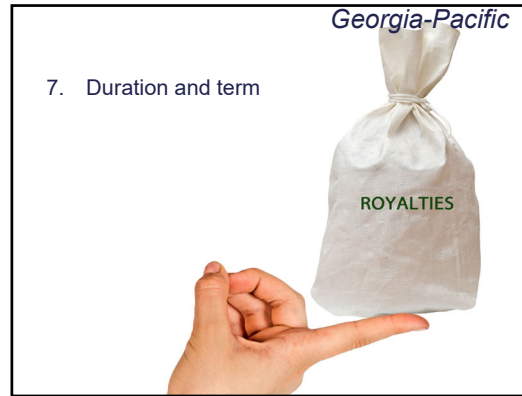
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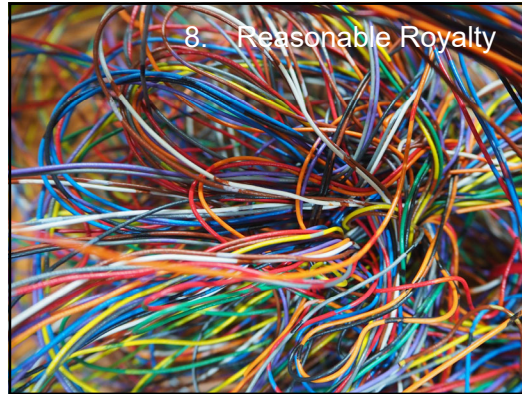
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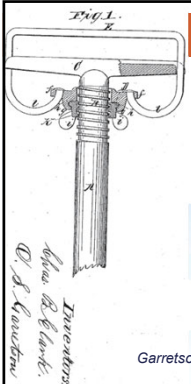
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### Apportionment

“The patentee must...give evidence, tending to...apportion...damages, between the patented feature and the unpatented features...or he must show...that the entire value of the whole machine...is properly and legally attributable to the patented feature.”

Garretson v. Clark, 111 U.S. 120 (1884)

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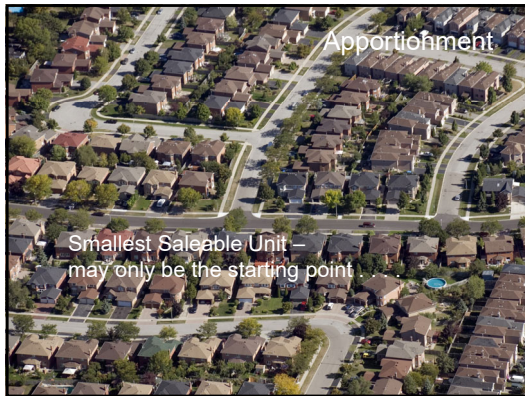
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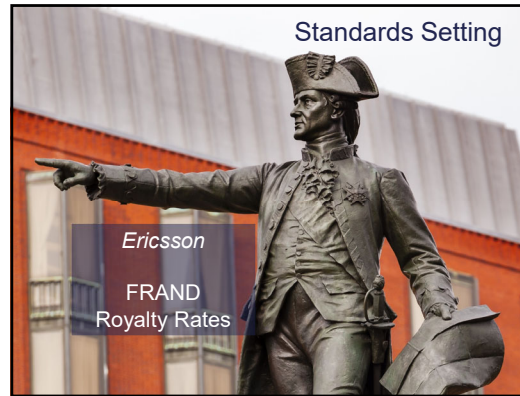
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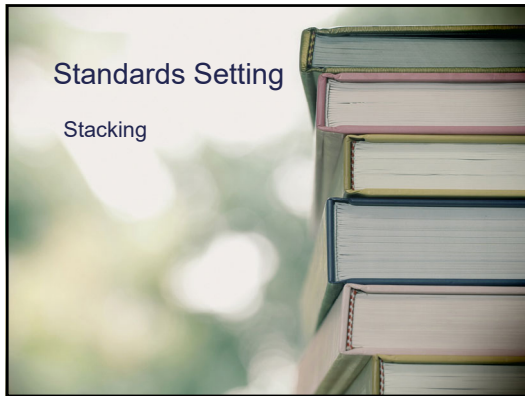
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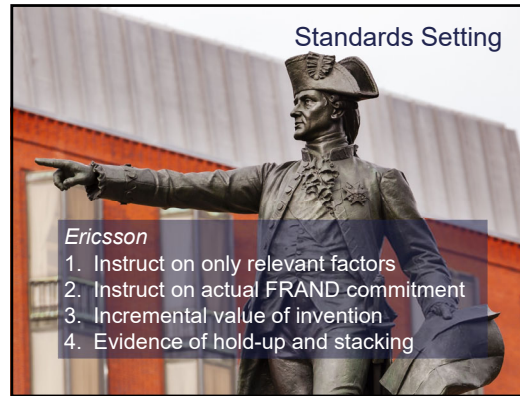
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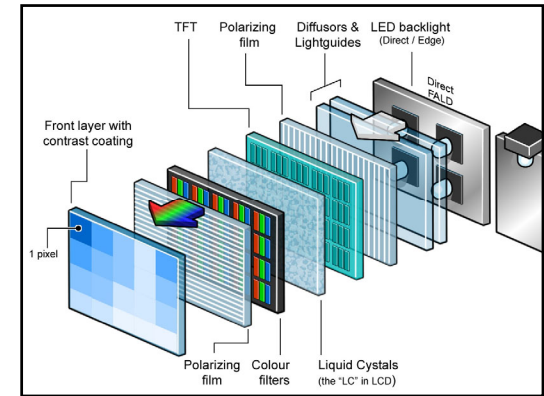
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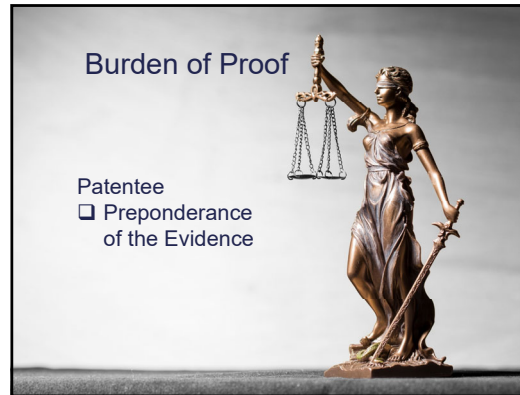
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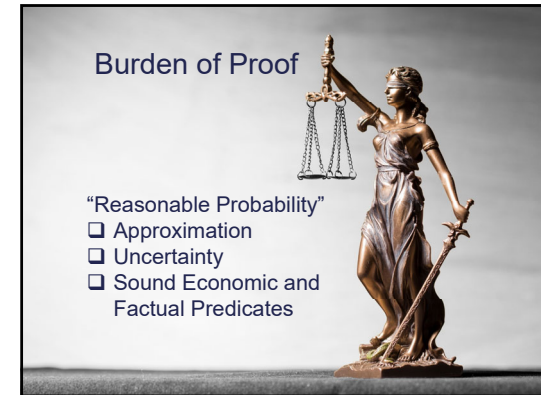
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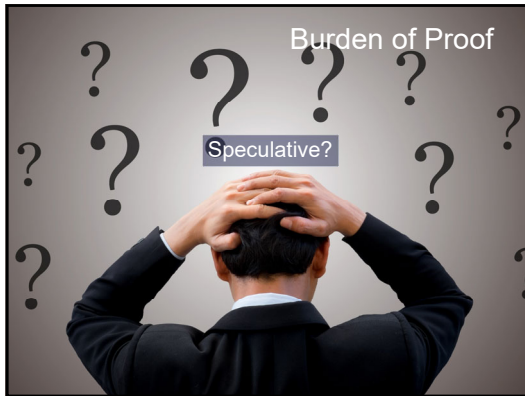
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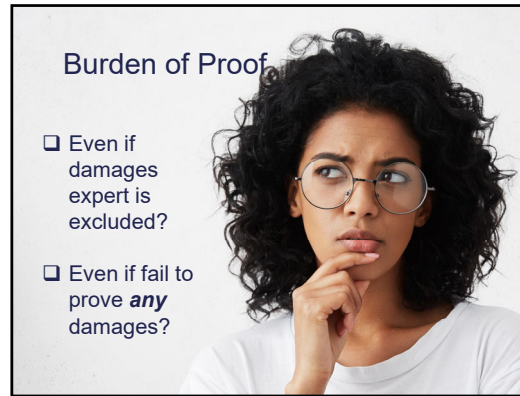
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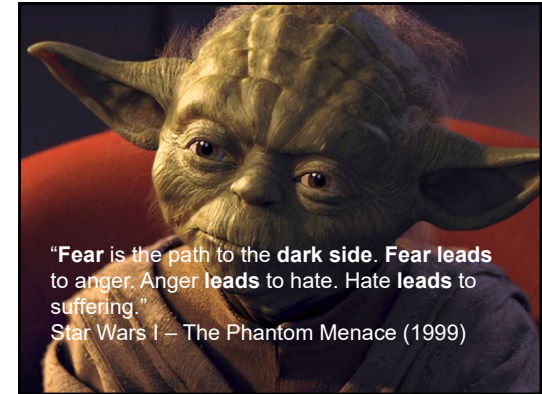
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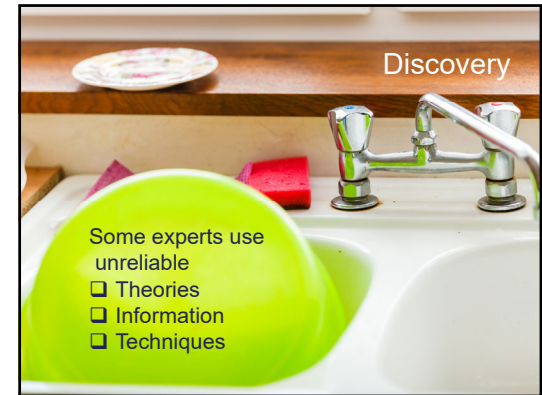
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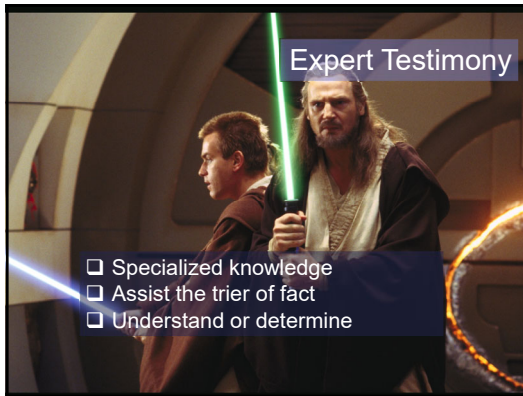
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Industry

Expert Testimony

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Academia

Expert Testimony

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Expert Testimony

- ☐ Reports
- ☐ Deposition
- ☐ Prior testimony
- ☐ Publications

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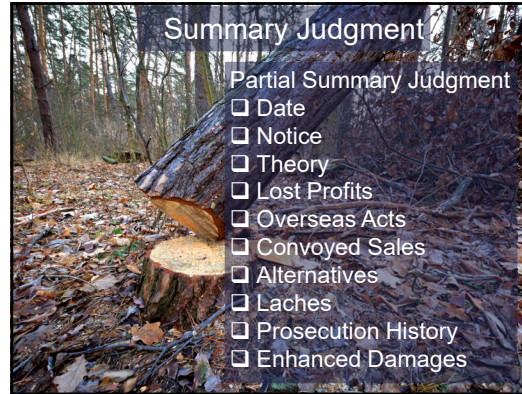
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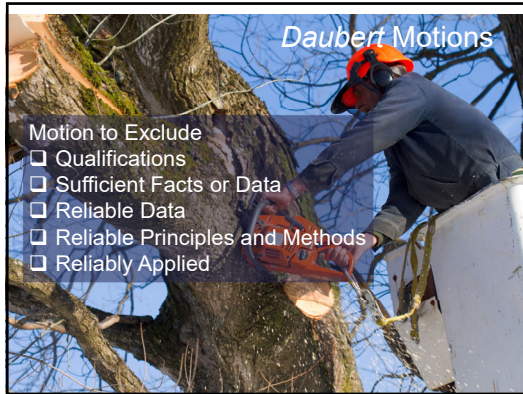
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