



# EASTERN DISTRICT OF TEXAS BAR ASSOCIATION



## ***Where There's A Wrong, There's A Remedy. Looking for Remedies in All the Wrong Places – From Patent Infringement to Trade Secret Misappropriation***



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# Patent v. Trade Secret Damages & Remedies

## Patent

- Actual losses including lost incremental profits
- Price erosion
- Disgorgement of profits (design patent article of manufacture)
- Royalty
- Injunction (*eBay*)

## Trade Secrets

- Actual losses including lost profits (which may vary by jurisdiction)
- Price erosion
- Unjust enrichment (defendant's profits, cost savings, head start etc)
- Royalty
- Injunction
- Other: lost value, diminution, etc.

# Issues Faced in Recent Patent & Trade Secret Cases

- Apportionment in patent cases
  - Lost Profits: *Mentor Graphics*
  - Royalty: SSPPU vs. EMVR, Comparable Licenses
- Apportionment in trade secret cases
  - Lost Profits: where product using a trade secret also contains other features
  - Unjust Enrichment/Disgorgement: equitable considerations
- What issues arise under these scenarios:
  - multiple trade secrets on the same product
  - trade secrets and patents covering the same product
  - lost profits vs. disgorgement damages claims