

# ANALYSIS GROUP ECONOMIC, FINANCIAL and STRATEGY CONSULTANTS

# FORUM

CELEBRATING 30 YEARS

FALL/WINTER 2011

MORTGAGE-BACKED  
SECURITIES CASES p. 3

VTI, COTT, MICROSOFT  
DECISIONS p. 5

SOLVING FOR  
MISSING DATA p. 6

FOCUS ON IP  
LITIGATION p. 8

## FROM THE CEO



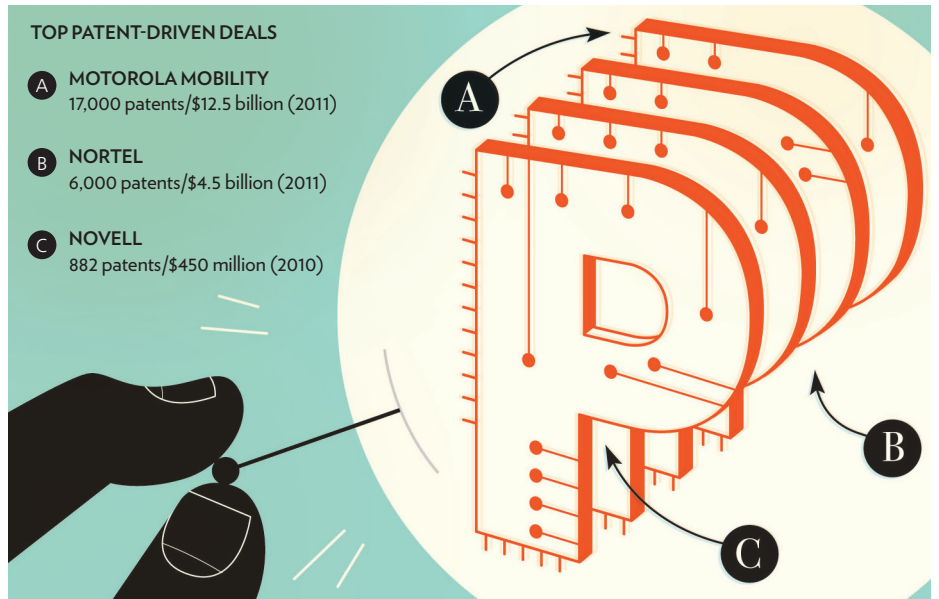
In this edition of *Forum*, we focus on two topics that are center stage in the courtroom and in the world of business. First

are the implications of patent proliferation and patent reform; and second are the issues associated with the default of mortgage-backed securities. It took legislators many years and multiple iterations to reach the patent-reform bill that was signed into law this fall. Similarly, four years past the beginning of the collapse of the U.S. housing market, economists, attorneys, and regulators are still examining the extent and causes of widespread mortgage defaults as well as the relationship of those defaults to the broader financial crisis. My colleagues and I have been working with experts in highly specialized areas of finance, helping to assess securitized assets, evaluate macroeconomic factors, and advise clients on exposure. As these matters unfold, we will continue to grapple with the complexities associated with intellectual property and mortgage-backed financial instruments, both of which play such a significant role in our economy.

  
MARTHA S. SAMUELSON, PRESIDENT AND CEO

## TOP PATENT-DRIVEN DEALS

- A** MOTOROLA MOBILITY  
17,000 patents/\$12.5 billion (2011)
- B** NORTEL  
6,000 patents/\$4.5 billion (2011)
- C** NOVELL  
882 patents/\$450 million (2010)



## A Look at Patent Litigation and Valuation Post Reform

by John C. Jarosz

The Leahy-Smith America Invents Act (AIA) will have clear procedural implications for those applying for and managing patents, and resource implications for the U.S. Patent and Trademark Office (USPTO). However, the impact of America Invents on litigation is less clear given that provisions related to the determination of damages and to conduct constituting infringement were ultimately left out.

The legislation, which went through many versions over a number of years and was signed into law by President Obama on September 16, 2011, mandates several core changes – most important, the switch from a first-to-invent to a first-to-file rule for granting patents, as well as new processes for challenging patents that have already been awarded. America Invents also

gives the USPTO the power to set patent fees, which some believe will give it the resources necessary to process its backlog of patent requests more effectively and expediently. Other elements of AIA include the elimination of a “best mode” requirement and limits on joinder rules and false-marking suits.

CONTINUED ON NEXT PAGE

# Implications of Patent Reform (CONTINUED FROM PREVIOUS PAGE)

In June 2010, we cosponsored (with Georgetown University and McKool Smith) a panel discussion on impending patent reform and its implications for litigation. One of the participants, the Honorable Paul R. Michel, retired chief judge of the Federal Circuit, revisited the topic with us in the wake of the passage of AIA.

“If I were addressing that group today, I’d say that from a resources perspective, AIA is a failure,” Judge Michel said. The patent office has long had to deal with inadequate resources, he said, but the AIA does nothing to address this problem: The fees that users pay for the services rendered by the USPTO can still be diverted or withheld by Congress, as they have been all along.

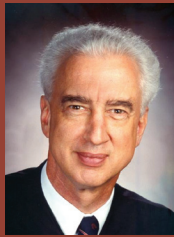
“Ironically, AIA adds to the existing burdens of the patent office, further preventing the staff from examining and reexamining patents carefully and promptly,” Judge Michel said. Revised requirements around post-issuance review, for instance, will add thousands of staff hours to the workload. “The net effect will be to add delay and uncertainty to the process and to devalue patents,” he said.

Judge Michel lauded the fact that provisions associated with damages, appeals, and trial venue were left out of the bill. Changes in these areas would have only slowed down the courts, he said. Patent filings will increase sharply, immediately, he predicts, which will exacerbate the resource problem. Court litigation will also increase – but Judge Michel

predicts that a smaller percentage of filed cases will settle, because AIA will increase uncertainty around the quality of patents.

On other fronts, America Invents was

The assessment and valuation of these mega-portfolios can be complicated and time-consuming – but necessary. According to a PricewaterhouseCoopers study on patent litigation, the annual median damages awards



**“America Invents adds to the existing burdens of the patent office, further preventing the staff from examining and reexamining patents carefully and promptly.”**

— THE HONORABLE PAUL R. MICHEL

designed to bring U.S. intellectual property law closer to international law, and, in the long term, its provisions may help to mitigate the effects of lawsuits filed by nonpracticing entities (NPE) against large organizations. (A study undertaken by several researchers from Boston University suggests that hundreds of billions of dollars have been spent on NPE-related lawsuits over the past decade.)

However, a second-order consequence of the media spotlight on America Invents may be increased attention paid to the general rise in patent activity – namely, organizations’ attempts to build massive collections of patents as a guard against litigation. Consider, in particular, recent deals in mobile computing that have been driven by patents, such as Google’s purchase of Motorola Mobility Holdings and its more than 17,000 technology patents for \$12.5 billion. (And the subsequent countermove by IP firm Intellectual Ventures, which sued Motorola Mobility for patent infringement.)

between 1995 and 2009 ranged from \$2.4 million to \$10.5 million. More and more often, triers of fact are linking damages awards to evidence of the contributions that patented technologies make to the products- or services-in-suit.

Accurate valuation can be accomplished through detailed assessments of the income, market effects, and costs associated with the use of a particular piece of intellectual property, as well as an analysis of its impact and use with associated patents in a product.

With regard to concerns about patent valuation and oversize damages awards, it could well be that Judge Michel was right in his comments to us, and when he wrote to Congress a few years ago, that the courts seem to be a pretty good foil for these cases and are policing themselves well. ■

**JOHN C. JAROSZ** IS A MANAGING PRINCIPAL IN THE WASHINGTON, D.C., OFFICE OF ANALYSIS GROUP.

# Common Threads in Mortgage-Backed Securities Cases

by Adam Decter and Mark Howrey

Four years past the beginning of the collapse of the U.S. housing market, there are scores of class action and individual lawsuits involving the origination and securitization of residential mortgage-backed securities (RMBS).

Monoline insurers and private RMBS investors are filing individual and class actions against issuers of securities, loan originators, and securities underwriters; in other cases, government-sponsored entities are doing the filing. The U.S. Federal Housing Finance Agency, for instance, sued 18 of the world's largest banks on behalf of Fannie Mae and Freddie Mac, claiming the financial institutions misstated or omitted material information concerning \$200 billion worth of securities sold to Fannie and Freddie.

The RMBS securitization process is complex, involving a chain of transactions and multiple players, including loan originators, securities issuers and underwriters, due-diligence service providers, credit-rating agencies, and insurers. In RMBS disputes, litigators and economic experts must not only isolate the factors that are relevant for determining liability and damages, and, in the event of class actions, for addressing certification issues; but also consider those factors within the context of varying industry practices, disclosures in offering documents, levels of investor sophistication, and U.S. housing, mortgage, and RMBS markets.

Analysis Group has a long history of working on complex securities and mortgage-backed securities matters. Recently, we have been working on a range of RMBS cases related to the financial crisis and housing market collapse, including *New Jersey Carpenters Vacation Fund, et al. v. The Royal Bank of Scotland Group, plc, et al.*, a matter in which certification was denied to a putative class of institutional investors in part because experts were able point out the disparity of investor sophistication and knowledge among members of the class. While the parties, circumstances, and amounts vary from case to case, there are two primary issues in RMBS matters:

**Allegations of misrepresentation.** In many of these cases, there are claims that the banks' offering documents have omitted information or contain false or misleading statements about the underlying collateral — for instance, whether the loans were originated in accordance with stated underwriting guidelines and whether information about property appraisals, loan-to-value ratios, or borrower



It is early in the life span of RMBS cases, so it is still unknown whether these matters are more likely to be settled by parties or fully litigated in court.

incomes is accurate. These sorts of allegations were central to RMBS litigation involving The Royal Bank of Scotland, IndyMac Bank, Merrill Lynch, Washington Mutual, Countrywide, and others. For instance, the IndyMac plaintiffs, a putative class of investors in mortgage pass-through certificates publicly offered by IndyMac between 2005 and 2007, contended that the offering documents for the certificates did not provide adequate information about IndyMac's underwriting practices. IndyMac "relied upon faulty appraisals of the underlying real estate that were not made according to [industry standards] and oftentimes grossly overvalued the property/collateral," they alleged.

**The role of economic conditions.** Another central point of analysis in RMBS-related cases is the macroeconomy — more specifically, the effects of significant changes in real estate, financial, and other markets on the performance of the underlying loans and the value of securities within a given time frame. Since 2007, these changes have included the greater than 30% average decline in housing prices nationwide, with larger declines in some regions; increases in the unemployment rate; the drying up of liquidity in capital markets; and the overall defaults in the mortgage market, which have reached unprecedented levels. As the number of actual and expected defaults increased, the prices of many RMBS fell precipitously. "Real estate economists have attributed the downturn in the (CONTINUED ON PAGE 4)

## Mortgage-Backed Securities Cases (CONTINUED FROM PREVIOUS PAGE)

mortgage market predominantly to the deterioration in the macroeconomic environment and ... to the unprecedented fall in home prices,” one expert explained in a recent report.

### Approaches to Assessing Liability and Damages

There are several approaches that economic experts can take to present a complete picture of industry practices and market conditions. They include:

*Performing risk-exposure analysis.* It is relatively early in the life span of RMBS cases, so it is still unclear whether these matters are more likely to be settled by parties, or fully litigated in court. A first step is to understand the damages that parties are likely to claim based on publicly available pricing data and the payment history of the certificates at issue. We have estimated damages using trading assumptions before taking into account the impact of loss causation on Section 11 and 12 claims. Again, this is a starting point; it does not factor in the economic conditions that affected the performance of loans or the causes of RMBS price declines.

*Analyzing the performance of securities.* Using regression analyses and data from a variety of sources, including internal and external databases, we have helped economic experts perform loan- and deal-level comparables analyses. For instance, we have estimated how various deals at issue performed relative to the rest of the industry after controlling for relevant loan and borrower characteristics (such as

loan-to-value ratios, documentation type, and FICO score) as well as changes in macroeconomic performance. We have also analyzed the impact of alleged loan defects to determine if they were associated with increased defaults and losses and could have contributed to losses. The results of these analyses have provided insights into whether there were factors specific to the deals that may have caused performance that was different from that of the market as a whole.

*Assessing the use of statistical sampling.* The volume of loans at issue in RMBS litigation may sometimes favor a cost- and time-sensitive analytical approach: statistical sampling. A subset of loans are selected and analyzed, and inferences about the entire population of loans are drawn from the assessment of this subset (the sample). Experts can analyze whether and which sampling methodologies might be appropriate. They can also re-underwrite the loans to determine if they were defective. In the re-underwriting process, experts perform an after-the-fact review of the loans to determine whether they were underwritten in accordance with stated guidelines.

These and other sophisticated analytical approaches can help litigators reach appropriate solutions to RMBS disputes. ■

ADAM DECTER SPECIALIZES IN SECURITIES, ANTITRUST, AND CLASS CERTIFICATION ISSUES, PARTICULARLY IN THE FINANCIAL SERVICES INDUSTRY. MARK HOWREY SPECIALIZES IN FINANCE, SECURITIES, AND DAMAGES. BOTH ARE VICE PRESIDENTS IN THE BOSTON OFFICE OF ANALYSIS GROUP.

### ***In re Countrywide Financial Corp. Mortgage Marketing and Sales Practices***

A federal judge in California denied certification for a putative class of more than 500,000 borrowers who alleged that Analysis Group client **Countrywide Financial Corporation** defrauded them by steering them toward subprime and pay option adjustable rate mortgages regardless of their qualifications or ability to meet financial terms. The plaintiffs alleged that the defendants advised them to take on “toxic and unaffordable” products to drive up the number of loans that could then be resold in the secondary market as mortgage-backed securities. A team from Analysis Group, including Vice President **Adam Decter**, Managers **Eric Dufresne** and **Dov Rothman**, and affiliates

**Timothy Riddiough** and **James Levinsohn**, was retained to address issues of class certification. At the center of the matter were two different loan products offered by four divisions of Countrywide, each of which employed its own marketing materials, techniques, and sales structures and protocols. Dr. Riddiough and Dr. Levinsohn examined and opined on issues relating to commonality, predominance, and causation. Citing Dr. Riddiough’s report in his decision, Judge Dana Sabraw ruled that, given the different terms and disclosures presented to differently situated borrowers, individual issues predominated over common ones. He denied the plaintiffs’ motion for certification.

## Recent Litigation

---

### ***Certification Overturned in Microsoft Canada Case***

The Court of Appeal for British Columbia, Canada, decided in favor of Analysis Group client **Microsoft Corporation**, reversing class certification in an antitrust action involving indirect purchasers of Microsoft software products. In *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, a putative class of retail buyers of computers equipped with Microsoft applications and operating systems alleged that Microsoft, together with manufacturers, tried to exclude competition and raise prices. The plaintiffs also alleged that overcharges at the OEM level were being passed on to them and sought restitution.

**Blake, Cassels & Graydon LLP**, the law firm representing Microsoft, retained a team from Analysis Group to provide industry analysis, rebuttal of multiple opposing expert witnesses, and general support to counsel. President and CEO **Martha Samuelson**, Principal **Almudena Arcelus**, Vice Presidents **Elizabeth Eccher**, **Samuel Weglein**, and **Alan White**, and Manager **Kristina Shampanier** supported several Analysis Group affiliates, including **R. Glenn Hubbard**, the Dean of Columbia Business School, who demonstrated the shortcomings of the plaintiffs' proposed damages models. Citing legal precedents in both the U.S. and Canada, including *Kingstreet Investments Ltd. v. New Brunswick (Finance)* and *Illinois Brick Co. v. Illinois*, the judges dismissed the plaintiffs' action and set aside the earlier class certification order received.

### ***Vietnam Telecom International v. Eddie Inyang, et al.***

In this fraud case, Analysis Group worked with **Nixon Peabody** on behalf of



**Vietnam Telecom International (VTI)**, a government-owned international telecommunications carrier. VTI accused the defendants, Qwest Communications and several individuals, of participating in a scheme to defraud VTI involving the provision of voice-over-IP traffic between the U.S. and Vietnam. Vice Presidents

**David Sosa** and **Sara Filipek** provided consulting support to the testifying experts and to counsel. Analysis Group affiliate **William Lehr**, a telecommunications economist, testified about the damages suffered by VTI as a result of the fraud. Analysis Group affiliate and former FCC Commissioner **Harold Furchtgott-Roth** testified on issues of domestic and international telecommunications regulation. **Terrence McGarty**, a telecommunications entrepreneur and affiliate, testified on business customs and practices in international telecommunications. Qwest settled with VTI after the close of expert discovery. Following a six-week trial involving the remaining defendants, the jury found in favor of VTI, awarding the company \$9.3 million in damages.

### ***Cott Gets Favorable Decision in Breach of Contract Suit***

Analysis Group client **Cott Beverages, Inc.** received a favorable decision in a breach of contract suit filed in the U.S. District Court for the Eastern District of California. The Citri-Lite Company alleged that Cott had breached the terms of a licensing agreement by failing to promote Citri-Lite's Slim-Lite product in a commercially reasonable manner. Analysis Group affiliate Professor **Randolph Bucklin** analyzed the extent and effectiveness of Cott's marketing activities, and Managing Principal **Jeffrey Kinrich** analyzed Citri-Lite's damages claims. Both were supported by a team that included Vice President **Peter Simon** and Manager **Flavia Bainbridge**. Following an eight-day bench trial, Judge Oliver Wanger found for the defendant. He found that the plaintiff's expert's opinions were less persuasive than Mr. Bucklin's opinions because they were "not founded in modern marketing science, economics, or quantifiable approaches."

#### **New @ AnalysisGroup.com**

We have been providing economic analysis and litigation support in a range of matters related to mergers and acquisitions. For an overview of the underlying economic issues involved, see "A Closer Look at M&A-Related Litigation" ([bit.ly/MergerLitigation](http://bit.ly/MergerLitigation)).

## The “Missing Data” Challenge: Using Clinical Trials Results

*A critical issue for those performing statistical analysis in support of litigation is how to interpret findings meaningfully when they are based on incomplete data.*

The “missing data” challenge is particularly pronounced in health care–related disputes. Stakeholders in the U.S. health care system are paying closer attention than ever to the safety and efficacy of treatments and monitoring how pharmaceutical companies report the results of clinical trials. A consequence of this scrutiny is the large number of mass tort and product liability cases in which pharmaceutical companies’ analyses, interpretations, and reporting of results have played a central role.

In these types of disputes, attorneys and analysts often rely on data collected from clinical trials. But as **Daniel Scharfstein**, a professor of biostatistics at Johns Hopkins Univer-

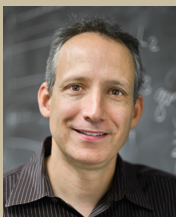


with those who stay on, the standard tools for analyzing clinical trials data may not be valid. Indeed, the issues raised by “informative dropout” can hinder efforts to determine liability, assess damages, or, in the case of mass torts, to determine common impact. Litigators and analysts are left with

panel on the handling of missing data in clinical trials and has collaborated with Analysis Group on cases in which this dropout effect was present. We asked him to discuss ways to draw scientifically valid conclusions despite missing data.

### **How can patient dropout compromise study results?**

In a typical clinical trial, eligible study patients are randomized across two drugs according to a strict treatment protocol. This randomization lets researchers balance out, on average, the distributions of known and unknown baseline risk factors among the participants. This way, patients receiving alternative treatments can be compared fairly. During the course of the clinical trial, however, some patients may prematurely terminate their participation. This dropout is “informative” if patients who with-



**“During the course of a clinical trial, some patients may prematurely terminate their participation because of adverse events or because a treatment is not working. Biostatisticians call this ‘informative dropout.’ ”**

**DANIEL SCHARFSTEIN, JOHNS HOPKINS UNIVERSITY**

sity’s Bloomberg School of Public Health, explains, these data are commonly incomplete. For a variety of reasons, patients may drop out and be observed for only part of an entire trial period. Depending on the risk profiles of the people who drop out compared

significant information gaps and do not know whether these gaps matter in their assessments of the case issues at hand.

Dr. Scharfstein recently served on a U.S. Food and Drug Administration

draw are different from those who remain on study with respect to factors related to the outcome under investigation. When informative dropout occurs, the data that researchers observe may be biased relative to what they would have seen had *all* the patients completed the study. Researchers cannot know the distribution of the missing outcomes, so their analysis of the data then relies in part on unverifiable assumptions about the missing observations.

#### **How does this data dynamic play out in a typical clinical trial?**

Let me give you a recent example—the COMPANION study compared the effects of three alternative treatments on the survival of patients with chronic heart disease. These treatments were (1) a cardiac pacemaker, (2) a cardiac pacemaker with defibrillator, and (3) drug treatment alone. The researchers were interested in treatment differences with respect to two primary endpoints: death, and hospitalization plus death. About one-quarter of the patients who were enrolled in the drug treatment arm of the study dropped out, compared with only 6% or 7% for the patients who were enrolled in the device arms. Many of the patients who dropped out in the drug treatment arm subsequently asked for implantation of a pacemaker.

## **The Four Phases of Clinical Trials**

**Phase I trials:** Researchers test an experimental drug or treatment in a small group of people (20 to 80) for the first time to evaluate its safety, determine a safe dosage range, and identify side effects.

**Phase II trials:** The experimental study drug or treatment is given to a larger group of people (100 to 300) to see if it is effective and to further evaluate its safety.

**Phase III trials:** The experimental study drug or treatment is given to large groups of people (1,000 to 3,000) to confirm its effectiveness, monitor side effects, compare it to commonly used treatments, and collect information that will allow the experimental drug or treatment to be used safely.

**Phase IV trials:** Post-marketing studies delineate additional information including the drug's risks, benefits, and optimal use.

*Source: U.S. National Institutes of Health ([www.clinicaltrials.gov](http://www.clinicaltrials.gov))*

These patients were likely at higher risk for hospitalization or death than the patients in the drug treatment arm who remained in the study. An analysis that ignores this fact could provide an inaccurate or biased estimate of the difference in outcomes between the device arms and the drug treatment arm. This could be significant for, say, a device manufacturer facing allegations related to the safety or risk associated with its products.

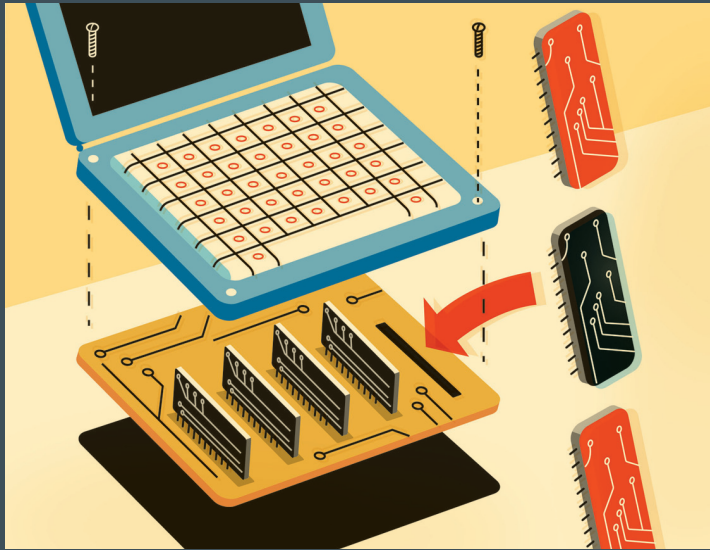
#### **How can researchers account for missing data?**

To account for missing data, I advocate the use of sensitivity analysis. First, I

recommend an analysis, guided by clinical input, that assumes that dropout can be explained (probabilistically) by time varying the information measured both on patients who dropped out and on patients who completed the study. This assumption is sometimes called “missing at random,” but I like to call it “explainable dropout.” Second, I recommend submitting this analysis to a stress test. This is done by positing clinically plausible deviations from the explainable dropout assumption and seeing whether inferences change. If they don't change, then you have confidence that results are robust. ■

## Litigation Spotlight: Intellectual Property

Consultants in our Dallas and Los Angeles offices have been involved in a number of technology-related patent infringement lawsuits filed in the U.S. District Court, Eastern District of Texas, in which our



clients received favorable damages rulings.

The district has long been considered a plaintiff-friendly one for patent-related cases; according to some estimates, the district has found in favor of plaintiffs 78% of the time. "Several U.S. jurisdictions do have that reputation, Eastern Texas being one. No matter the venue, however, our approach to assessing the core economic factors in IP cases is consistent," said **Keith R. Ugone, Ph.D.**, a testifying expert and Managing Principal at Analysis Group. In the cases cited here, Dr. Ugone opined on damages and was

supported by a team of Analysis Group consultants, including Vice Presidents **Na Dawson, Ph.D.**, and **Suzanne Heinemann**, and Managers **Minh Doan** and **Georgina Moreno, Ph.D.** The team conducted independent evaluations of claimed damages and prepared rebuttal reports. They considered a range of economic variables in their analyses, including relevant sales and profit data, contributions of the patents-in-suit to the products at issue, and the availability of next-best alternatives.

### ***Convolve, Inc. v. Dell, Inc., Western Digital Corporation, Hitachi Global Storage Technologies, Inc., and Hitachi, Ltd.***

Convolve sued our client **Hitachi** for alleged infringement of a patent covering a user interface for optimizing the seek noise associated with hard disk drives. Convolve had claimed \$35.8 million in damages from Hitachi, as well as significant claimed damages from codefendants Dell and Western Digital. Dr. Ugone testified at deposition and trial that, if infringement were found, claimed damages should be a lump-sum payment of no more than \$2.4 million. He based that estimate on several factors, including Hitachi's innovations and contributions relating to hard disk drives, Hitachi's

profit per disk drive, the limited consumer demand for the accused feature, and Convolve's real-world licensing offers for its technologies, including the patent-in-suit. The jury found the patent-in-suit to be valid and infringed, however the damages award against Hitachi was only \$1.4 million rather than the \$35.8 million requested. (The damages awards against Dell and Western Digital were similarly favorable, at \$1.4 million and \$2.4 million, respectively. Dell and Western Digital had retained their own damages experts who also testified at trial.)

---

## **Personal Audio LLC v. Apple, Inc.**

Personal Audio accused Analysis Group client **Apple** and its 16 generations of the iPod, its three generations of the iPhone, and its iPad of infringing two patents related to navigable playlists. The court ordered that the case be adjudicated in two separate trials, with the first covering the iPod classic, iPod mini, and iPod nano; and the second covering the iPod touch, iPhone, and iPad.

Personal Audio sought per-unit royalty rates and claimed royalty damages totaling \$84.4 million associated with the accused products in the first trial. Dr. Ugone testified that claimed damages should be much less than the amount sought by Personal Audio and should be in the form of a freedom-to-operate lump-sum license covering past and future sales of Apple products. He considered a number of factors, including Apple's license agreements related to comparable technologies, Apple's innovations and contributions to the commercial success of the accused products, and the limited claimed benefits of the patents-in-suit over existing technologies. At the conclusion of the first trial, the jury found the patents-in-suit to be valid and infringed. However, the jury awarded Personal Audio a lump-sum amount of \$8 million, rather than the \$84.4 million requested. With a lump-sum award, the judge determined there would be no second trial for the iPod touch, iPhone, and iPad.

---

## **Related Lawsuits Involving Bedrock Computer Technologies LLC**

Bedrock Computer Technologies sued our clients **Yahoo!** and **Google.com** for the alleged infringement of a patent related to an "on the fly" method of disposing of obsolete records contained in certain versions of the Linux kernel. In the Google matter, Bedrock was seeking \$183 million in royalty damages. Dr. Ugone testified that if infringement were found, claimed damages should be much less than the amount being sought. The factors he considered included the cost to modify the accused software code, the limited value of the accused software code to Google, and the existence of acceptable non-infringing alternatives. The jury awarded Bedrock \$5 million in damages rather than the \$183 million it sought.

In the Yahoo! matter, Bedrock was seeking \$32.4 million in royalty damages. Dr. Ugone testified that claimed damages should be significantly less than the amount being sought, given the cost to modify the accused software code, the limited value of the accused code to Yahoo!, Yahoo!'s ability to remove the accused code from the Linux kernel, and the existence of acceptable non-infringing alternatives. The jury found that Yahoo! did not infringe the patent-in-suit and awarded no damages to Bedrock. This finding marked the first defendant victory in a patent infringement case tried in the Eastern District of Texas, Tyler Division, since 2007.

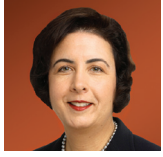
## **Jury Awards \$920 Million in Damages in DuPont Trade Secrets Matter**

In a widely publicized case, a federal jury awarded Analysis Group client **DuPont Co.** \$920 million in damages in a suit involving the misuse of information related to DuPont's Kevlar business. In the matter of *E.I. du Pont de Nemours & Co. v. Kolon Industries Inc.*, the chemicals company alleged that Kolon Industries, a South Korean textile firm, had misappropriated trade secrets, engaged in conspiracy, and stolen confidential business information about DuPont's "para-aramid" or Kevlar fiber, which is used in body armor and automotive products. The law firms of **McGuireWoods** and **Crowell & Moring** retained a team from Analysis Group, led by Managing Principal **John Jarosz** and Vice President **Robert Vigil, Ph.D.**, to perform a damages analysis and testify about the findings. They examined the costs that Kolon had avoided through its misuse of information and found that the gains totaled \$920 million. After a 10-hour deliberation, the jury found that Kolon and its U.S. subsidiary had wrongfully and willfully obtained proprietary information about Kevlar by hiring former DuPont engineers and marketers. According to Bloomberg and other news sources, the \$920 million award was one of the largest intellectual property judgments in 2011.

# Spotlight on Analysis Group

## New Managing Principals

### Anita J. Chawla Promoted



Anita J. Chawla, Ph.D., was promoted to Managing Principal. Dr. Chawla has more than 20 years' experience as a health economist, using economic analyses to support the business objectives of life sciences firms. Dr. Chawla, a member of our Menlo Park office, has played a lead role in developing an early phase economic-modeling capability for pharmaceuticals, an approach that connects strategic planning to health economics. She has assessed the value of a range of therapies to inform health care decision makers, and she has designed economic and outcomes-research strategies for product development and commercialization objectives. Dr. Chawla has conducted research and published on a variety of health economics issues including treatment patterns and outcomes, and the economic burden of various illnesses.

### Tasneem Chipty Joins Boston Office



Tasneem Chipty, Ph.D., has joined the Boston office as a Managing Principal. Dr. Chipty is an expert on industrial organization, antitrust economics, and econometrics. She has advised clients on a range of competitive issues and has provided economic and econometric analyses in cases involving antitrust liability, damages, and class certification. Dr. Chipty has studied numerous industries, with significant focus on media markets as well as pharmaceuticals, health care, and tobacco. She has submitted testimony, testified at trial and deposition, and presented before various organizations and agencies, including the U.S. Federal Trade Commission and the U.S. Department of Justice.

## Affiliate Sharon Oster Receives Award from AEA



Sharon M. Oster, the Frederic D. Wolfe Professor of Management and Entrepreneurship at the Yale School of Management and an Analysis Group affiliate, is the 2011 recipient of the Carolyn Shaw Bell Award. The award, presented at the January 2012 meeting of the American Economics Association's (AEA) Committee on the Status of Women in the Economics Profession, is given to an individual who "has furthered the status of women in the economics profession, through example, achievements, increasing our understanding of how women can advance in the economics profession."

Professor Oster is a past dean of Yale School of Management and specializes in competitive strategy, microeconomic theory, and antitrust economics.

## Analysis Group Repeats as a Top Place to Work

For the fourth year in a row, Analysis Group was named to *The Boston Globe's* annual list of the "Top Places to Work." The firm was ranked 12th among companies with 250 or fewer employees in Massachusetts.

President and CEO **Martha S. Samuelson** and Manager **Brian Ellman** were featured in several articles and video clips accompanying the survey results.

"I think this award reflects the committed, consistent approach we have taken over the years to making Analysis Group a great place to work," said Ms. Samuelson. "We have worked hard across all 10 of our offices to maintain a strong corporate culture focused on work rigor, respect for the individual, and collaboration."

In August 2011, Analysis Group was named the ninth-best consulting firm in the country to work for by Vault.com, based on input from consultants. This is the second year in a row that the firm has appeared in Vault's top 10.



## Celebrating 30 Years

Analysis Group celebrated its 30th anniversary with a client reception held in October 2011 in New York. The firm was founded in 1981 by **Bruce Stangle**

(currently chairman) and **Michael Koehn** (currently an academic affiliate and board member). Their goal was to apply academic rigor to challenges in business litigation. In

line with their vision, the firm has grown to 10 offices and more than 500 professionals across North America, and continues to cultivate a network of academic affiliates.

# Analysis Group Senior Staff

## Managing Principals and Principals

**Almudena Arcelus**  
aarcelus@analysisgroup.com

**Jonathan Arnold, Ph.D.**  
jarnold@analysisgroup.com

**Howard G. Birnbaum, Ph.D.**  
hbirnbaum@analysisgroup.com

**T. Christopher Borek, Ph.D.**  
cborek@analysisgroup.com

**Maureen M. Chakraborty, Ph.D.**  
mchakraborty@analysisgroup.com

**Anita J. Chawla, Ph.D.**  
achawla@analysisgroup.com

**Tasneem Chipty, Ph.D.**  
tchipty@analysisgroup.com

**Laurits R. Christensen**  
lchristensen@analysisgroup.com

**Jeffrey A. Cohen**  
jcohen@analysisgroup.com

**Pierre Y. Cremieux, Ph.D.**  
pcremieux@analysisgroup.com

**Nicholas I. Crew, Ph.D.**  
ncrew@analysisgroup.com

**Bruce F. Deal**  
bdeal@analysisgroup.com

**Mei Sheng Duh, Sc.D.**  
mduh@analysisgroup.com

**Mark H. Eglund**  
megland@analysisgroup.com

**Elizabeth A. Evans**  
eevans@analysisgroup.com

**Michael Falvey**  
CAO and CFO  
mfalvey@analysisgroup.com

**Brian S. Gorin**  
bgorin@analysisgroup.com

**Paul E. Greenberg**  
pgreenberg@analysisgroup.com

**D. Lee Heavner, Ph.D.**  
lheavner@analysisgroup.com

**John C. Jarosz**  
jjarosz@analysisgroup.com

**Jeffrey H. Kinrich**  
jkinrich@analysisgroup.com

**Rebecca Kirk Fair**  
rkirk@analysisgroup.com

**Genia Long**  
glong@analysisgroup.com

**R. Jeffrey Malinak**  
jmalinak@analysisgroup.com

**Justin N. McLean**  
jmclean@analysisgroup.com

**Marnie A. Moore**  
mmoore@analysisgroup.com

**Carla S. Mulhern**  
cmulhern@analysisgroup.com

**Andrew Parece**  
aparece@analysisgroup.com

**Michael J. Quinn, Ph.D.**  
mqinn@analysisgroup.com

**Martha S. Samuelson**  
President and CEO  
msamuelson@analysisgroup.com

**Laura Boothman Stamm**  
lstamm@analysisgroup.com

**Bruce E. Stangle, Ph.D.**  
Chairman  
bstangle@analysisgroup.com

**Richard M. Starfield**  
rstarfield@analysisgroup.com

**Bruce A. Strombom, Ph.D.**  
bstrombom@analysisgroup.com

**Susan F. Tierney, Ph.D.**  
stierney@analysisgroup.com

**Edward Tuttle**  
etuttle@analysisgroup.com

**Keith R. Ugone, Ph.D.**  
kugone@analysisgroup.com

**Marc Van Audenrode, Ph.D.**  
mvanaudenrode@analysisgroup.com

**Andrew Wong, Ph.D.**  
awong@analysisgroup.com

**Eric Qiong Wu, Ph.D.**  
ewu@analysisgroup.com

## Vice Presidents

**Matthew Barrett, Ph.D.**  
mbarrett@analysisgroup.com

**Michael Beauregard**  
mbeauregard@analysisgroup.com

**Stephen M. Benenson**  
sbenenson@analysisgroup.com

**Bruce L. Blacker**  
bblacker@analysisgroup.com

**Donna Lau Brooks**  
dbrooks@analysisgroup.com

**John M. Browning**  
jbrowning@analysisgroup.com

**Stephen Cacciola, Ph.D.**  
scacciola@analysisgroup.com

**Janis M. Carey, Ph.D.**  
jcarey@analysisgroup.com

**Michael J. Chapman, Ph.D.**  
mchapman@analysisgroup.com

**Serge Cherny**  
scherny@analysisgroup.com

**Michael Cliff, Ph.D.**  
mcliff@analysisgroup.com

**Na Dawson, Ph.D.**  
ndawson@analysisgroup.com

**Adam Decter**  
adecter@analysisgroup.com

**Robert L. Earle, Ph.D.**  
rearle@analysisgroup.com

**Elizabeth A. Eccher, Ph.D.**  
eeccher@analysisgroup.com

**Sara Filipek**  
sfilipek@analysisgroup.com

**Christian Frois**  
cfrois@analysisgroup.com

**Arindam Ghosh, Ph.D.**  
aghosth@analysisgroup.com

**Debjit A. Ghosh**  
dghosh@analysisgroup.com

**Kevin Gold**  
kgold@analysisgroup.com

**Mark A. Gustafson**  
mgustafson@analysisgroup.com

**Robin Heider**  
rheider@analysisgroup.com

**Suzanne Heinemann**  
sheinemann@analysisgroup.com

**Peter Hess, Ph.D.**  
phess@analysisgroup.com

**Paul J. Hibbard**  
phibbard@analysisgroup.com

**Michael Holland**  
mholland@analysisgroup.com

**Mark Howrey**  
mhowrey@analysisgroup.com

**Michael C. Hsu, Ph.D.**  
mhsu@analysisgroup.com

**Gaurav Jetley**  
gjetley@analysisgroup.com

**Ajay Jyoti**  
ajyoti@analysisgroup.com

**Daria Z. Killebrew**  
dkillebrew@analysisgroup.com

**Lauren R. Kindler**  
lkindler@analysisgroup.com

**George Kosicki, Ph.D.**  
gkosicki@analysisgroup.com

**Gene Kovacs, Ph.D.**  
gkovacs@analysisgroup.com

**Ted Laguerre**  
tlaguerre@analysisgroup.com

**William Leaf-Herrmann, Ph.D.**  
wleaf-herrmann@analysisgroup.com

**Patrick Lefebvre**  
plefebvre@analysisgroup.com

**Susanna Matter**  
smatter@analysisgroup.com

**David N. Mishol, Ph.D.**  
dmishol@analysisgroup.com

**Richard A. Mortimer, Ph.D.**  
rmortimer@analysisgroup.com

**David Nellesen, Ph.D.**  
dnellesen@analysisgroup.com

**Mike Nguyen**  
mnguyen@analysisgroup.com

**Nikita Piankov, Ph.D.**  
npiankov@analysisgroup.com

**Lisa B. Pinheiro**  
lpinheiro@analysisgroup.com

**James Rosberg, Ph.D.**  
jrosberg@analysisgroup.com

**Jimmy Royer, Ph.D.**  
jroyer@analysisgroup.com

**Steven S. Saeger, Ph.D.**  
ssaeger@analysisgroup.com

**Todd Schatzki, Ph.D.**  
tschatzki@analysisgroup.com

**Evan Hoffman Schouten**  
eschouten@analysisgroup.com

**Stephen A. Schurman, Ph.D.**  
sschurman@analysisgroup.com

**Peter P. Simon, Ph.D.**  
psimon@analysisgroup.com

**Tamar Sisitsky**  
tsisitsky@analysisgroup.com

**David W. Sosa, Ph.D.**  
dsosa@analysisgroup.com

**Robert L. Vigil, Ph.D.**  
rvigil@analysisgroup.com

**Orlando Visbal**  
ovisbal@analysisgroup.com

**Ching Tai Watson, Ph.D.**  
cwatson@analysisgroup.com

**Samuel Weglein, Ph.D.**  
sweglein@analysisgroup.com

**Alan G. White, Ph.D.**  
awhite@analysisgroup.com

**Aaron Yeater**  
ayeater@analysisgroup.com

**Sander Yermakov**  
syermakov@analysisgroup.com

## Selected Academic Affiliates & Experts

**Dennis J. Aigner**  
University of California, Irvine  
Merage School of Business

**Susan C. Athey**  
Harvard University

**Laurence C. Baker**  
Stanford School of Medicine

**Ray Ball**  
The University of Chicago  
Booth School of Business

**Arnold I. Barnett**  
MIT Sloan School of Management

**Ernst R. Berndt**  
MIT Sloan School of Management

**Hendrik Bessembinder**  
University of Utah  
David Eccles School of Business

**Marshall E. Blume**  
The Wharton School

**Marcel Boyer**  
Université de Montréal

**Michael J. Brennan**  
Manchester Business School

**Erik Brynjolfsson**  
MIT Sloan School of Management

**Thomas Buchmueller**  
University of Michigan  
Ross School of Business

**Karl E. Case**  
Wellesley College

**Patricia Chadwick**  
Ravengate Partners LLC

**Charlotte Chamberlain**  
Chamberlain Associates

**William J. Chambers**  
Boston University

**Judith A. Chevalier**  
Yale School of Management

**Iain M. Cockburn**  
Boston University  
School of Management

**Robin Cooper**  
Consensus

**Dwight B. Crane**  
Harvard Business School

**J. David Cummins**  
The Wharton School

**Michael R. Darby**  
UCLA Anderson School of Management

**Sanjiv R. Das**  
Santa Clara University  
Leavey School of Business

**David J. Denis**  
University of Pittsburgh  
Katz Graduate School of Business

**Francis X. Diebold**  
The Wharton School

**B. Espen Eckbo**  
Dartmouth College  
Tuck School of Business

**Lorraine A. Eden**  
Texas A&M University  
Mays Business School

**Nabil N. El-Hage**  
Independent Consultant

**Paul J. Feldstein**  
University of California, Irvine  
Merage School of Business

**Pierre Fortin**  
Université du Québec à Montréal

**George Foster**  
Stanford University  
Graduate School of Business

**Harold W. Furchtgott-Roth**  
Furchtgott-Roth Economic Enterprises

**Stuart A. Gabriel**  
UCLA Anderson School of Management

**Martin S. Gaynor**  
Carnegie Mellon University  
The Heinz School

**Stuart C. Gilson**  
Harvard Business School

**Steven R. Grenadier**  
Stanford University  
Graduate School of Business

**Robert Grien**  
TM Capital

**Mark Grinblatt**  
UCLA Anderson School of Management

**Jonathan Gruber**  
Massachusetts Institute of Technology

**Robert E. Hall**  
Stanford University  
Hoover Institution

**Oliver Hart**  
Harvard University

**John R. Hauser**  
MIT Sloan School of Management

**Donna Hitscherich**  
Columbia Business School

**William W. Holder**  
University of Southern California  
Marshall School of Business

**R. Glenn Hubbard**  
Columbia Business School

**James W. Hughes**  
Bates College

**Philippe Jorion**  
University of California, Irvine  
Merage School of Business

**Ronald C. Kessler**  
Harvard Medical School

**Ralph C. Kimball**  
Babson College

**Michael F. Koehn**  
Co-Founder, Analysis Group

**John M. Lacey**  
California State University, Long Beach  
College of Business Administration

**William H. Lehr**  
Massachusetts Institute of Technology

**Joshua Lerner**  
Harvard Business School

**James Levinsohn**  
Yale School of Management

**Thomas Lys**  
Northwestern University  
Kellogg School of Management

**Burton G. Malkiel**  
Princeton University

**John W. Mayo**  
Georgetown University  
McDonough School of Business

**Thomas G. McGuire**  
Harvard Medical School

**J.F. Philip Merrigan**  
Université du Québec à Montréal

**Andrew Metrick**  
Yale School of Management

**Sharon M. Oster**  
Yale School of Management

**Pierre Ouellette**  
Université du Québec à Montréal

**John W. Peavy III**  
Smith Group Asset Management, L.P.

**Robert S. Pindyck**  
MIT Sloan School of Management

**A. Mitchell Polinsky**  
Stanford Law School

**Timothy J. Riddiough**  
University of Wisconsin-Madison  
Wisconsin School of Business

**Louis F. Rossiter**  
College of William and Mary  
Thomas Jefferson Program in  
Public Policy

**David S. Scharfstein**  
Harvard Business School

**Steven M. Shavell**  
Harvard Law School

**Robert A. Sherwin**  
Analysis Group, Inc.

**Douglas J. Skinner**  
The University of Chicago  
Booth School of Business

**Edward A. Snyder**  
Yale School of Management

**Laura T. Starks**  
University of Texas at Austin  
McCombs School of Business

**Meir Statman**  
Santa Clara University  
Leavey School of Business

**Robert N. Stavins**  
Harvard University  
Kennedy School of Government

**Joel H. Steckel**  
NYU Stern School of Business

**Toby E. Stuart**  
Harvard Business School

**Guhan Subramanian**  
Harvard Law School and  
Harvard Business School

**Walter N. Thurman**  
North Carolina State University  
College of Management

**Peter Tufano**  
Oxford University  
Saïd Business School

**Kerry D. Vandell**  
University of California, Irvine  
Merage School of Business

**Roger Ware**  
Queen's University

**Roman L. Weil**  
The University of Chicago  
Booth School of Business

**Lawrence J. White**  
NYU Stern School of Business

**Michael K. Wohlgenant**  
North Carolina State University

**Susan E. Woodward**  
Sand Hill Econometrics

**Richard J. Zeckhauser**  
Harvard University  
Kennedy School of Government

**Jerold L. Zimmerman**  
University of Rochester  
Simon Graduate School of Business



CELEBRATING 30 YEARS

BOSTON CHICAGO DALLAS DENVER LOS ANGELES MENLO PARK MONTREAL NEW YORK SAN FRANCISCO WASHINGTON

[www.analysisgroup.com](http://www.analysisgroup.com)