Intellectual Property Capabilities
Cornerstone Research provides economic and financial consulting and expert testimony in all phases of complex litigation and regulatory proceedings. The firm works with an extensive network of prominent faculty and industry practitioners to identify the best-qualified expert for each assignment. Cornerstone Research has earned a reputation for consistent high quality and effectiveness by delivering rigorous, state-of-the-art analysis for over 25 years. The firm has 700 staff and offices in Boston, Chicago, London, Los Angeles, New York, San Francisco, Silicon Valley, and Washington.
Cornerstone Research’s capabilities cover the full spectrum of issues in intellectual property litigation.

Our highly skilled and experienced consultants have advanced degrees in economics, marketing, statistics, accounting, and finance and have deep experience in a variety of industries. We work with an extensive network of valuation and damages experts, economists, consumer behavior and marketing experts, and industry and licensing experts to offer cutting-edge solutions to clients in high-stakes intellectual property litigation.

We have worked on hundreds of intellectual property matters. Our experts have testified in numerous high-profile cases in federal and state courts throughout the United States, and have extensive trial experience in key venues such as the Eastern District of Texas, the District of Delaware, the Northern District of California, and the Southern District of New York. We have been involved in dozens of matters at arbitration proceedings, at the International Trade Commission, and in international courts.
Cornerstone Research experts have provided analyses and testimony in patent infringement litigation covering the full range of damages issues, including reasonable royalties, lost profits, and price erosion, as well as post-verdict royalties and injunction analyses.

Because patents exist in a wide variety of industry contexts, our analyses and methodologies are mindful of industry characteristics—there is no “one size fits all” approach to valuing patented inventions in the post-Uniloc world. Our experience includes:

- High-technology industries, such as semiconductors, mobile devices, and the rapidly evolving social media and networking space, which are characterized by patent thickets with multiple and overlapping patent rights.
- Anticommons industries, such as biotechnology, with divided entitlements among complements—either horizontal (patents covering different pieces that must be integrated into a product) or vertical (patents covering different steps in cumulative innovation).
- Pharmaceuticals and chemicals, where the scope of patents is generally coextensive with products actually sold.
- Modern software, characterized by fast-moving, iterative improvements on existing products.
- Industries such as aerospace, where new product generations are infrequent.

**FEATURED CASE**

**MONSANTO V. DUPONT**

Counsel for Monsanto retained Cornerstone Research and Senior Advisor Michael Keeley to analyze damages in a patent infringement case Monsanto brought against DuPont and one of DuPont’s subsidiaries, Pioneer Hi-Bred International. Monsanto claimed that, as a result of the infringement, Pioneer gained an illegal six-year head start in the development and commercialization of its infringing soybean seed product that used Monsanto’s patented Roundup Ready® technology.

Dr. Keeley estimated damages that resulted from the illegal head start based on DuPont/Pioneer’s own projections. Dr. Keeley found that damages ranged between $800 million and $1.2 billion. The case was tried before a jury in the U.S. District Court for the Eastern District of Missouri. The jury found the patent was valid, all the asserted patent claims were infringed, and that infringement was willful. The jury awarded Monsanto $1 billion in damages. The parties subsequently settled the case.

**Michael C. Keeley**

Senior Advisor, Cornerstone Research
Complex Patent Litigation

Market-Based Evidence in Patent Litigation

Recent court rulings have emphasized the need for market-based evidence to establish the value of a patented feature. Cornerstone Research staff have extensive experience with economic principles that underlie market-based evidence and advanced capabilities analyzing complex market data. We use state-of-the-art techniques, including various survey and econometric methods, to develop market-based approaches for both plaintiff and defendant clients. We also work with an unparalleled network of consumer behavior, survey, and economic damages experts.

Cutting-Edge Capabilities: Valuing Features in Mobile Devices

Cornerstone Research adopts a multipronged approach in patent infringement cases involving high-end, convergent mobile devices:

**Consulting Work**
- Consulting with counsel on specific market-based approaches that are likely to withstand *Daubert* scrutiny
- Consulting with counsel on whether patented features are testable via a consumer survey

**Consumer Demand Analysis**
- Working with counsel and technical experts to translate complex patent claim language to layperson’s terms
- Designing consumer surveys to test patented features
- Conducting econometric analysis of survey data

**Damages Analysis**
- Using consumer demand analysis to inform “but-for” reconstruction
- Analyzing and valuing design around alternatives
- Conducting *Panduit* and/or *Georgia-Pacific* analyses

FEATURED EXPERT

Lorin M. Hitt
Zhang Jindong Professor of Operations, Information, and Decisions, The Wharton School, University of Pennsylvania; Senior Advisor, Cornerstone Research

Federal Circuit rulings such as *Uniloc v. Microsoft* and *LaserDynamics v. Quanta* involve heightened scrutiny of patent damages. A credible damages analysis must establish a causal link between the contribution of the patented invention and the claimed royalty base. Professor Hitt exemplifies the unique industry perspective we are able to provide to clients in the evolving patent damages environment.

Professor Hitt’s research interests lie at the intersection of information technologies, economics, and econometrics. His research focuses on the study of value chains in information technology. With his distinctive background, interdisciplinary research, and testifying experience, Professor Hitt provides a unique industry-specific expertise and is exceptionally qualified to conduct rigorous market-based analyses to ascertain the relative contribution of a patented invention.
Complex Patent Litigation

FEATURED EXPERT

John R. Hauser
Kirin Professor of Marketing, Sloan School of Management, Massachusetts Institute of Technology

Increasingly, consumer surveys are being used to provide proof of the incremental value of patented inventions in complex, multifeatured products. Professor Hauser is uniquely positioned to bring his expertise to bear on patent damages. His research and teaching include marketing management, new product and service development, customer satisfaction, marketing research, and competitive marketing strategy.

Professor Hauser’s work focuses on the development of market research techniques, including conjoint surveys, to determine consumers’ preferences for product features. He has testified in numerous high-profile matters involving intellectual property and has conducted surveys to measure consumers’ preferences, beliefs, and willingness to pay. With his research background and rich testifying experience, Professor Hauser is exceptionally qualified to provide market-based evidence to ascertain the value of patented inventions.

Surveys in Patent Damages: An Affirmative Club and a Defensive Shield

Surveys are increasingly being used as an affirmative club and a defensive shield in complex patent litigation. A carefully constructed survey or a survey critique can be a valuable tool for both plaintiffs and defendants in winning the battle over market-based evidence.

Our consumer survey work uses cutting-edge academic research in survey methodology, quantitative marketing, and consumer behavior. Cornerstone Research staff have advanced degrees in statistics and marketing and bring a sophisticated and nuanced understanding of questionnaire design and sampling methods. We employ advanced statistical and econometric techniques to analyze survey data. We also work with an unparalleled network of marketing and consumer behavior experts who have conducted, analyzed, and critiqued hundreds of consumer surveys in many dozens of industries and market contexts.

In patent litigation, our experts have conducted or critiqued numerous surveys in response to the increasing need for market-based evidence. Our survey capabilities include:

- Calculating consumers’ willingness to pay for product features using sophisticated techniques such as conjoint analysis
- Rebutting entitlement to Entire Market Value by isolating the relative value of the patented feature in the overall product or service offering
- Determining the level of awareness of features covered by patent claims
- Determining the extent of use of patented features
- Testing Panduit factors such as demand for the patented invention or the existence of commercially acceptable non-infringing alternatives
- Testing whether a claimed benefit flowing from a patent is a driver of demand
- Estimating “but-for” market shares
Complex Patent Litigation

Intersection of Patents, Antitrust, and Contracts

Our network of antitrust scholars and licensing experts provides a rich set of complements to our damages experts for clients who navigate the intersection of the patent system, antitrust law, and contract law. Our experience includes:

- Analysis of patent misuse defense in patent infringement cases, including
  - Analyzing disclosure policies of standard-setting organizations
  - Analyzing fair, reasonable, and nondiscriminatory (FRAND) commitments and their implications for potential royalties
- Analysis of cross-licenses and patent pools
- Analysis of so-called exclusion payment, reverse payment, or pay-for-delay settlements that occur in the context of the Hatch-Waxman Act
- Analysis of alleged tying of patents to unpatented items
- Analysis of licensing disputes regarding patent scope

Patent Misuse Defense in Mobile Device Litigation

In a recent case involving mobile devices, Cornerstone Research worked with counsel on the successful defense of one of the world’s largest smartphone and tablet manufacturers. The court ruled that an injunction cannot be obtained to enforce patents declared essential to a standard and subject to reasonable and nondiscriminatory (RAND) commitments.

FEATURED CASE
MICROSOFT V. MOTOROLA

Counsel for Microsoft retained Cornerstone Research and Senior Vice President Matthew Lynde to estimate the value and range of royalties that would be consistent with Motorola Mobility’s contractual obligations to license its patented standards on RAND terms.

Dr. Lynde filed two expert reports and testified at the Phase I trial. He presented evidence providing a quantitative basis for the court’s determination, and rebutted opposing testimony. Judge James L. Robart of the U.S. District Court for the Western District of Washington determined that RAND royalties would total approximately $1.8 million per year across the two standards, very close to the amount of approximately $1.2 million estimated by Dr. Lynde and substantially less than Motorola’s initial demand of up to $4 billion per year. In Phase II, the court found that Motorola’s licensing offers to Microsoft breached contractual obligations to the standard-setting organizations.

Matthew R. Lynde
Senior Vice President, Cornerstone Research
Life Sciences Disputes

Our intellectual property and pharmaceuticals and healthcare practices work in tandem to provide comprehensive expertise to clients who focus on life sciences disputes. Our experience includes:

- Analyzing lost profits, price erosion, accelerated market entry, and reasonable royalties
- Analyzing economic issues related to irreparable harm and commercial success in pharmaceutical patent infringement cases
- Analyzing the impact of generic entry and the factors affecting pharmaceutical sales in ANDA cases
- Conducting industry and market analyses of obviousness
- Analyzing licensing and collaboration agreements between drug companies, including terms relating to financial considerations and milestone payments, options to develop and commercialize, and termination clauses

INTELLECTUAL PROPERTY LICENSING AND PHARMACEUTICAL INDUSTRY EXPERTISE IN A POST-ACTAVIS WORLD

The Supreme Court decision in *FTC v. Actavis* does not eliminate the uncertainty regarding antitrust scrutiny that brand and generic companies previously faced in entering reverse payment settlements. Payments in the form of monetary compensation are obvious, but often the payment is alleged to have been hidden within contemporaneous business agreements—for example, patent licenses, supply agreements, and agreements for promotional support—or in agreements related to brand-authorized generics.

Determining whether such agreements hide a reverse payment requires careful evaluation (and potentially valuation) of the various components of the agreements. Cornerstone Research has closely collaborated with intellectual property management practitioners with expert knowledge of different aspects of licensing relationships. We work with experts who have extensive experience in negotiating pharmaceutical licenses, collaboration agreements, and co-development ventures.
Trademark, Trade Dress, and Copyright Infringement

Trademark and Trade Dress Infringement

Cornerstone Research staff and affiliated experts have provided analyses and testimony on a wide range of Lanham Act issues related to trademark and trade dress infringement and false advertising. We often work with multiple experts in a single matter to address complex liability and damages claims, combining economics, marketing, statistical, accounting, and industry expertise.

We work with some of the foremost scholars in the fields of marketing, branding, and advertising. Our unparalleled network includes experts with experience in analyzing Sleekcraft factors; evaluating whether trade dress is functional or inherently distinctive; estimating corrective advertising when marks have been misappropriated; and designing and assessing surveys to determine likelihood of confusion, secondary meaning, genericness, and dilution, including blurring and tarnishment tests.

Copyright Infringement

Cornerstone Research staff and affiliated experts have provided analyses and testimony on a range of valuation and damages issues related to copyright infringement and breach of technology sharing.

We have prepared and tested infringement-related damages claims in cases alleging lost profits and unjust enrichment. We have also analyzed reasonable royalties and industry licensing practices and assessed allegations of unfair competition stemming from unauthorized use or infringement, and have experience analyzing affirmative defenses to infringement, especially fair use defenses.

FEATURED EXPERT

Dominique M. Hanssens
Distinguished Research Professor of Marketing, Anderson School of Management, University of California, Los Angeles; Senior Advisor, Cornerstone Research

We routinely work with high-profile academic experts on intellectual property matters that require marketing, survey, and consumer behavior expertise. We have successfully applied our approach of combining quantitative marketing research techniques with rigorous analysis of consumer behavior and behavioral economics literature.

Professor Hanssens exemplifies this approach. He has served as faculty chair, associate dean, and marketing area chair at the UCLA Anderson School of Management. His extensive expertise includes analyzing harm to brand, researching marketing channels and how they influence consumers’ purchase decisions, analyzing the extent to which a trademark at issue has achieved secondary meaning in the marketplace, and addressing the likelihood of confusion caused by an alleged infringement.
Trade Secret Misappropriation and Unfair Competition

The number of trade secret cases has grown rapidly, doubling every seven to ten years since 1950. In the majority of these cases, companies allege that current or former employees have misappropriated confidential or secret information.

Cornerstone Research staff and affiliated experts have offered effective trade secret analysis and rigorously supported opinions in industries such as high technology and the Internet, financial institutions, and entertainment and gaming. In particular, we have analyzed:

- The nature of claimed secrets and efforts to protect them
- Due diligence and corporate governance practices
- Employment restrictions (noncompete or nondisclosure agreements)
- Valuation of alleged secrets (using marketing and consumer survey experts)
- The role of technology-sharing agreements as part of due diligence for licensing, joint ventures, or mergers and acquisitions
- Damages claims and allegations of unfair competition in cases involving
  - Lost profits and unjust enrichment related to changes in market share
  - Unjust head-start gains
  - Avoided costs of development
  - Reasonable royalties and licensing practices

FEATURED EXPERT

George G. Strong Jr.
Managing Director,
Cornerstone Research

George Strong has more than thirty years of consulting experience in complex commercial disputes and has testified in more than a hundred cases involving intellectual property, antitrust, breach of contract, and fraud disputes.

He has testified on lost profits and other types of economic harm in numerous cases of alleged misappropriation of trade secrets, including Ticketmaster v. Tickets.com, sit-up Ltd. v. IAC/InterActiveCorp and HSN International, and Mentor Graphics and Meta Systems v. Quickturn Design Systems and Cadence Design Systems.

Mr. Strong has coauthored chapters appearing in editions of the Litigation Services Handbook series.
Representative Engagements

Complex Patent Litigation
Microsoft Corp. v. Motorola Inc. et al.
Monsanto Co. v. E.I. du Pont de Nemours & Co. et al.
Brandeis University and GFA Brands Inc. v. Keebler Co. et al.
Bard Peripheral Vascular Inc. v. W. L. Gore & Associates Inc.
Boston Scientific Corp. et al. v. Cordis Corp.
Siemens Medical Solutions USA Inc. v. Saint-Gobain Ceramics & Plastics Inc.
LG.Philips LCD Co. v. Tatung Co. of America et al.
The Procter & Gamble Co. v. Kimberly-Clark Corp.
Polaroid Corp. v. Eastman Kodak Co.

Trademark and Trade Dress Infringement
NEON Systems Inc. v. New Era of Networks Inc.
Computer Video Games
Vision Improvement Products Advertising

Copyright Infringement
VLIW Technology Inc. v. Hewlett-Packard Co. and STMicroelectronics Inc.
Computer Software Industry
IDX Systems Corp. v. Epic Systems Corp. et al.
Sony Computer Entertainment Inc. et al. v. Connectix Corp.
Apple Computer Inc. v. Hewlett-Packard Inc. and Microsoft Corp.

Trade Secret Misappropriation and Unfair Competition
Security Title Agency Inc. v. First American Title Insurance Co.
Niitakaya U.S.A. Inc. v. Nishimoto Trading Co. Ltd.
Theft of Trade Secrets Regarding Online Social Games
VLIW Technology Inc. v. Hewlett-Packard Co. and STMicroelectronics Inc.
IDX Systems Corp. v. Epic Systems Corp. et al.
Theft of Trade Secrets Regarding Internet Advertising

FEATURED EXPERT

Mary A. Woodford
Senior Advisor,
Cornerstone Research

Mary Woodford has over twenty years of consulting experience in intellectual property cases, and has testified at deposition and/or trials in over four dozen cases.

Ms. Woodford has testified on economic issues including lost profits, reasonable royalties, and unjust enrichment in venues including Eastern Texas, Delaware, Eastern Virginia, and the International Trade Commission. Examples of cases in which she has testified at trial include Siemens Medical Solutions v. Saint-Gobain Ceramics & Plastics, Bright Response v. Google, and Boston Scientific v. Cordis.

She is one of two economic experts on a panel that coauthored the Compensatory Damages Issues in Patent Infringement Cases: A Pocket Guide for Federal District Court Judges.
Selected Intellectual Property Experts

David Bell  
University of Pennsylvania

Ernst Berndt  
Massachusetts Institute of Technology

Louis P. Berneman  
Texelerate

Eric T. Bradlow  
University of Pennsylvania

Timothy F. Bresnahan  
Stanford University

Cornerstone Research

Michael E. Burton  
Cornerstone Research

Bruce I. Carlin  
University of California, Los Angeles

Pradeep K. Chintagunta  
University of Chicago

Srikant M. Datar  
Harvard University

John A. Deighton  
Harvard University

Ravi Dhar  
Yale University

Jeffrey A. Dubin  
University of Southern California

Greg Eastman  
Cornerstone Research

Tülin Erdem  
New York University

Daniel M. Garrett  
Cornerstone Research

Anindya Ghose  
New York University

Henry G. Grabowski  
Duke University

Rahul Guha  
Cornerstone Research

Christine M. Hammer  
Cornerstone Research

Ward A. Hanson  
Stanford University

Dominique M. Hanssens  
University of California, Los Angeles

Cornerstone Research

John R. Hauser  
Massachusetts Institute of Technology

Lorin M. Hitt  
University of Pennsylvania

Cornerstone Research

Vandy M. Howell  
Cornerstone Research

Wayne D. Hoyer  
University of Texas at Austin

James W. Hughes  
Bates College

Carlyn Irwin  
Cornerstone Research

Raghuram Iyengar  
University of Pennsylvania

Michael C. Keeley  
Cornerstone Research

Kevin Lane Keller  
Dartmouth College

Gordon Klein  
University of California, Los Angeles

Donald R. Lehmann  
Columbia University

John G. Lynch Jr.  
University of Colorado Boulder

Matthew R. Lynde  
Cornerstone Research

Zoya Marriott  
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