EXHIBIT 11

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

101099

RESQNET.COM, INC.,

Plaintiff,

01 Civ. 3578 (RWS)

- against -

OPINION

LANSA, INC.,

Defendant.

---X

12-6-1[

A P P E A R A N C E S:

Attorney for Plaintiff

SORIN ROYER COOPER LLP
Two Tower Center Boulevard, 11th Floor
East Brunswick, N.J. 08816
By: Jeffrey Kaplan, Esq.

Attorneys for Defendant

ARENT FOX LLP
1675 Broadway
New York, N.Y. 10019
By: David Wynn, Esq.

1050 Connecticut Avenue, NW
Washington, D.C. 20036
By: James Hulme, Esq.
Janine Carlan, Esq.
Taniel Anderson, Esq.

The more common approach of determining damages attempts to ascertain the royalty rate to which the parties would have agreed had they negotiated an agreement prior to infringement. See, e.g., Unisplay, S.A. v. American Elec. Sign Co., Inc., 69 F.3d 512, 517 (Fed.Cir. 1995). "The hypothetical negotiation tries, as best as possible, to recreate the ex ante licensing negotiation scenario and to describe the resulting agreement . . . . The hypothetical negotiation also assumes that the asserted patent claims are valid and infringed." Lucent, 580 F.3d at 1324. In calculating a reasonable royalty under this approach, courts rely on the comprehensive, if overlapping, list of fifteen factors detailed in Georgia-Pacific Corp. v. United States Plywood Corp., 318 F.Supp. 1116, 1120 (S.D.N.Y. 1970), often termed the "Georgia-Pacific factors."

The first Georgia-Pacific factor requires considering past and present royalties received by the patentee "for the licensing of the patent in suit, proving or tending to prove an established royalty." 318 F.Supp. at 1120. "[T]his factor considers only past and present licenses to the actual patent and the actual claims in litigation." ResQNet.com, 594 F.3d at 869 (citing Lucent, 580 F.3d at 1329). Thus, the damages calculation may not rely on licenses that are "radically different from the hypothetical agreement under consideration." Lucent, 580 F.3d at 1327-28.

In addition, the hypothetical negotiation must be assumed to have occurred prior to litigation over the patent because the threat of suit may skew a fee's negotiation, see Hanson v. Alpine Valley Ski Area, Inc., 718 F.2d 1075, 1078-79 (Fed. Cir. 1983), and established royalty rates are therefore evaluated in this light. Similarly, a reasonable royalty can be different than an established royalty when widespread infringement artificially depressed past licenses. See, e.g., Nickson Indus., Inc. v. Rol Mfg. Co., 847 F.2d 795, 798 (Fed. Cir. 1988).

The second Georgia Pacific factor considers "the rates paid by the licensee for the use of other patents comparable to the patents in suit." Georgia Pacific 318 F.Supp. at 1120. The third factor weighs "[t]he nature and scope of the license, as exclusive or non-exclusive; or as restricted or non-restricted." Id. The fourth Georgia-Pacific factor concerns the licensor's policies and practices regarding the grant of licenses to its technology. Id. The fifth addresses the commercial relationship between the licensor and the licensee. Id. The sixth factor is "[t]he effect of selling the patented specialty