

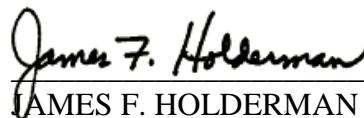


including at least an access point and a station of a functioning nature. In that context, the application of the requirement that the court look for the “smallest salable patent-practicing unit” may be incoherent, as many apparatuses may be necessary to implement the patent’s methods or systems, even though those apparatuses are not themselves part of the invention.

To put a finer point on the court’s concern, imagine a patent for a manufacturing method repurposing various typical factory equipment in a new way to make a manufacturing process more efficient. To practice the patent, one would need each of the pieces of typical factory equipment, and yet it would not make any sense to calculate a royalty based on the value of all of that machinery—literally, the “smallest salable patent-practicing unit.” The value of the new manufacturing method which makes use of the preexisting typical machinery would seem to be something else altogether.

The court is concerned that the situation here is analogous to the manufacturing method hypothetical example above. Accordingly, the parties are requested to be prepared at the trial beginning on 9/9/13 to provide input that addresses the applicability of the standard requiring the “smallest salable patent-practicing unit” in the situation here. If the parties believe that the standard is inappropriate to apply to claims covering systems and methods, they should be prepared to articulate an alternative standard that the court can apply in these circumstances.

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JAMES F. HOLDERMAN

District Judge, United States District Court

Date: September 5, 2013