

## CLIENT ALERT

### Pre-Verdict Reasonable Royalties Should Not Be Used For Determining Post-Verdict Damages

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In *Carlos Armando Amado v. Microsoft Corp.*, (No. 07-1236, February 26, 2008), the Federal Circuit vacates the district court's royalty award and remands for further consideration. Following a jury finding of infringement by Microsoft and awarding a reasonable royalty of four cents per infringing unit to Amado, the district court trebled the jury's award to twelve cents using the "trebling for willful [infringement] as a guideline." The district court also issued a permanent injunction, which was stayed until any appeal was abandoned or otherwise resolved. Both Amado and Microsoft appealed the district court's award of twelve cents, with Microsoft arguing that the district court abused its discretion by awarding more than the four cents royalty found by the jury.

The Federal Circuit, in vacating the district court's royalty award of twelve cents, holds that there is a fundamental difference between a reasonable royalty for pre-verdict infringement and damages for post-verdict infringement. Since the jury's award of four cents per unit was based on Microsoft's infringing conduct prior to the verdict, that award should not now form the basis for post-verdict damages. The Federal Circuit further notes that the district court's trebling of damages was erroneously based on willful infringement. Willfulness, the Federal Circuit concludes, is not the proper inquiry when the infringement is permitted by a court-ordered stay. Rather, any damage assessment for post-verdict infringement "should take into account the parties' bargaining positions, and the resulting change in economic circumstances, resulting from the determination of liability."

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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