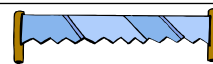


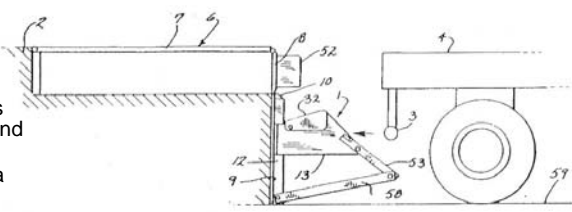
- **35 U.S.C. §283 Injunction.**
 - The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.
- **35 U.S.C. §284 Damages.**
 - Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.
 - When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed. . . .
- **35 U.S.C. §286 Time limitation on damages.**
 - Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint...

Rite-Hite v. Kelley (Fed. Cir. 1995) (en banc)					
Rite-Hite					Kelley
Patent	Price	Item/Model	Damages Sought	Missed sales	AID
None in suit	\$1000 to \$1500	ADL-100 *	-All lost wholesale profit -30% lost retail profit	3,243	Truk Stop (3,825 AIDs sold)
'847	\$333 to \$750	MDL-55 *	same	80	
Not patent protected		Dock levelers **	same	1,692	

* Damages awarded and upheld ** Damages awarded but reversed on appeal

• **Kelley disputes**

- That the patent act allows damages for lost ADL-100 sales
- Lost profits on dock levelers are not attributable to demand for '847 invention
- Royalty rate should not be a percentage of ADL-100 and dock leveler profits



Rite-Hite v. Kelley (Fed. Cir. 1995)

- Kelley argues, that to recover damages in the form of lost profits a patentee must prove that, “but for” the infringement, ***it would have sold a product covered by the patent in suit*** to the customers who bought from the infringer
- Rite-Hite argues it is entitled to all profits it would have made on ***any of its products*** “but for” the infringement
- Statute
 - “adequate to compensate for infringement”
 - Supreme Court
 - This means “damages that will fully compensate the patentee for infringement
 - Be careful in limiting patent damages
 - If no infringement, what would the patentee have made?
 - Thus, initial filter of lost sales to include in damages is “but for” causation

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Rite-Hite v. Kelley (Fed. Cir. 1995)

- Panduit’s DAMP test is a mechanism to establish “but for” causation and entitlement to lost profits damages
 - Evaluated DAMP from a reasonableness perspective
 - Burden shifts once DAMP showing made by patentee
- DAMP (not the exclusive test) =
 - (1) demand for the patented product
 - (2) absence of acceptable noninfringing substitutes
 - (3) his manufacturing and marketing capability to exploit the demand, and
 - (4) the amount of the profit he would have made
- Test does not stop with DAMP establishment of “but for” causation
 - Need reasonable, objective capability to establish a second, “proximate cause” filter on damages
 - Here, loss of sales of the ADL-100 is reasonably capable

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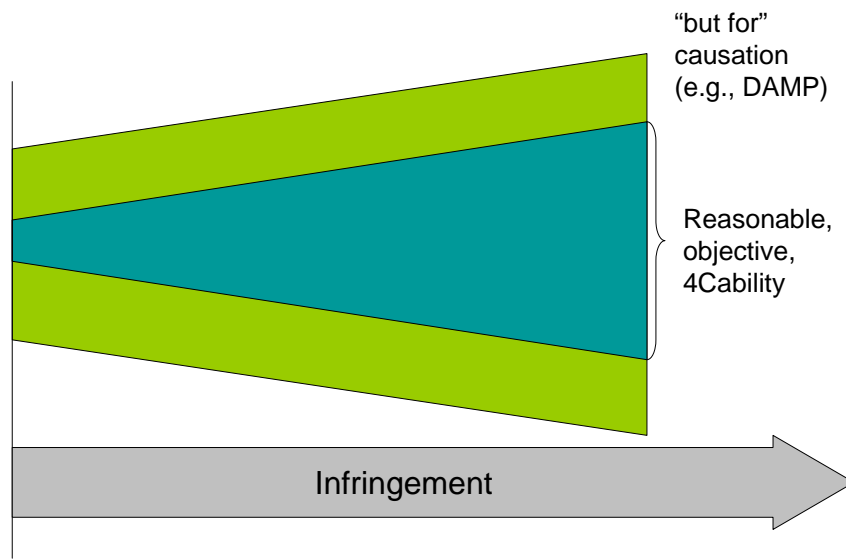
Rite-Hite v. Kelley (Fed. Cir. 1995)

- The court rejects Kelley’s argument that this is an antitrust problem
 - Rite-Hite is simply calculating the harm resulting from infringement
- The court rejects Kelley’s argument that this result conflicts with Panduit – arguing that the DAMP test only goes to patent-covered items
 - Panduit is not the only test or way to meet “but for” causation
 - Even taking the DAMP factors into account, only the second one is arguably not met

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Rite-Hite v. Kelley (Fed. Cir. 1995)

- Model of the Rite-Hite analysis



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Rite-Hite v. Kelley (Fed. Cir. 1995)

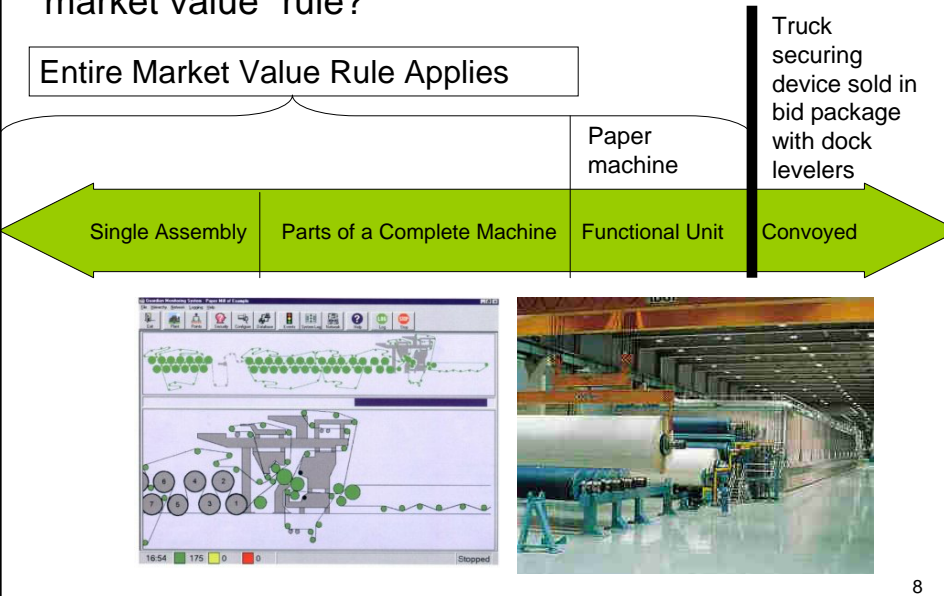
- Dock Levelers

- Reverse district court’s inclusion of lost dock levelers sales
- There is “but for” causation here
- But, apply the “entire market value” rule to limit the damages
 - This rule says that the damages award can go to the entire value of the whole machine as a marketed article
 - The entire value must be properly and legally attributable to the patented feature – the patented component substantially created the value and the basis for customer demand
 - The district court applied a “convoyed” sales rule to determine the scope of the entire market value
 - The dock levelers were typically bid and supplied with the truck securing device

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Rite-Hite v. Kelley (Fed. Cir. 1995)

- What constitutes appropriate application of the “entire market value” rule?



Rite-Hite v. Kelley (Fed. Cir. 1995)

- The assembly – complete machine – functional unit test shows that the damages should not extend to the dock levelers
 - They are merely bid and sold with the truck securing devices
 - The parties had established sales and market positions with the dock levelers before the patented articles came along
 - “We distinguish our conclusion to permit damages based on lost sales of the unpatented (not covered by the patent in suit) ADL-100 devices, but not on lost sales of the unpatented dock levelers, by emphasizing that the Kelley Truk Stops were devices competitive with the ADL-100s, whereas the dock levelers were merely items sold together with the restraints for convenience and business advantage.”

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Rite-Hite v. Kelley (Fed. Cir. 1995)

- Dissents
 - Nies
 - Extending damages to lost ADL-100 sales misreads the word “damages” in 35 USC 284
 - The focus should be injury to patent rights, not actual damages
 - “the majority states a broader rule for the award of lost profits on any goods of the patentee with which the infringing device competes, even products in the public domain”
 - Newman
 - Convoyed sales of dock levelers should be allowed
 - Look to the standard business practice of needing to bid these systems together

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