

THOMAS P. McGAHEE, PH.D.

Vice President

Phone: 214 523 1425
Fax: 214 523 1401
thomas.mcgahee@analysisgroup.com

2911 Turtle Creek Boulevard
Suite 600
Dallas, TX 75219

Dr. McGahee specializes in economic analysis and damages quantification. He focuses on their application in complex commercial disputes, including intellectual property, antitrust, breach of contract, and false advertising matters. Dr. McGahee has filed expert reports on damages and economic issues and has testified at deposition and trial. He has evaluated lost profits and reasonable royalty damages in a range of industries, including mobile devices and applications, internet products and services, computer hardware and software, and medical devices. He also has evaluated claims of irreparable economic injury and other economic criteria relevant to obtaining injunctions in patent infringement matters. In trademark infringement and false advertising matters, Dr. McGahee has evaluated lost profits, unjust enrichment, and corrective advertising. He also has assessed claims of class-wide economic injury and evaluated proposed methods for quantifying damages on a class-wide basis. In antitrust matters, he has evaluated allegedly anticompetitive conduct and claimed damages. Dr. McGahee served on the faculty of the University of Georgia and has taught courses in economics at the undergraduate and graduate levels.

EDUCATION

Ph.D., economics, University of Georgia (*Fields*: Industrial organization, econometrics) 2011
B.B.A., management, University of Georgia 2002

PROFESSIONAL EXPERIENCE

Analysis Group, Inc. 2011–Present
Research Assistant, economics, University of Georgia 2008–2011

TEACHING EXPERIENCE

Lecturer, economics, University of Georgia 2018–2022
Teaching Assistant, economics, University of Georgia 2005–2011

EXPERT REPORTS AND TESTIMONY LISTING

(*Clients underlined*)

- Repairify, Inc. v. Keystone Automotive Industries, Inc. d/b/a Elitek Vehicle Services (US District Court for the Western District of Texas, Civil Action No. 6:21-cv-00819). Retained as an economics and damages expert for the plaintiff in a patent infringement matter related to remote vehicle diagnostics and programming. Evaluated damages. Prepared expert report (2023).

- *Innovaport LLC v. Target Corporation* (US District Court for the Western District of Wisconsin, Civil Action No. 3:22-cv-425-wmc). Retained as an economics and damages expert for the defendant in a patent infringement matter related to in-store product location functionality in mobile applications, mobile websites, and in-store kiosks. Evaluated the plaintiff's claimed reasonable royalty damages. Prepared expert report (2023).
- Confidential arbitration matter (American Arbitration Association, Case No. 01-22-000-7897). Retained as an economics and damages expert for the claimant in a matter involving allegations of patent infringement, misappropriation of trade secrets, multiple breaches of contract, breach of the implied covenant of good faith and fair dealing, and unfair competition. Evaluated claimant's damages associated with the alleged wrongful conduct. Prepared expert report (2023).
- *HQ Specialty Pharma Corp. and WG Critical Care, LLC v. Fresenius Kabi USA, LLC* (US District Court for the District of Delaware, Civil Action No. 1:21-cv-01714-MN). Retained as an economics and damages expert for the plaintiffs in a patent infringement matter related to terminally sterilized, pre-mixed, ready-to-administer calcium gluconate injection products. Evaluated damages, economic support for a permanent injunction, and economic evidence related to the commercial success of the patented technology. Prepared multiple expert reports and provided deposition testimony (2023).
- *Atlas Global Technologies LLC v. TP-Link Technologies Co., Ltd. and TP-Link Corporation Ltd. et al.* (US District Court for the Eastern District of Texas, Civil Action No. 2:21-cv-00430). Retained as an economics and damages expert for the defendants in a patent infringement matter related to Wi-Fi routers where the asserted patents were claimed to be essential to the 802.11ax (Wi-Fi 6) standard. Evaluated the plaintiff's claimed royalty damages and whether the royalty rates sought by the plaintiff were fair, reasonable, and non-discriminatory (FRAND). Prepared multiple expert reports and provided deposition and trial testimony (2023).
- *Fall Line Patents, LLC v. McDonald's Corporation and McDonald's USA, LLC* (US District Court for the Eastern District of Texas, Civil Action No. 6:18-cv-412-RWS). Retained as an economics and damages expert for the defendants in a patent infringement matter related to mobile ordering functionality in mobile applications. Evaluated the plaintiff's claimed reasonable royalty damages. Prepared expert report (2023).
- *Sun Mechanical Contracting, Inc. v. Jake Hunter and TDIndustries, Inc. et al.* (Superior Court of the State of Arizona, Pima County, Case No. C20213455). Retained as an economics and damages expert for the defendants and counterclaimants in a matter involving alleged misappropriation of trade secrets and other alleged wrongful conduct. Evaluated the plaintiff's claimed lost profits damages. Evaluated the counterclaimants' damages associated with alleged wrongful conduct by the plaintiff and other counter-defendants. Prepared two expert reports (2022) and provided deposition testimony (2023).
- *Unicorn Global, Inc., Hangzhou Chic Intelligent Technology Co., Ltd., and Shenzhen Uni-Sun Electronic Co., Ltd. v. Hillo America, Inc. d/b/a Hoverheart* (US District Court for the Central District of California, Civil Action No. 2:19-cv-03028). Retained as an economics and damages expert for the plaintiffs in a patent infringement matter related to electric self-balancing vehicles (or hoverboards). Evaluated damages, economic support for a permanent injunction, and economic evidence relating to the commercial success of the patented technology. Prepared expert report (2020).

- Unicorn Global, Inc., Hangzhou Chic Intelligent Technology Co., Ltd., and Shenzhen Uni-Sun Electronic Co., Ltd. v. Golabs, Inc. d/b/a GOTRAX, et al. (US District Court for the Northern District of Texas, Civil Action No. 3:19-CV-00754-N). Retained as an economics and damages expert for the plaintiffs/counter-defendants in a patent infringement matter related to electric self-balancing vehicles (or hoverboards). Evaluated the defendants'/counterclaimants' claimed economic support for a preliminary injunction related to alleged tortious interference and other counterclaims. Assessed claims of irreparable harm. Prepared expert report and provided deposition testimony (2019).
- Diamondback Industries, Inc. v. Kingdom Downhole Tools, LLC, Trea H. Baker, and Justice Baker (US District Court for the Northern District of Texas, Civil Action No. 4:18-CV-00902-A). Retained as an economics and damages expert for the defendants in a matter involving allegations of misappropriation of trade secrets and violation of the Digital Millennium Copyright Act. Evaluated the plaintiff's claimed lost profits damages and assessment of claimed development costs allegedly avoided by the defendants. Prepared two expert reports (2019).

SELECTED CONSULTING ENGAGEMENTS

Intellectual Property

- Assisted in evaluating claimed reasonable royalty damages in a patent infringement matter related to the use of certain parallel processing functionality by microprocessors contained in mobile devices. Analyzed sales performance among mobile devices to evaluate whether the claimed patented technology was a determinative factor in the commercial success of a mobile device. Assisted in the determination of a reasonable royalty payment based on a hypothetical negotiation framework and indicators of value for the patents-in-suit derived from relevant market transactions related to the claimed patented technology. Demonstrated that the plaintiff's damages expert overstated the claimed reasonable royalty rate by relying on unsupported and overstated effective royalty rate calculations.
- Assisted in evaluating claimed reasonable royalty damages in a patent infringement matter related to dynamic allocation of uplink bandwidth on LTE networks. The plaintiff alleged that mobile devices that support the 4G LTE communication standard infringed its patents. Evaluated damages models proffered by the plaintiff's experts, including conjoint analysis and econometric market demand estimation. Various analyses isolated the incremental value contributions of the asserted patents from the economic benefits associated with wireless telecommunications standards. Also evaluated licensing policies and rates for relevant patent pools associated with wireless telecommunications standards.
- Assisted in evaluating claimed reasonable royalty damages in a patent infringement matter related to turn-by-turn navigation applications for mobile devices. At issue was the use of image vector entities to overlay text information on maps shown in the application's 3D navigation view. Analyses demonstrated that the plaintiff's damages expert overstated claimed incremental profits from the paid version of the defendant's turn-by-turn navigation application. Further demonstrated that the "cost-based apportionment" methodology proffered by the plaintiff's damages expert was conceptually flawed and unsupported. Assisted in the determination of a reasonable royalty payment based on a hypothetical negotiation framework and indicators of value for the patent-in-suit derived from comparable patent license, settlement, and patent assignment agreements.

- Assisted in evaluating claimed damages in a trademark infringement matter in which a professional video editing company accused a major video sharing platform of infringing its trademarks and creating confusion in the marketplace through the name of a tool within the platform's mobile application. Analyses included evaluating the amount of royalty damages, unjust enrichment, and corrective advertising requested by the plaintiff. Analyses showed that the plaintiff's expert's damages calculations were significantly overstated, relied on flawed economic reasoning, and were based on irrelevant measures of claimed value.
- Assisted in evaluating claimed reasonable royalty damages in a patent infringement matter in which a major e-commerce retailer was accused of infringing patents related to sales force automation by offering automated online product recommendations. Analyses demonstrated that the plaintiffs' damages and marketing experts overstated the defendant's revenues allegedly attributable to the accused recommendation features. Further demonstrated that the plaintiff's damages expert opined to an incorrect royalty payment structure and overstated claimed royalty rate.
- Assisted in evaluating claimed reasonable royalty damages in a patent infringement matter involving multiple defendants related to guided parametric search functionality on e-commerce websites. Analyses of sales data and usage metrics evaluated whether there was an economic causal connection between the accused functionality and the defendants' revenues or profits. Demonstrated that the plaintiff's claimed damages were unreasonably high in light of the amounts the plaintiff historically had sought for a license to the patent-in-suit. Analyses further demonstrated that the plaintiff's actual patent license agreements deviated substantially from its stated licensing policy, which the plaintiff's damages expert had relied on as the basis for the plaintiff's claimed damages.
- Assisted in evaluating claimed reasonable royalty damages in a patent infringement matter related to a method of operating an internal combustion engine. Analyses demonstrated that the plaintiff's damages expert overstated the claimed profit premium associated with vehicles that had an accused engine and opined to an unreasonable apportionment of the claimed value of the patents-in-suit between the parties. Analyses further showed that the plaintiff's claimed damages were unreasonably high in light of the amounts the plaintiff historically had been willing to accept for a license to the patents-in-suit.
- Assisted in evaluating claimed damages in a trademark infringement matter involving a national restaurant chain accused of false designation of origin, unfair competition, and trademark dilution. Analyses included evaluating the amount of claimed corrective advertising requested by the plaintiffs and claimed damages resulting from the alleged wrongful conduct. Analyses showed that the plaintiffs' marketing and damages expert overstated the required amount of claimed corrective advertising and failed to demonstrate that the claimed confusion between the plaintiffs' and defendant's restaurants caused economic injury to the plaintiffs.
- Assisted in evaluating claimed lost profits, reasonable royalty damages, and disgorgement of the defendant's profits in a patent infringement matter related to laparoscopic surgical devices. Analyses included evaluation of *Panduit* factors, determination of the plaintiff's sales in the absence of the alleged infringement, and assessment of incremental revenue and costs. Assisted in evaluating reasonable royalty damages based on *Georgia-Pacific* analysis and hypothetical negotiation framework.

- Assisted in evaluating compensatory damages to a major mattress manufacturer due to a rival's alleged infringement of its trade dress and design patents. Analyses included an assessment of the defendant's profits earned through the infringement and an evaluation of plaintiff's lost profits and reasonable royalty damages. Evaluated *Panduit* factors and demonstrated a causal connection between the defendant's alleged infringement and the plaintiff's lost sales and lost profits. Determined the plaintiff's sales in the absence of the alleged infringement and evaluated the appropriate incremental profit margin to be applied to the plaintiff's lost sales.
- Assisted in evaluating damages in a patent infringement matter in which a music services provider accused a competitor of infringing patents related to visual complements and video on-demand linking technology. Analyses demonstrated a causal connection between the defendant's alleged infringement and the plaintiff's lost profits and price erosion damages. Also evaluated economic support for an injunction under the *eBay* framework, including assessments of irreparable economic injury, inadequacy of monetary remedies, balance of hardships, and service to public interest.
- Assisted in evaluating claimed reasonable royalty damages in a patent infringement matter related to the composition of clumping cat litter products. Performed analyses of the economic comparability of relevant patent license and settlement agreements. Assisted in evaluating *Georgia-Pacific* factors. Analyses demonstrated that the plaintiff's damages expert opined to an incorrect royalty payment structure and overstated claimed royalty damages.
- Assisted in evaluating claimed reasonable royalty damages in a patent infringement matter involving multiple defendants related to private label website solutions. At issue were partner-branded websites designed to have the "look and feel" of the partner's host websites. Analyses demonstrated that the plaintiff's claimed damages were significantly overstated and unreasonably high in light of real-world facts that would have been important considerations at a hypothetical negotiation between the plaintiff and each defendant, including relevant market transactions related to the claimed patented technology.
- Assisted in evaluating claimed diminution of value and reasonable royalty damages related to the alleged misappropriation of trade secrets by a technology provider in the home care and hospice industry. At issue were claimed trade secrets related to technology enabling home care and hospice agencies to electronically document patient care. Also at issue were claims of fraud and breach of contract related to a nondisclosure agreement. Analyses demonstrated that the plaintiff's damages expert failed to establish a nexus between the alleged wrongful conduct and the plaintiff's claimed loss in value. Also demonstrated that the plaintiff's expert overstated claimed reasonable royalty damages.
- Assisted in economic analyses related to the amount to be paid by an enterprise resource planning software company for violating an injunction order prohibiting licensing or servicing of infringing procurement software products. Analyses included an assessment of the defendant's gains from failing to comply with the injunction. Determined apportionments of the defendant's licensing revenues from large suites of related software products and aggregate service revenues. Assisted in evaluating analyses proffered by the defendant's rebuttal damages expert, including rebutting a reasonable royalty analysis and analyses of the appropriate profit margin to be used for disgorgement purposes.

Antitrust

- Assisted in evaluating the plaintiff's economic liability arguments relating to allegations that a major gaming and hospitality company participated in an alleged conspiracy to restrict bidding on paid search advertising associated with branded keywords. Analyzed keyword bidding data and showed that empirical evidence did not support the plaintiff's theory of liability. Assessed the defendant's unilateral incentives with respect to keyword bidding behavior. Showed lack of antitrust injury to the plaintiff.
- Assisted in evaluating the plaintiff's economic liability arguments relating to an alleged bid suppression agreement among at least three major hotel companies to restrict bidding on paid search advertising associated with hotel branded keywords. Evaluated the plaintiff's arguments related to market definition, alleged market power, alleged anticompetitive conduct, and alleged harm to competition. Assessed the three defendants' unilateral economic incentives related to keyword bidding behavior. Showed lack of antitrust injury to the plaintiff.
- Assisted in evaluating whether a major financial advisory company engaged in anticompetitive conduct through the filing of a raiding claim against a rival firm before the Financial Industry Regulatory Authority (FINRA). Evaluated the plaintiff's economic liability arguments as they related to market definition, alleged market power, alleged anticompetitive conduct, and alleged harm to competition. Assessed pro-competitive benefits derived from the availability of a raiding claim under FINRA proceedings. Showed lack of antitrust injury to the plaintiff resulting from challenged conduct.
- Assisted in evaluating claimed antitrust damages asserted by a major airline company against a global distribution system operator for alleged anticompetitive behavior related to the provision of booking services to travel agencies. Assisted in evaluating the plaintiff's claimed damages related to claimed lost profits resulting from the defendant's alleged actions to impede the rollout of a competing technology for booking services, contractual restrictions allegedly preventing the airline from offering targeted discounts to price-sensitive customers, allegedly imposing retaliatory booking fee increases, and allegedly biasing fare search results displayed to travel agencies.
- Assisted in evaluating claimed antitrust damages asserted by a major airline company against a global distribution system operator for alleged anticompetitive behavior related to "full content" provisions in the parties' distribution agreements and alleged overcharges for booking fees. Analyzed the relevant benchmarks for booking fees and showed the absence of overcharges. Evaluated the econometric model of demand proffered by the plaintiff's expert and showed that it significantly overstated the plaintiff's claimed lost profits. Also evaluated the bargaining positions of the parties and the economic benefits associated with the at-issue provisions that the plaintiff's damages expert ignored when calculating claimed lost profits.
- Assisted in evaluating the plaintiff's economic liability arguments and claimed antitrust damages relating to allegations that the defendant monopolized or attempted to monopolize the market for magnetic brakes for amusement park rides through malicious prosecution of an unlawfully obtained patent. Evaluated the plaintiff's assessment of the relevant product market, allegations of market power, and the impact of the alleged anticompetitive conduct. Identified unsupported assumptions underlying the plaintiff's claimed damages model and showed the lack of an economic causal connection between the alleged wrongful conduct and claimed damages.

- Assisted in evaluating claimed antitrust damages asserted by a dental equipment distributor against major manufacturers and distributors of dental equipment related to an alleged conspiracy to fix margins and boycott or terminate low-margin distributors. Analyses showed that the claimed growth rates, incremental profit margins, and convoyed sales ratios that the plaintiff's experts assumed would be achieved in the absence of the alleged conspiracy were overstated and unreasonably high, resulting in significantly overstated claimed damages figures.

Breach of Contract

- Assisted in evaluating economic damages suffered by a global distribution system operator as a result of a major airline company's breach of the confidentiality provision in its distribution agreement. At issue was the defendant's disclosure of confidential pricing information during the plaintiff's contract negotiations with other major airline customers. Analyzed the impact of the defendant's disclosure on pricing and other terms negotiated in the affected contracts. Assisted in determining the plaintiff's lost revenues and lost profits due to the defendant's disclosure.
- Evaluated claimed damages associated with an alleged breach of a purchase agreement between a disinfectant wipe manufacturer and a former customer after the manufacturer was acquired by a competitor. Evaluated the customer's claimed lost profits associated with the claimed impact on its ability to fulfill its own purchase orders from its downstream customers. Analysis showed that various components of the plaintiff's claimed losses had been mitigated through obtaining wipes from alternative suppliers and that other components of claimed losses had been double-counted in the plaintiff's calculations of claimed damages.

Class Certification

- Assisted in evaluating the plaintiffs' position that the claimed economic injury suffered by putative class members could be quantified on a class-wide basis in a matter related to alleged cybersecurity vulnerabilities in certain vehicles sold by a major automobile manufacturer. Demonstrated that the approaches proposed by the plaintiffs' experts for calculating class-wide damages would not yield reliable or relevant estimates of the alleged harm suffered by individual putative class members. Analyzed individualized factors such as knowledge and perceptions of the alleged cybersecurity vulnerabilities, local supply and demand conditions, and individually negotiated transaction prices. Identified deficiencies in the plaintiffs' experts' proposed discrete choice experiment and proposed method for converting a claimed difference in "willingness to pay" to a claimed difference in prices paid by the putative class members.
- Assisted in evaluating the plaintiffs' position that the claimed economic injury suffered by putative class members could be quantified on a class-wide basis in a matter related to LED-backlit LCD televisions. Analyzed individualized factors such as exposure to the television manufacturer's challenged advertising and/or label statements, knowledge and perceptions of the relevant technology, reasons for purchase, and prices paid. Evaluated the proposed regression analysis described by the plaintiff's damages expert and identified inconsistencies between the proposed analysis and the plaintiff's theory of liability. Identified necessary data and methodological requirements for performing the proposed regression analysis that had not been acknowledged by the plaintiff's expert.

- Assisted in evaluating the plaintiffs' position that the claimed economic injury suffered by putative class members could be quantified on a class-wide basis in a matter related to beverages marketed as "all natural" when they contained the preservative sodium benzoate. Demonstrated that the approach proposed by the plaintiffs' expert to calculate class-wide damages would not yield a reliable or relevant estimate of the alleged harm suffered by individual putative class members. Arguments presented included that wide variations in retail prices associated with the accused products and variations in the putative class members' reasons for purchase would prevent a reliable calculation of the putative class members' damages on a class-wide basis.
- Assisted in evaluating the plaintiffs' position that claimed economic injury suffered by putative class members could be quantified on a class-wide basis in a matter related to claimed false advertising of coconut water products. Analyzed variations in retail prices associated with the accused products and demonstrated that there was no systematic price premium relative to benchmark products. Demonstrated that the plaintiffs' expert's hedonic regression analysis suffered from numerous flaws, including conflation of the challenged claim with an omitted relevant product attribute, inappropriate aggregation of retail sales data, and omission of relevant observations.
- Assisted in evaluating the plaintiffs' position that the claimed economic injury suffered by putative class members could be quantified on a class-wide basis in a matter related to anti-aging skin care products marketed as repairing signs of aging "in just one week." Demonstrated that the approaches proposed by the plaintiffs' expert to calculate class-wide damages would not yield reliable or relevant estimates of the alleged harm suffered by individual putative class members. Arguments presented included that the large number of repeat buyers, wide variations in retail prices associated with the accused products, and wide variations in retail price differences relative to other anti-aging products would prevent a reliable calculation of the putative class members' damages on a class-wide basis.

COURSES TAUGHT

Principles of Microeconomics

Topics included functioning of markets, supply and demand analysis, elasticities, theory of the firm, profit maximization, market structure, competition, product differentiation, monopoly, antitrust regulation, social welfare, allocation of resources, market efficiency, equity, market failure, and solutions to market failure.

Principles of Macroeconomics

Topics included determination of national income/gross domestic product, social welfare, drivers of economic growth, technological change, productivity, inflation, unemployment, savings and investment, and various monetary and fiscal policies.

Competitive Strategy and Structure

Topics included market definition, identifying relevant competitors, strategic interaction, industry analysis, sources of competitive advantage, product differentiation, price discrimination, network effects, two-sided markets, R&D strategy, intellectual property, licensing, bargaining, contracts, and antitrust regulation.

Environmental Economics

Topics included sources of market failure, economic foundations of environmental problems, depletion of natural resources, standards-based solutions, market-based solutions, incentives for technological innovation, and various economic criteria for evaluating policy intervention options.

SERVICE ACTIVITIES

Patent Infringement Damages Panel, Boston Patent Law Association	2022
Faculty Advisor, Economics Society, University of Georgia	2018–2022
Undergraduate Program Coordinator, Economics, University of Georgia	2018–2022
Professor Panel: Antitrust and Market Concentration, University of Georgia	2019

HONORS AND AWARDS

Favorite Business Professors of the Class of 2021, Poets & Quants for Undergrads	2021
Swift Award for Outstanding Lecturer Teaching in Economics, University of Georgia	2020
Research Assistantship, National Science Foundation	2010–2011
Swift Award for Outstanding Teaching in Undergraduate Economics, University of Georg	2009
H. B. Earhart Foundation Fellowship	2007–2009

ACADEMIC RESEARCH

Dynamics of Patent Precedent and Enforcement: An Introduction to the UGA Patent Litigation Datafile, with John L. Turner and Matthew D. Henry, University of Georgia working paper (2013).