

HEADLINES & HIGHLIGHTS™

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APPEALS COURT AFFIRMS 71% OF PROJECTED NET PROFIT AS BEING A REASONABLE ROYALTY TO COMPENSATE A PATENT OWNER FOR INFRINGEMENT

On March 8, 2018, the United States Court of Appeals for the Federal Circuit (which hears appeals in all patent cases) affirmed 71% of projected net profit as being a reasonable royalty to compensate a patent owner for infringement. The name of the case is *Exergen Corporation v. Kaz USA, Inc.*, (Fed. Cir., 2018) 2018 WL 1193529.

In affirming the award of 71% of projected net profit as being a reasonable royalty, the Appeals Court approved of the jury finding credible the testimony of the patent owner's damage expert. The

damage expert testified that:

- The patented technology provided advantages over other products and there were nine years remaining on the patent;
- Patent owner and infringer were fierce competitors;
- Patent owner would have reasoned that if it voluntarily licensed infringer, patent owner would have lost sales;
- Patent owner would have needed to be highly incentivized to license the Patent and
- Patent infringer would have been incentivized to pay a higher royalty rather than sit out a growing market.

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