

## Judge Albright Limits Plaintiff's Potential Damages in *Integrity Worldwide, Inc.*

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On January 3, 2022, Judge Albright issued multiple orders related to the award of potential damages in *Integrity Worldwide, Inc. v. Rapid-EPS Ltd. et al.* The below summarizes these orders.

### Grant of Partial Summary Judgment, Limiting Plaintiff's Damages

Integrity Worldwide, LLC ("Integrity") alleges that Rapid-EPS Ltd. ("Rapid") infringed multiple patents. After the court denied Rapid's motion to dismiss for lack of standing in mid-2021, Rapid moved for summary judgment to limit Integrity's potential damages, arguing that Integrity had "failed to produce any evidence that it put any of the Defendants on actual notice prior to [the time of filing]." Judge Albright agreed.

35 U.S.C. § 287 states that if the patentee fails to sufficiently notify the public of its patent, "no damages shall be recovered ... in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice." The Federal Circuit holds that this notice requirement can be satisfied by "either providing constructive notice—i.e., marking its product—or by providing actual notice to an alleged infringer." *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.*, 950 F.3d 860, 864 (Fed. Cir. 2020).

Integrity did not dispute that it sold products covered by the asserted patents or that it never marked those products with the relevant patent numbers. Instead, Integrity argued that it provided actual notice to Rapid prior to the filing date through three separate interactions: (1) in 2008, Integrity informed another company of its design rights (though this was done before the relevant patents were issued); (2) in 2011, Rapid's legal counsel confirmed in a letter that it "had knowledge of Integrity's patent portfolio" in an interaction with a third party; and (3) in 2012, Rapid's legal counsel did the same in a separate interaction with another third party. Judge Albright found all interactions to be insufficient for meeting Section 287's notice requirement.

First, as to the 2008 interaction, Judge Albright concluded that "[b]ecause the asserted patents did not exist at the time ... it is impossible for those letters to communicate the specific charge of infringement required by the Federal Circuit." Second, as for the 2011 and 2012 interactions, Judge Albright cited Federal Circuit case law holding that

“[N]otice [under § 287] must be of ‘the infringement,’ not merely notice of the patent’s existence or ownership.” Thus, because Integrity did not properly provide actual notice to Rapid prior to September 2, 2016, it cannot recover any relevant damages prior to that date.

## Denial of Lost Profits Due to Lost Market Share to Plaintiff

Integrity also alleged that its U.S. sales plummeted as result of Rapid’s relationship with Aluma—the exclusive distributor of all allegedly infringing products of Rapid. Thus, Integrity argued that it was owed all lost profits during the relevant period. Judge Albright disagreed, finding that Rapid and Aluma terminated their distributor relationship before the alleged period of infringement.

## Denial of Lost Profits on Rental Revenue to Plaintiff

Finally, Integrity contended that it was also owed lost profits on all potential rental revenue it could have earned during the infringement period. Again Judge Albright disagreed, finding that Integrity’s proposed lost-rent calculations were “fatally flawed.”

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