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New Study Shows Large Patent Damages Rarely Survive Intact on Appeal

Very large damages awards, while headline-grabbing, are illusory and may distort perceptions of patent enforcement.

A new paper by Dr. Bowman Heiden — executive director of the Tusher Strategic Initiative for Technology Leadership at UC Berkeley and co-director of the Center for Intellectual Property at the University of Gothenburg — examines how large patent damage awards fare on appeal to the U.S. Court of Appeals for the Federal Circuit (CAFC).

Drawing on a novel database of district court jury verdicts between 2010 and 2025, the research assesses how often damages survive appellate review — and whether award size affects whether the higher court affirms the lower court's decision.

Key Findings

- **Low overall survival:** Only about one-third of damages awards survive intact on appeal once pending and settled cases are excluded.
- **Award size is decisive:** Larger verdicts are disproportionately overturned, reduced, or vacated. Median damages are similar (~$35–40M), showing that mega-verdicts skew the averages.
- **Cliff effect at high values:** Awards above $100M are rarely upheld. Awards above $500M are never upheld.
- **Biotech vs. non-biotech:** Non-biotech cases show a stronger negative correlation between award size and survival, with statistical significance.

Implications

- **For policymakers:** Very large damages awards, while headline-grabbing, are illusory. They rarely survive appellate scrutiny and may distort perceptions of patent enforcement.
- **For litigants:** The fragility of large verdicts may play a key role in informing the litigation and settlement strategies of patent litigants of different sizes.
- **For the courts:** The findings highlight the appellate system's active role in overturning the majority of lower court decisions — which adds to the duration and expense of patent litigation.

Survival rate of Jury Damage Awards from US District Court

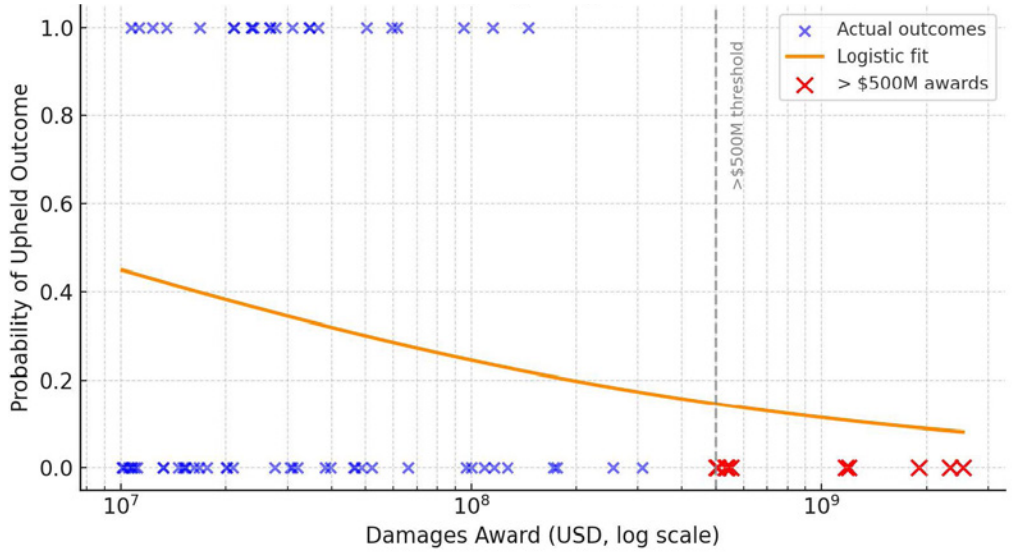
Outcome statistics of the total sample

Outcome	Cases	%
Upheld	31	22%
Not Upheld	51	36%
Pending	32	23%
Settled	28	20%
Total	142	100%

Descriptive statistics for CAFC decisions with and without biotech cases. All damages are in $ million

	Total Sample			Non-Biotech Sample		
	All Decisions	Upheld	Not Upheld	All Decisions	Upheld	Not Upheld
Sample size	82	31	51	73	23	50
Mean Damages	204.7	102.7	266.8	204.3	40.1	279.8
Medium Damages	37.5	34.7	39.6	30.9	26.7	39.0
Std. Dev.	460.9	141.5	567.2	486.9	34.8	573.8
Min Damages	10.1	10.7	10.1	10.1	10.7	10.1
Max Damages	2540	532.9	2540	2540	146	2540

Probability of Appeal Being Upheld vs. Damages Size in the non-biotech dataset



ABOUT BOWMAN HEIDEN

Bowman Heiden, Ph.D., is the founding faculty director of the Open Innovation Labs at the Institute for Business Innovation, UC Berkeley, co-director of the Center for Intellectual Property at the University of Gothenburg, and executive director of the Tusher Strategic Initiative for Technology Leadership at UC Berkeley. He also co-chairs the Technology, Innovation, and Intellectual Property program at the Classical Liberal Institute at NYU School of Law. Heiden holds a Ph.D. and M.Sc. in Technology Management and Economics from Chalmers University and a B.S. in Electrical Engineering from Bucknell.