



OCEAN TOMO

# EXPERT TESTIMONY



OCEAN TOMO®  
INTELLECTUAL CAPITAL EQUITY®

Litigants and their counsel have a number of options when engaging expert and litigation support services. Since 1988 Ocean Tomo professionals have been at the forefront of intellectual property damages analysis.

Ocean Tomo offers a distinct choice.

- Intellectual property and other intangible assets are our core business. No other company has the singular focus on the value of intellectual property, both inside and outside the courtroom.
- Our professionals are not just testifying experts, but also consult with clients on intellectual property valuation, investing, licensing, and sale issues.
- Our expert opinions are well supported. We understand the level of effort and detail necessary to prepare defensible positions.
- In addition to our experienced testifiers, we staff all engagements with dedicated teams of experienced and knowledgeable professionals.
- Our professional rates are competitive; we understand the importance of the budget process and work diligently to control total project costs.
- Our reputation is our most important asset and our client relations are long-lived.

We are known for our “teaching” – as opposed to “telling” – style of testimony. Rather than just provide a judge or jury with an opinion, we communicate the key facts and relevant theories in a clear and logical manner. Our client list is evenly balanced between plaintiffs and defendants.

## Financial Testimony

Ocean Tomo’s Financial Testimony professionals have industry-leading experience across all types of disputes and are particularly skilled in the determination of damages involving intellectual property. Our top testifying experts average over 30 years of intellectual property litigation analysis. Our experience benefits clients when considering complex financial data, qualitative facts, supporting testimony, and damages related case law. We strive to develop a focused yet creative approach to every assignment. Ocean Tomo’s experts have testified regarding virtually all damage elements including lost profits, reasonable royalties, unjust enrichment, price erosion and suppression, accelerated market entry, corrective advertising, and future lost profits. Our track record of results spans more than 100 different industry segments. Because our past success provides the best indication of our capabilities, we encourage potential clients to seek references from both clients and opposing counsel.

## Technology Litigation

Ocean Tomo, LLC provides forensic accounting and valuation services focused on disputes involving the decisions to choose and implement a given technical solution as compared to its alternatives. With more than a quarter century of experience in determining damages in patent litigation, our financial, market and technical experts provide a unique understanding of the contributory value and risk of innovation for any given consumer product or business-to-business solution. Building upon Ocean Tomo’s deep experience as leading experts presenting to courts and juries, the scope of our Expert Testimony includes technology based breach of contract, unfair competition, shareholder disputes and class action claims assessment.

# Surveys

Ocean Tomo's Survey offering merges our experience in intellectual property litigation with a thorough understanding of our clients' business and the experience of market research specialists. By combining these three key elements, Ocean Tomo designs and executes surveys which are tailored to the unique needs of the courtroom. Our survey offerings address pertinent issues related to each of the following types of litigation:

- Trademark
- Patent Infringement
- Class Certification
- Antitrust Claims
- Breach of Contract
- Trade Secret
- Unfair Competition
- Licensing Disputes
- Product and Package Labels, Warnings and Instructions

# Featured Engagements

## **Idenix Pharmaceuticals Inc., et al v Gilead Sciences Inc., et al.**

On December 15, 2016 a Delaware jury returned the largest patent verdict in history. The case, Idenix Pharmaceuticals Inc., et al. v Gilead Sciences Inc., et al. was heard in the United States District Court for District of Delaware. The jury awarded Merck's subsidiary, Idenix, \$2.54 billion for patent infringement of technology pertaining to Hepatitis C medication. OceanTomo Managing Director Andrew Carter opined as to damages equal to 10% of Gilead's US sales or \$2.54 billion.

## **Dalmatia Import Group Inc. v FoodMatch, Inc. et al.**

On February 24, 2017 a Pennsylvania jury returned the first verdict under the Defend Trade Secrets Act, which was signed into law in 2016. The case, Dalmatia Import Group, Inc. v. FoodMatch Inc. et al. was heard in the United States Court for the Eastern District of Pennsylvania. The jury awarded Dalmatia \$2,567,000 in compensatory damages related to trade secret misappropriation, along with trademark infringement and counterfeiting. The final award was increased for statutory damages and trebling. Ocean Tomo Managing Director James E. Malackowski opined as to the damages in the case.

## **Prism Technologies LLC v. Sprint Spectrum L.P. D/B/A Sprint PCS**

In June 2015, a Nebraska Federal jury awarded Prism Technologies LLC \$30 million for Sprint Spectrum's infringement of two U.S. patents directed to a wireless backhaul network. Ocean Tomo CEO James Malackowski testified to a royalty rate based on Sprint Spectrum's cost savings. On March 6, 2017, the Federal Circuit affirmed noting that Mr. Malackowski's testimony provided an adequate basis for the jury's award.



### CONTACT

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For more than 30 years Mr. Carter has focused on intellectual property infringement damages, providing expert witness testimony in excess of 80 times. Mr. Carter has testified in both Federal and State courts, as well as in front of the International Trade Commission. He is frequently called upon to testify in large scale or complex cases, and was the damages expert for the largest patent damages award in history (\$2.5 billion). His clients cover a wide variety of industries, from telecommunications to pharmaceuticals.



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# OCEAN TOMO®

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## About Ocean Tomo

Established in 2003, Ocean Tomo, LLC provides Financial Expert, Management Consulting, and Advisory services related to intellectual property (IP) and other intangible assets; corporate accounting investigations; regulatory and reporting obligations; solvency and restructuring; and contractual or competition disputes.

Practice offerings address economic damage calculations and testimony; accounting investigations and financial forensics; technology and intangible asset valuation; strategy and risk management consulting; mergers and acquisitions; debt and equity private placement; and IP brokerage.

Our services are built upon more than three decades of experience in the most rigorous venues – state, federal, and international courts. Our financial, market, and technical experts provide a unique understanding of the contributory value of proprietary innovation. This is the cornerstone of our business. This insight permeates every practice and client engagement.

Collectively, Ocean Tomo professionals have:

- Completed over 1000 engagements, including over 300 valuation and 500 financial damages expert testimony engagements;
- Consulted and provided expert testimony on some of the highest profile matters over the past decades;
- Successfully closed hundreds of IP sale transactions with a cumulative transaction value well in excess of \$1 billion; and
- Originated more successful IP monetization solutions than any other firm, including creation of the world's oldest and most successful live patent auction.

Our track record of results spans more than 150 different industry segments. Because our past success provides the best indication of our capabilities, we are proud to serve more than 80% of the AM Law 100® and encourage potential clients to seek references from past clients.

Intangible assets comprise 90 percent of business value but are also subject to significant impairment due to enterprise and regulatory compliance risk. Ocean Tomo assists clients – corporations, law firms, governments, and institutional investors – in realizing Intellectual Capital Equity® value broadly defined.

Headquartered in Chicago, Ocean Tomo has offices in Greenwich, Houston, Jacksonville, Reston, San Francisco, and Shanghai. Subsidiaries of Ocean Tomo include Ocean Tomo Investment Group, LLC, a licensed broker-dealer under Federal and State securities law (brokercheck.finra.org Broker Check CRD #: 172912), OTI Data Networks, LLC and Patent Marking, LLC.