The Current Realities Of The Classic 25% Rule: An Attempt To Put The House In Order

By Robert Goldscheider

Introduction

This supplements my article "The Classic 25% Rule and The Art of Intellectual Property Licensing" which was successively published in the August, 2011 *Duke Law & Technology Review* and the September, 2011 issue of *les Nouvelles*.[1] The article was also discussed at two workshops convened at the Annual Conference of The Licensing Executives Society in October, 2011, and the references on these occasions to the "The Classic 25% Rule" were enthusiastically received.

I have come to realize that the United States Court of Appeals for the Federal Circuit decision in *Uniloc v. Microsoft* is having an important impact on the licensing profession. In view of my involvement in the initial identification of the concept over 40 years ago, I intend to monitor unfolding contemporary events, and try to provide insights from my past experiences. This may enable parties to intellectual property transactions to realize benefits and avoid problems as relevant events occur.

On the basis of this background, I decided that it is appropriate for me to make further comments touching four related points, which might usefully be placed before the profession with the objectives of clarifying and perhaps solving some of the existing issues. These are organized as follows:

- A discussion memorandum with added comments about five distinct steps in the Classic Rule;
- Certain historical events and the climate of opinion surrounding The 25% Rule;
- Two initiatives already published, and related thoughts; and
- What's in a name?

I. The Discussion Memorandum

The following additional statements are intended to be of further aid to practitioners. They are keyed to the five identified steps of The Classic 25% Rule:

1. Tentative Baseline Royalty

Carefully consider a reasonable tentative baseline royalty apportionment between or among the parties, as a reasonable foundation of a hypothetical negotiation. This requires a true general understanding of the technical, commercial, and legal realities involved.

This is the point at which The Classic Rule and the prohibited Rule of Thumb part company. At this early stage, the parties each should have some ideas and projections of their respective intended contributions to the envisaged project. If either have had experiences relevant to the project, they should be described at this time. If there are some similar known deals, in the same country or internationally, the details should be revealed. Ideas about expected profitability of the respective parties, prior to detailed study, should also be indicated.

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If a potential licensee is uncertain whether it should become committed to a new project, it might request an option during which such points can be investigated by, or on behalf of the parties, to reduce risks and hopefully provide knowledgeable confidence to move forward. Investigations under such option should be given a high priority in order to minimize the delay in moving forward.

In short, the parties should endeavor to get a "ballpark" estimate of where they're headed, to help enable them to predict a reasonable tentative baseline royalty, subject to adjustments as their negotiations proceed. They should then mutually select a starting ratio of their respective profit participation and agree on a preliminary figure.

2. Next Best Alternative

Try to determine the next best alternative to the technology being considered for licensing, using the methodologies outlined by Marc Finnegan and Herbert Mintz in their seminal article written in 1978 entitled "Royalty as a Function of the Next Best Alternative to the Licensee," quoted at page 153 of my recent article. I like to refer to this as "The Finnegan Limitation."

1. Volume XLVI, No. 3, pp. 148-159.

This exercise should involve participation by patent lawyers, in-house or independent experienced technical outsiders, together with sales or marketing people, who are expected to manage the business created by the envisaged deal. This can sharpen the focus of the parties to their mutual benefit by indicating the top price that the licensee should rationally consider paying.

3. The Georgia-Pacific Factors

Perform an analysis of the situation pursuant to the relevant *Georgia-Pacific* factors, for which considerable jurisprudence exists.

In my view, many practitioners have an insufficient appreciation of this area of licensing practice, thereby doing a disservice to their employers or clients who are expected to be party to real or hypothetical transactions, or, indeed, to themselves.[2]

There was clear evidence of this in *Uniloc v. Microsoft.*

The *Georgia-Pacific* factors announced in 1970 by the Federal District Court for the Southern District of New York can be extremely useful in determining the extent of damages from infringements, if the factors are understood and adroitly applied. Importantly, Judge Linn states in his opinion that "the Court's rejection of the 25% Rule of Thumb is not intended to limit the application of the *Georgia-Pacific* factors."

Assembled parts in the *Uniloc* case, known as Product Keys, which employed the technology included in the plaintiff's '216 patent, were previously decided to be infringed by Microsoft. Such Keys also contained "short digital signature technology that Microsoft Research developed." The relative value of that Microsoft invention, as well as any portions of the Product Keys considered to be owned by third parties or in the public domain, should be deducted from the total determined value of assembled Product Keys so as to identify an appropriate base for calculating damages.

Dr. Joseph Gemini, *Uniloc's* damages expert, testified that he had considered several of the *Georgia-Pacific* factors with the idea being "to adjust this 25% up or down depending how [such factors] favor either party." Judge Linn then reported "at bottom, [Dr. Gemini] concluded that the factors in favor of Uniloc and Microsoft generally balanced and did not change the royalty rate," giving no factual details of his reasoning. Dr. Gemini then proceeded to make his cleverly leveraged misuse of the Entire Market Value Rule, which he described as a check on his work, that the Court correctly disallowed, leading to the Order for a new trial on damages.[3]

One gets the impression that a rigorous *Georgia-Pacific* factors analysis might have revealed that Uniloc's contribution of the '216 patent to the infringing Product Keys was "slender," meaning that an appropriate amount of damages due to Uniloc should have been much more modest than that to which Dr. Gemini testified, $564,946,803; this illegally influenced the jury to reach a verdict that Microsoft's damages should be $388 million. In my view, this enormous sum would never have surfaced with astute use by counsel for Microsoft of the *Georgia-Pacific* tools.

4. Use of the Book of Wisdom

Utilize the teachings of the Book of Wisdom, the term originally expressed by Mr. Justice Cardozo and introduced to this arena by Judge Markey in his cited opinion in the *Fromson* case.[4]

As indicated elsewhere, I have not been professionally involved in the subject litigation between Uniloc and Microsoft, nor am I informed about the actions of either party during and subsequent to the trial. I therefore do not know whether or not Microsoft has redesigned the Product Keys found to contain one or more elements that infringe the Uniloc's '216 patent, in order to remove such infringing matter, and thereby avoid further damages.

It is my outsider's understanding that Microsoft owns, or has available to it, a giant patent portfolio which probably includes some non-infringing components or designs which would enable Microsoft to avoid such damages. Computer related security is known to be an important issue in the industry and considerable, urgent efforts were being made by many companies and individuals to enhance security and defeat illegal hackers. This is still the case. It therefore seems very possible that one or more non-infringing alternatives were identified by Microsoft which then took steps to avoid infringements. This should be an active element on Microsoft's agenda in the determination of the final, approved baseline for the calculation of Microsoft's "reasonable royalty" damages.

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2. I have published detailed comments about the *Georgia-Pacific* in my two volume treatise *Licensing and the Art of Technology Management*, particularly §§ 18.4-18.6. ©2011 Thomson Reuters.

3. See official publication of the Court of Appeals for the Federal Circuit, pp. 33-34.

4. *Fromson v. Western Lith Plate & Supply Co.*, 853 F.2d 1568 (Fed Cir 1988).

5. Final Baseline Royalty

Adjust the tentative baseline royalty to a supportable opinion taking into account a serious professional appreciation of the accumulated information.

As a result of considerations of items 2, 3 and 4, the tentative baseline royalty set in item 1 may, or may not, be adjusted to determine item 5. In making this decision, the parties should be mindful of the teachings of the *Daubert* and *Kumho Tire* cases as well as Rule 702 of the Federal Rules of Evidence to ensure that the final baseline royalty rate is based on, or takes into account, all relevant scientific, technical and other specialized knowledge.[5]

II. Certain Historic Events and the Climate of Opinion Surrounding The 25% Rule

The essence of The 25% Rule existed long before it had a name. As mentioned in my earlier article, and in several things I wrote and discussed before that, I noticed it to be a reality that had already existed for some time as part of an international array of Philco's active intellectual property technical assistance agreements. They each included patent, trademark, copyright and know-how licenses, and contained detailed procedures for providing technical assistance, protection of confidentiality, sharing engineering and scientific data, and dealing with infringements. There was uniformity of language among the agreements and a spirit of mutual goodwill prevailed. The Philco story is discussed in detail in my previous article.[6]

More generally, it combined several realities that I learned were important. Firstly, Philco, the licensor, had developed a detailed and comprehensive strategy to license its technology and had succeeded in negotiating virtually identical terms in many different countries around the world. Secondly, despite the varying markets in which the licensees operated, they were uniformly successful, and each of them earned approximately 20 percent pre-tax profit.[7] Thirdly, each licensee paid to the licensor (involving Philco Corporation S.A., a wholly owned Swiss subsidiary of the parent, Philco Corporation), a total of 5 percent royalty on its net sales, which I considered to be a respectable rate at that stage of my career. Finally, there was mutual satisfaction and goodwill between the parties to each license and, overall, around the world.

I was impressed by the comprehensive quality of this existing system and was, at that time, frankly surprised to note that the licensor "merely" received an average of 25 percent of what I came to refer to as "the profitability pie." I also realized that this ratio existed as part of a license involving all the intellectual property rights, not just patents, and that the continuous flow of very special know-how was probably more valuable than the licensed patents in these relationships.

I recognize that the ratio reflected the underlying rights and duties, so that it might vary if a license involved a broad and very valuable patent with no know-how, or trade secret disclosures that were seriously needed by the licensee, and also whether or not trademark and/or copyright assets were being employed.

It is relevant to note that the Licensing Executives Society was getting started around this time. I became an active member in the 1960s, during its third year when it only had about 60 members, all in North America. Members commonly shared with one another the non-confidential aspects of deals with which they were currently, or had recently been, involved. Consistent with this professional practice, I described my Philco situation to several audiences. By that time, I had begun using a so-called "25 percent yardstick" in licensing negotiations, essentially as a flexible precedent, and discovered that it "worked" in actuality. Others had similar positive experiences and the word spread steadily.

I have no recollection of using it as a "rule of thumb" in some uncontrolled manner. Instead, the descriptions of the "classic" version of the Rule in my recent article more accurately describe my thinking on the point, even at that time.

There is one case mentioned in that article, however, where I resorted to the bald use of the 25 percent concept with stunningly successful results. This was during negotiations between Dow Chemical Company and W.R. Grace about a reasonable royalty to be paid by Grace to Dow for an exclusive license to use a valuable patented process to make polyethylene.[8]

The "magic number" of 25 percent of production profitability was well known to all the negotiators. There was therefore no outcry when I suggested that we should analyze pertinent existing data to see if use of that ratio would lead to a mutually acceptable royalty rate for the contemplated transaction. As

5. Ibid footnote 3, at page 41.

6. See *les Nouvelles*, Volume XLVI, No.3, pp. 151-154.

7. At this writing, many years after the fact, I am not certain of the actual term Philco used for such profit, but I believe that the general expression "pre-tax profit" would be accurate.

8. See pp. 156 and 157 in the September, 2011 issue of *les Nouvelles*.

described, this resulted in a "bull's eye"; the parties settled on a payment of 11 percent royalty to my client, Dow, instead of the "seemingly reasonable" rate of 5 percent which Grace had originally proposed. This demonstrates to me that a mature appreciation of the 25:75 formula, as a "ballpark" dimension, perhaps requiring further refinement by recognized empirical procedures, can have practical value. It should also be noted that these discussions occurred outside the environment of litigation and were thus not subject to the jurisprudence of the *Daubert* or *Uniloc* cases.

This is not to say that I disagree with Judge Linn's opinion invalidating "The 25% Rule of Thumb." On the contrary, I heartily applaud it. In view of the teachings of the *Daubert* case and its progeny in combination with my experience, I can, for the future, appreciate that The 25% Rule of Thumb has become *obsolete*, at least in litigation. It should therefore rightfully be retired from that arena. We will have to see if this principle will extend beyond the courtroom.

In this connection, let us consider that the Volkswagen BEETLE®, and virtually every other sophisticated mechanical or electrical product of my youth, has been essentially superseded by contemporary designs and technologies. Today, for instance, we have all the resources of the Internet to appraise any inventions with a view to revealing reasonable royalty terms; we should take full advantage of these modern assets which can enhance the speed and quality of valuation analyses.

Which is not to say that The 25% Rule of Thumb was or is "evil," or even "sloppy," and that we should rejoice at its demise as some critics seem disposed to do. On the contrary, it was involved with many important transactions that were conceived and closed during its peak era, some of which are still viable and valuable. I can think of a parallel: although the declaration of Mark Twain's death is no longer "premature," he still lives in our minds and on our bookshelves, and deserves the respect he had rightfully earned.

If one considers the term "25% Rule" to be synonymous with my activities described as "The Classic 25% Rule," the historic old rule still exists and this should be acknowledged. The 1965 version of the Volkswagen BEETLE did not have power steering, automatic transmission, air conditioning, seat belts, airbags, a sizable trunk in the rear—now considered standard in today's version of the Volkswagen that has a similar outer appearance. The quality of materials and construction workmanship of the old model were widely admired. None of my mature contemporaries who had experiences with that classic BEETLE model disparages it today.

During my early days in licensing, I don't recall anyone being negatively critical of our "professional tool kit" of the time. I fondly recall favorable accounts of its use by Dudley Smith, Marc Finnegan, several other LES Gold Medal winners or respected pioneers with whom we "talked shop."[9] Indeed, I clearly remember comments by several of my contemporaries following the publication of the decision in the *Georgia-Pacific* case in 1970, who expressed satisfaction that factor 13 of that landmark opinion confirmed the essence of the negotiating procedures we were utilizing, in which the 25 percent concept in some reasonable forms was being used.

Moreover, I am aware of the fact that several methodologies exist that employ other means to evaluate technology in the course of licensing negotiations.[10] These include Industry Standards, Rating/Ranking, Discounted Cash Flow, so-called Advanced Methods such as Monte Carlo and Real Options and Auctions.

Because of its ready understandability by most businessmen around the world in addition to the United States, it is my opinion that The 25% Rule in the classic form or as a rule of thumb, have been used more frequently than any of the other approaches, and with a high degree of success. Outside the courtroom, I expect that the Rule, in both forms, will continue to be used—at least informally.

For the foregoing reasons, I am puzzled why the methodology I observed many years ago, which I have employed consistently and successfully—at least as part of my licensing strategy—about which I have lectured worldwide, should have seemingly created alarming problems for some people reputed to be experienced in the licensing field. If there have been failures in the use of the Rule, or other problems about which I am unaware (certainly a possibility, considering the many years and numerous projects involved), I would be eager to learn details about them in order to consider their impact.

The "bottom line" is that I have been proud to devote virtually my entire professional career to the licensing process, and am prepared to consider ways

9. On the wall of my office, I proudly display a framed plaque from LES (USA & Canada), Inc. bearing the text under my name reading "for his outstanding contribution to licensing and the historic role of the twenty-five percent rule in the development of modern patent evaluation." October 15, 2007 (signed) Allen Baum, President LES (USA & Canada).

10. For an excellent discussion of such alternative technologies, I recommend the writings of my respected friend Dr. Richard Razgaitis, including his excellent chapter entitled *Technology Valuation in The LESI Guide to Licensing Best Practices,* John Wiley & Sons, 2002.

to preserve the high reputation which I believe the discipline has earned. The Classic 25% Rule is an icon in this "museum" and should respectfully be treated accordingly. I intend to be vigilant that it will be.

III. Two Initiatives Already Published and Related Thoughts

In reflection of the importance of Judge Linn's opinion in *Uniloc v. Microsoft*, especially in view of its direct attention to an income related issue, a stream of articles may be expected to be published. I hope to comment about these from time to time, especially on anything intended to be scholarly which I consider to be valuably creative or seriously inaccurate. As of the time of this writing, two published papers within the LES environment have come to my attention, both expressing negative views with which I disagree.

The problem with these other authors is mainly based on a difference in our respective understanding of the express language of Judge Linn's basic decision, which clearly states that:

> "This court now holds as a matter of Federal Circuit law that *the 25% rule of thumb* [my emphasis] is a fundamentally flawed tool for determining a baseline royalty rate in a hypothetical negotiation. Evidence relying on *the 25% rule of thumb* is thus inadmissible under *Daubert* and the Federal Rules of Evidence because it fails to tie a reasonable royalty base to the facts of the case at issue."

I agree with the literal wording of this negating of the "rule of thumb," which I read to be narrower than "The Classic 25% Rule," which is expressly defined to include use of all relevant scientific, technical and other specialized knowledge consistent with "the teachings of the *Daubert* and *Kumho Tire* cases as well as Rule 702 of the Federal Rules of Evidence (see paragraph I.5 of this article).

I am prepared to discuss candidly with these three authors, and anyone else who has the view that Judge Linn's lucid wording is intended to erase the full scope of The 25% Rule *per se*. Having stated the basic principle, I have the following specific contents about the two articles:

The first is entitled "25% Rule Rest in Peace," written by Mohan Rao, Ph.D.[11] It begins with the completely erroneous statement that "In Uniloc, the Appeals Court *categorically* [my emphasis] eliminated the use of the '25% rule' in calculating reasonable royalty damages in the United States." This preceded my article published in September, 2011, that Judge Linn's opinion is expressly focused on "the 25% *rule of thumb*," thereby, in my view, leaving all other aspects of the rule intact.

Dr. Rao's choice of the word "categorically" is inappropriate. According to my copy of *Webster's New Universal Unabridged Dictionary,* categorically means, "absolutely, expressly, positively, as to affirm categorically." Judge Linn refers to "The 25% Rule" 17 times and to "The 25% Rule of Thumb" 21 times. He clearly distinguishes between the two concepts. It is only The 25% Rule of Thumb which the court expressly holds to be inadmissible. I interpret this to mean that The 25% Rule, *per se*, (particularly in the form of The Classic 25% Rule) remains enforceable at this time, and may be expected to remain so unless a subsequent Court opinion may hold otherwise. The analysis by Judge Linn is limited to the specific facts of the case, *i.e.* incremental benefits realized by Microsoft attributed to a portion of the Product Keys that infringed Uniloc's '216 Patent.

The remainder of this relatively short Rao article attempts to make the point that "the 25% rule never made any economic sense ...." My prior article refutes this view in that it lists over 10 examples in which I participated and where applications of The 25% Rule helped create solid successes recognized by all parties, and which therefore made "economic sense." This reality is also diametrically opposed to another declaration made by Dr. Rao that a 25% rule analysis "is entirely fact free."

In sum, the effort by Dr. Rao misses the major points I consider obvious. He nevertheless appears to be a serious and sensitive person. I would therefore be glad to discuss any pertinent aspects of this matter with him, if he seeks my further thoughts.

The second article is intriguing to me. It is entitled "Simply Wrong: The 25% Rule Examined."[12] This was jointly written by Douglas G. Kidder and Vincent E. O'Brien, ("K & O"), respectively a Partner and Managing Partner of OSKR in California. I do not know them personally, nor, as this is written, do I know anything about their professional activities. I nevertheless take them seriously and hope to have an opportunity to explore ways in which the licensing profession can get the benefit of a combination of our different, but not necessarily inconsistent, points of view.

Before opening a dialogue with them in the nature of a debate, I would like to clarify two points made

11. *Viewpoints,* The Newsletter of the Licensing Executives Society, Vol. XVIII No. 2 April, 2011.

12. *les Nouvelles*, December, 2011, Vol. XLVI No.3, pp. 263-268.

in the opening two sentences in their article. With respect, I consider them to be "simply wrong" to borrow from the title of this impressive work directed at mine.

The first sentence contains the statement that "The Uniloc ruling…on its face, *unequivocally* [emphasis mine] barred the use of The 25% Rule in litigation…" K & O failed to distinguish between the Rule *per se* and "The 25% Rule of Thumb," which is the precise term used by Judge Linn in his excellent opinion. This distinction is clearly and repeatedly made by Judge Linn, as I emphasized, *supra* when raising the same point with Dr. Rao. The use of "unequivocally" by K & O, which my dictionary defines as "plainly, clearly, straight forward and/or not ambiguously," immediately preceding the words "The 25% Rule," instead of the expression "25% Rule of Thumb," which was actually employed by Judge Linn, appears to be a misstatement of the actual judicial holding.

A similar obvious error appears in the next sentence. It states that "[Robert Goldscheider] wrote an article explaining why he believed the ruling [by Judge Linn] was 'incorrect'." In two separate places in my article, at pages 150 and 154, I expressly indicated my agreement with Judge Linn's ruling on this point and I have said nothing whatsoever negative about his entire opinion. Indeed, I complimented him about the firm manner in which he finessed the effort by trial counsel for *Uniloc* to misuse the Entire Market Value Rule to the detriment of Microsoft, through the testimony of Joseph Gemini.[13]

I am puzzled at these oversights because the remainder of the article contains some interesting theoretical thinking and remarks which are worthy of potential fruitful discussions between us. Perhaps these errors occurred because K & O, according to footnote 3 of their article, created an "[o]riginal draft [that] is 45 pages long and was drafted *just prior* to the *Uniloc* decision—which they believe rendered the decision 'moot'." I'm uncertain what this means but am interested to learn what they intend. To swap slogans, this is not "correctly [tossing] onto the scrap-heap of junk science by the CAFC," to quote K & O; it is an attempt to "throw out the baby with the bathwater," as I stated on page 158 of my earlier article published in the September, 2011 issue of *les Nouvelles*.

K & O apparently admire a strict rule that conforms to the disciplined model of a battalion of West Point cadets, with all the specific individuals in precise rows. That's an admirable idea, and many of their criticisms of variations in applications of "The 25% Rule" are well taken.

The lore of the 25 percent phenomenon, however, as I have noted from time to time, spread by word of mouth and was never strictly defined by a legislative enactment, (although it is well known that legislatively enacted bills are often riddled with loopholes). I consider sophisticated licensing to be an "art" and this word appears in the titles of several of my books and other writings. A framework surrounding a functional nucleus exists in virtually all creative enterprises, but there is also a dimension for such creativity which has often improved the quality of a sensitive, mutually controlled, license. Many well-intentioned attempts by private sector scholars to create order out of masses of "25 percent" licensing events have grown to impressive global proportions. K & O tell us "they have found 38 published articles" prior to the CAFC decision of January 4, 2011 Uniloc decision that have expressed a variety of viewpoints. It could be productive were we to analyze them cooperatively, since we might learn something useful from their variety of artistic properties.

In the light of these contrasting attitudes, I get the image of a college sophomore's "casually disorganized" dormitory room in comparison to a Brooks Brothers' store window. The former's "informality" can be reasonably straightened out by orderly people acting sensibly. By crafting my definition of The Classic 25% Rule, I have been attempting to do just that. Careful readers will note that the multi-step procedure that I define is completely consistent with the *Daubert* decision and its progeny. I directly refer to that point. This explains why I strongly believe that the ill fate of the rule of thumb should not adversely affect (or perhaps "infect") the viability of The Classic Rule.

Despite its somewhat disorderly nature, the 25 percent phenomenon has essentially been successful because its "ingredients" have been appreciated and effectively utilized by business persons and their lawyers all over the world. The 25% Rule is now being streamlined, its Rule of Thumb was recognized as undesirable and has been sidelined; perhaps further practical refinements are in the offing with the utilization of our modern tools, including the Internet and broad bandwidth. K & O appear to be skilled and experienced in such matters, which, alas, I am not.

I find several useful comments by K & O in their

13. At p. 154, I stated that "Uniloc's damages expert also did not appropriately apply the *Georgia-Pacific* factors, wrongly attempted to inflate the royalty base by misuse of the entire Market Value Rule, and was rightly criticized by Judge Linn."

article, *e.g.* a single, flexible formula for profits (whether net, gross or operating) should be devised and accepted. I agree with K & O that royalty rates should accurately reflect profitability and would like to learn more about K & O's ideas on the subject.

I'm also open to see other suggestions K & O would like to make, so long as they agree that The 25% Rule, possibly improved in some generally approved manner, will still be professionally recognized. Indeed, a survey of negotiations in which The Classic Rule, in various formats, has played a described useful role, could be a valuable addition to the literature and provide models for future strategies. The ability of the Internet could be marshaled to identify and analyze such successful projects.[14]

In addition, at such time as additional relevant articles come to my attention, I shall try to obtain the texts, share them with interested persons of whom I am aware, and attempt to have any potentially valuable publications brought to the attention of members of the licensing profession. I would like to see K & O participate in such activities.

IV. What's in a Name?

One by-product of my ruminations not yet considered is that use of the name "25% Rule," whether described in "classic" terms or not, will frequently be numerically inaccurate. The *Daubert* acceptable analytical tools, whether in an actual or hypothetical environment, may be expected to reveal a "tipping point" on most occasions which will vary away from exactly 25 percent. It would thus be appropriate to select a new name that fits the circumstances. Consistent with good marketing principles, I believe the new name should be simple, recognizable, and perhaps somewhat descriptive.

These are some preliminary suggestions:

- The motto "Win-Win Rule" comes to mind, but strikes me as lacking charm and being overly aggressive;
- Something alliterative like "Reasonable Remuneration Rule" would be theoretically accurate, but probably difficult to translate into non-English languages and, to be frank, is boring to me. If abbreviated to "RRR" it would also be unrecognizable, at least at the outset;
- Two somewhat similar names are "Relative Value Rule" or "Relative Profit Participations." These may be worthy of serious consideration because they are neutral in tone and could be accurate;
- Something I like even better is "Complementary Compensation." It is literally correct, and the word "Complementary" has a congratulatory sense in approving a deal in addition to its sense of constituting something smoothly achieved; it is also alliterative. This could be the winner;
- Finally, I (somewhat blushingly) confess that I am attracted to the "Golden Rule," which the dictionaries, and indeed the Bible, tell us means "Do unto others as you would have them do unto you." This is a motto and methodology that can elegantly inspire realistic and ethical results. It is also related to "altruism," one of my favorite words.

My problem is that this label might inadvertently be confused with the name "Goldscheider" since I am recognized as having had a role in the identification of the 25 percent concept. Even worse, my family name, Goldscheider was original known to me to mean "he who separates gold from its impurities" which has a semblance to the substance of licensing negotiations.

Whatever, I seriously believe that the acceptance of a recognized new name by the licensing profession could have a useful calming effect on the area of practice where there exists confusion. I therefore respectfully suggest that this question be placed before the Board of Delegates of the Licensing Executives Society International for advice. With my friend and protégé Jim Malackowski as President this year, I am confident there will be action.

V. Conclusion

Those of us who have had the privilege and pleasure of a career in licensing have been fortunate to participate in the growth of an important new profession in a dynamic environment. Impressive progress has been made to maximize the efficiency of the creative marketplace in which we function. An optimized methodology to help commercialize the innovations with which we work is highly desirable, in the full range of markets from local to global. With serious, open minded attention to the issues discussed in this article, progress can be realized to achieve our common goals. ■

14. The statistical analyses in the article entitled "Use of The 25 Per Cent Rule in Valuing IP" that appeared in *les Nouvelles* in 2002 were essentially the responsibility of my colleagues John Jarosz and Carla Mulhern. I shall leave it to them to debate these points if they wish. My concentration has always been on the particular factors of individual deals. In my view, this is where "reality" occurs, especially after the decision in the *Daubert* case.