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May 2017

[Favorable Capital Gains Taxation Rates Apply to Payments for Transfer of All Substantial Rights in Patents](#)

by [John C. Paul](#), [D. Brian Kacedon](#), and [Jonathan J. Fagan](#)

The portion of a termination payment attributable to a transfer of all substantial rights in a patent may be treated as long-term capital gain and taxed at more favorable rates than ordinary income. Such favorable tax treatment can be enjoyed by members of a partnership that has received payment for transferring those patent rights.

[Patent Litigation Settlement Agreements May Be Used to Support Reasonable Royalty Damages in Later Litigation](#)

by [John C. Paul](#), [D. Brian Kacedon](#), and [Anita Bhushan](#)

Litigation settlement agreements can be submitted as evidence to establish the amount of reasonable royalty damages and are more likely to be admitted into evidence when they occur at a later stage of the litigation, if the use of the patented technology by the party that settled is similar to the use made by the accused infringer, and if there are no enhanced damages at issue in the settled litigation.

[eBay Not Liable for Listing Infringing Products of Third-Party Sellers—Not an Offer to Sell by eBay](#)

by [John C. Paul](#), [D. Brian Kacedon](#), and [Ryan H. Ellis](#)

Third-party listings of infringing products for sale on eBay's online marketplace did not result in direct or indirect infringement by eBay. The court distinguished such third-party listings on Amazon and Alibaba marketplaces.

[A Summary Affirmance by the Federal Circuit Can Bar Re-Litigation of Infringement Claims](#)

by [John C. Paul](#), [D. Brian Kacedon](#), and [Kelly S. Horn](#)

When the Federal Circuit summarily affirms a trial court judgment, collateral estoppel can still apply to bar a patent owner from re-litigating an issue provided that the judgment of the trial court did not include a determination






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of more than one issue, each of which could independently support the result.

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