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Intellectual Property Litigation

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U.S. Supreme Court Relaxes Rules on Awarding Enhanced Damages in Patent Infringement Cases

On Monday, June 13, 2016, the United States Supreme Court [issued an opinion](#) in two companion cases, *Halo Electronics, Inc. v. Pulse Electronics, Inc., et al.*, No. 14-1513, and *Stryker Corp. et al. v. Zimmer, Inc.*, No. 14-1520, that noticeably eased the requirements for a district court to award enhanced damages for willful infringement. The following update provides some basic background on the award of enhanced damages in patent infringement litigation as well as on this recent Supreme Court opinion and the practical implications for parties involved in patent infringement litigation.

DAMAGES FOR INFRINGEMENT IN PATENT INFRINGEMENT LITIGATION – THE PATENT ACT AND THE FEDERAL CIRCUIT’S INTERPRETATION

Under the Patent Act, in a case of infringement courts “may increase the damages up to three times the amount found or assessed.” 35 U.S.C. § 284. The United States Court of Appeals for the Federal Circuit in *In re Seagate Technology, LLC*, 497 F. 3d 1360, 1371 (2007) established the test for enhanced damages, which required that a plaintiff demonstrate that the infringement of his patent was “willful.” The Federal Circuit announced a two-part test to establish such willfulness: First, a patent owner must “show by clear and convincing evidence that the infringer acted despite an objectively high likelihood that its actions constituted infringement of a valid patent.” Second, after establishing objective recklessness, the patentee must demonstrate, also by clear and convincing evidence, that the risk of infringement “was either known or so obvious that it should have been known to the accused infringer.” Only when both steps are established can a district court proceed to consider whether to exercise its discretion to award enhanced damages. In addition, an award of enhanced damages is subject to a trifurcated appellate review: the first step of *Seagate*—objective recklessness—is reviewed *de novo*, the second—subjective knowledge—for substantial evidence, and the ultimate decision—whether to award enhanced damages—for abuse of discretion.

THE SUPREME COURT’S DECISION

In a unanimous decision, the United States Supreme Court rejected the Federal Circuit’s *Seagate* framework for awarding enhanced damages as “unduly rigid” and not consistent with the text of Section 284. The Court first noted generally that Section 284 has no explicit limit of condition on when enhanced damages are appropriate, therefore leaving intact the grant of discretion to a district court in awarding enhanced damages for egregious infringement behavior.

The Court then determined that *Seagate*’s first requirement, objective recklessness, excludes from discretionary punishment many of the most culpable offenders, as a district court must first determine that such infringement was “objectively” reckless before awarding enhanced damages. In rejecting the first prong of *Seagate*, the Court explained that under Section 284 a district court should be able

to punish a full range of culpable behavior by taking into account the particular circumstances of each case and to reserve punishment for egregious cases.

The Court also rejected *Seagate*'s second prong, requiring subjective knowledge to be proven by clear and convincing evidence, explaining that Section 284 does not impose a specific evidentiary burden, much less a higher burden. Therefore, a preponderance of the evidence is the applicable standard.

Finally, after eschewing any rigid formula for awarding enhanced damages under Section 284, the Court similarly rejected the Federal Circuit's three-part appellate review framework. It noted that, because Section 284 provides district courts with the discretion to award enhanced damages, that decision on appeal should be reviewed for abuse of discretion.

BROAD IMPLICATIONS FOR PARTIES ACCUSED OF PATENT INFRINGEMENT

These cases are important because the threat of willfulness had been greatly diminished from patent litigation by recent Federal Circuit decisions, but now companies will need to factor that into their litigation strategy. The new test is more flexible and therefore should be easier for patent owners to meet, resulting in larger damages awards.

If you have any questions about how these rulings might affect your business, please contact one of the members of Robinson+Cole's [Intellectual Property Litigation Team](#):

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