

PUBLICATION

Supreme Court Lowers Bar for Awarding Enhanced Damages for Patent Infringement

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June 13, 2016

The U.S. Supreme Court today ruled in favor of patent owners with a unanimous (8-0) decision in *Halo Electronics, Inc. v. Pulse Electronics, Inc.* The Court held that the Federal Circuit's strict test for awarding enhanced damages was not consistent with the language of the Patent Act. Instead, the awarding of enhanced damages for patent infringement is in the discretion of the trial court.

Section 284 of the Patent Act provides that, in cases of patent infringement, the court "may increase the damages up to three times the amount found or assessed." In 2007, the Federal Circuit in the case of *In re Seagate Technology, LLC* established a two-part test setting a high bar for awarding enhanced damages. First, the 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, the patent owner must demonstrate 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."

The Supreme Court rejected the *Seagate* two-part test as being "unduly rigid." By requiring an objective recklessness finding in every case, the *Seagate* test excluded from possible punishment the "wanton and malicious pirate" who intentionally infringed a patent with no other purpose than stealing the patent owner's business. Instead, an infringer's subjective willfulness, whether intentional or knowing, should warrant a fee award without regard to whether the infringement was objectively reckless. Section 284 of the Patent Act thus allows trial courts to use their discretion for awarding enhanced damages, taking into account the particular circumstances of each case and permitting courts to punish egregious cases typified by willful misconduct.

In addition, the Supreme Court rejected the "clear and convincing evidence" requirement. The Patent Act imposes no specific evidentiary burden, and thus, the general patent-infringement litigation standard of "preponderance of the evidence" should apply.

Finally, the Supreme Court also discarded *Seagate's* multipart standard of review on appeal. Instead, the Court directed the Federal Circuit to review district decisions for "abuse of discretion."

As the base damages in patent infringement cases can be large, the potential enhanced damages award can be enormous. After nearly a decade of patent owners facing a standard that effectively removed enhanced damages from the table, the significant risk of a trebled award has been put back into the calculation. Any business facing a claim of patent infringement, or considering whether their actions may infringe a patent, should act with due care and take appropriate steps to establish lack of willful infringement.

If you have any questions about this ruling or how it could impact your business, please contact Edward Ramage or any of the attorneys in Baker Donelson's Intellectual Property Group.