

## Insights

### Supreme Court Issues Decision Regarding Enhanced Damage Availability in a Patent Infringement Litigation

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On June 13, 2016, the Supreme Court issued an important decision regarding when enhanced damages are available in patent infringement litigation. *Halo Electronics, Inc. v. Pulse Electronics, Inc.*, Case No. 14-1513 (June 13, 2016) and *Stryker Corporation, v. Zimmer, Inc.* Case No. 14-1520. In short, the Supreme Court overruled Federal Circuit precedent creating a difficult evidentiary threshold for receiving enhanced damages. The Supreme Court's decision vests far greater discretion in the district court presiding over the case to award enhanced damages.

Section 284 of the Patent Act states courts "may increase the damages up to three times the amount found or assessed." 35 U. S. C. §284. The Federal Circuit used a two-part test for determining whether damages may be increased pursuant to §284. A patent owner had to show, by clear and convincing evidence, (1) the infringer acted despite an objectively high likelihood that its actions constituted infringement of a valid patent" and (2) the risk of infringement "was either known or so obvious that it should have been known to the accused infringer." *In re Seagate Technology, LLC*, 497 F. 3d 1360, 1371.

The Supreme Court reasoned the principal problem with Seagate's two-part test is that it required a finding of objective recklessness before district courts may award enhanced damages. Under that standard, someone who infringed a patent without any reason to suppose the conduct was arguably defensible could escape any comeuppance under §284 solely on the strength of his attorney's ingenuity.

As with any exercise of discretion, courts should continue to take into account the particular circumstances of each case in deciding whether to award damages, and in what amount. Section 284 permits district courts to exercise discretion in a manner free from the inelastic constraints of the Seagate test. Such punishment should generally be reserved for egregious cases typified by willful misconduct. The Supreme Court's decision seems to follow the logic of *Octane Fitness*, 572 U. S., at \_\_\_\_\_. Like §285, §284 "imposes no specific evidentiary burden, much less such a high one." "Patent-infringement litigation has always been governed by a preponderance of the evidence standard." 572 U. S., at \_\_\_\_\_. Enhanced damages are no exception. District courts are "to be guided by [the] sound legal principles" developed over nearly two centuries of application and interpretation of the Patent Act. Those principles channel the exercise of discretion, limiting the award of enhanced damages to egregious cases of misconduct beyond typical infringement.