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I Can See Your *Halo*: Defending Willful Infringement Claims at Trial After *Halo*

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"*Remember those walls I built*
Well, baby, they're tumbling down"

Halo Increased the Likelihood that the Jury Will Decide Willfulness

- Because *Seagate*'s **objective prong** was a question of law for the court, defendants could get rid of willfulness on **summary judgment** and keep it from ever getting to the jury
- In the post-*Halo* era, it's all about the accused infringer's **subjective intent** – now it is much harder to keep willfulness from the jury

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"I found a way to let you win
But I never really had a doubt"

Halo Made It Easier to Prove Willfulness

- *Halo* lowered the burden of proof for willfulness
- "[P]atent-infringement litigation has always been governed by a **preponderance of the evidence** standard. . . . Enhanced damages are no exception."

  Halo Electronics, Inc. v. Pulse Electronics, Inc., 136 S. Ct. 1923, 1934 (2016) (emphasis added)

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"Hit me like a ray of sun
Burning through my darkest night"

But in Some Ways, *Halo* Also Made It Harder to Prove Willfulness

- *Halo* made it clear that willfulness requires more than a "typical infringement case" – it requires something seemingly much darker: "**egregious infringement behavior**"
- "Egregious infringement behavior" is behavior that is "willful, wanton, **malicious**, bad-faith, deliberate, consciously wrongful, **flagrant**, or—indeed—**characteristic of a pirate**."

  Halo, 136 S. Ct. at 1932 (emphasis added)

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