

Willful Infringement, Enhanced Damages, and the Impact of *Halo*

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DISCLAIMER/PROMISE

Willful Infringement and the Impact of *Halo*- Outline

1. Introduction
2. Enhanced Damages – Historical Background
3. Seagate Standard
4. The Supreme Court's *Halo* Decision
5. Federal Circuit Cases After *Halo*
6. District Court Cases After *Halo*
7. The Impact of *Halo* on the Need for and Value of Attorney Opinions
8. Observations/Comments/Practice Tips

Why is Willful Infringement Important?

35 USC § 284

“Court may increase damages in a patent infringement action up to 3X the amount found or assessed”

35 USC § 285

“The court in exceptional cases may award reasonable attorney fees to the prevailing party”

QUANTATIVE LOOK AT ENHANCED DAMAGES

ASSUME LIABILITY FOR INFRINGEMENT—NO ENHANCED DAMAGES-COST TO THE INFRINGER

--OWN ATTORNEYS FEES \$5 MILLION (AIPLA SURVEY 2015)
--COMPENSATORY DAMAGES \$10.2 MILLION (PWC 2015)

TOTAL COST TO DEFENDANT **\$15.2 MILLION** (PLAINTIFF FULLY COMPENSATED)

ASSUME LIABILITY FOR INFRINGEMENT—WITH ENHANCED DAMAGES (3X)—COST TO INFRINGER

--OWN ATTORNEYS FEES \$5 MILLION (AIPLA SURVEY)
--COMPENSATORY DAMAGES X 3 \$30.6 MILLION (PWC)

TOTAL COST TO DEFENDANT **\$35.6 MILLION; (\$40.6 M if Exceptional under 285)**

Brief History of Enhanced Damages

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Title search: Willful Infringement, Enhanced Damages, and the Impact of Halo

Also available as part of the eCourse

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"Willful Patent Infringement After the Supreme Court's Opinion in *Halo v. Pulse* and its Progeny"