

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

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1

## 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

[2017 Advanced Patent Law \(USPTO\) eConference](#)

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12<sup>th</sup> Annual Advanced Patent Law Institute session

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