



Defending Against Allegations of
Willful Infringement Post-*Halo*
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BAKER BOTTTS

Agenda

- The Aftermath of *Halo*
- Recommendations for Preparing a Defense
- Opinions of Counsel

Willfulness more interesting to jurors than infringement

“Willfulness and the associated issue of motive/intent are often more interesting to jurors than the highly technical issues. As a result, some jurors are going to find it easier to focus on, rely, and analyze the case based on the willfulness evidence.”

Chris Ritter, The Focal Point LLC

Halo Electronics v. Pulse Electronics

- Halo eliminated your best way to keep willfulness from the jury



“The subjective willfulness of a patent infringer, intentional or knowing, may warrant enhanced damages, **without regard to whether his infringement was objectively reckless.**”

Halo Electronics, Inc. v. Pulse Electronics, Inc., 136 S. Ct. 1923, 1933 (2016)
(emphasis added)

Halo Electronics v. Pulse Electronics

- And left us with vague fact issues



“The sort of conduct warranting enhanced damages has been variously described in our cases as willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.”

Halo Electronics, Inc. v. Pulse Electronics, Inc., 136 S. Ct. 1923, 1932 (2016)

bad-faith

deliberate

flagrant

consciously
wrongful

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