



Defending Against Allegations of  
Willful Infringement Post-*Halo*  
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CONFIDENTIAL  
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BAKER BOTTS

## Agenda

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

## Willfulness more interesting to jurors than infringement

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“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*

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- 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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