

Defending Against Willful Infringement In A Post-Halo World

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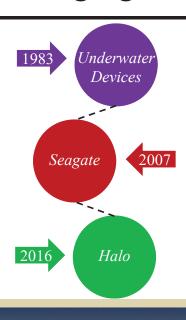
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Overview

- Changing Standards Of Willfulness
- Additional Post-Halo Implications
- Why Else Alleged Infringers Need To Be Careful
- Best Practices Generally
- Best Practices Opinions of Counsel
- Conclusions and Questions

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Changing Standards Of Willfulness



Duty-Of-Care Standard

Two-Prong Test
(1) Objectively High Risk Of Infringing
(2) Subjectively Knew/Should Have Know If Risk

Eliminated Objective Prong Willfulness Based on Knowledge Of Actor At Time of Challenged Conduct ("Egregiousness")

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Changing Standards Of Willfulness

"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).





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