

Enhanced Damages for Patent Infringement:

Catching Trolls or Pirates?

Supreme Court in Halo v Pulse and Stryker v Zimmer



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35 USC § 284

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed.

Increased damages under this paragraph shall not apply to provisional rights under section 154(d)

The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

See *In re Seagate*, 497 F.3d 1360 (Fed. Cir. 2007)



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35 USC § 285

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

See *Octane Fitness v. Icon Health*, 134 S. Ct. 1749 (2014).



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(1--Halo) Whether the Federal Circuit erred by applying a rigid, two-part test for enhancing patent infringement damages under 35 USC § 284 that is the same as the rigid, two part-test this court rejected last term in *Octane Fitness LLC v Icon Health*, 134 S. Ct. 1749 (2014) for imposing attorney fees under the similarly-worded 35 USC § 285?

(1—Stryker) Has the Federal Circuit improperly abrogated the plain meaning of [sec. 284] by forbidding any award of enhanced damages unless there is a finding of willfulness under a rigid, two-part test when this Court rejected an analogous framework imposed on [sec 285], the statute providing for attorney’s fees awards in exceptional cases?

(2—Stryker) Does a district court have discretion under [sec 284] to award enhanced damages where an infringer intentionally copied a direct competitor’s patented invention, knew the invention was covered by multiple patents, and made no attempt to avoid infringing the patents on that invention?

Consolidated Cert Petitions in Halo and Stryker



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Supreme Court rejected a standard that looked to objective and subjective criteria when case was exceptional

Octane Fitness and Section 285



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USOC5656985A

United States Patent [19]

Lu et al.

[11] Patent Number: **5,656,985**

[45] Date of Patent: **Aug. 12, 1997**

[54] ELECTRONIC SURFACE MOUNT PACKAGE

[75] Inventors: **Peter Lu**, Flowermeadow, Tex.; **Jeffrey Heaton**, Cupertino; **James W. Heaton**, Los Altos, both of Calif.; **Peter Lok Hong Pao**, Hong Kong, China; **Robert Lake Hang Lam**, Hong Kong, China; **Tsang Kei Sun**, Hong Kong, Hong Kong

[73] Assignee: **Halo Electronics, Inc.**, Redwood City, Calif.

[21] Appl. No.: **513,573**

[22] Filed: **Aug. 10, 1995**

[51] Int. Cl.⁶ **H01F 15/10**, **H01F 27/02**

[52] U.S. Cl. **336/96**; 174/52.4; 336/65; 336/192; 336/229; 361/821

[58] Field of Search 174/52.4; 361/821; 336/229, 192, 65, 90, 96

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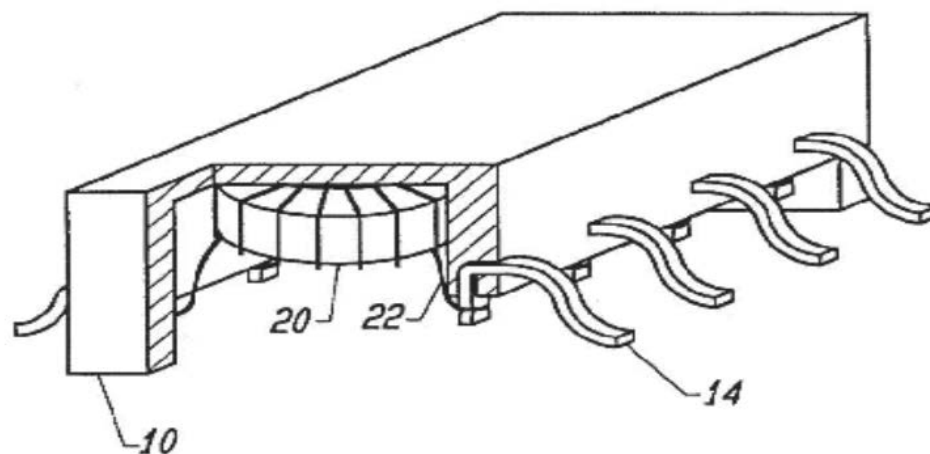
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Primary Examiner—Thomas J. Kozum
Attorney, Agent, or Firm—Trial & Technology Law Group

[57] ABSTRACT

An electronic surface mount package provides a one piece construction package (with an open bottom) with one or more terminal pins cradled into the package. Each of the pins have a notched post upon which a wire is wound which is from a toroid transformer carried within the package. Each of the posts are notched so their respective wires are separate from one another so as to prevent arcing. The case is opened at the bottom which prevents harm from expansion or cracking.

8 Claims, 5 Drawing Sheets



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US006022329A

United States Patent [19]
Arnett et al.

[11] **Patent Number:** **6,022,329**
[45] **Date of Patent:** ***Feb. 8, 2000**

[54] **IRRIGATION HANDPIECE WITH BUILT IN PULSING PUMP**

[75] **Inventors:** **Jeffery D. Arnett, Kalamazoo; Nicholas V. Gately, Portage; David H. Grulke, Battle Creek; Ruth A. Hilsbus, Saline; James L. Sertic, Kalamazoo, all of Mich.**

[73] **Assignee:** **Stryker Corporation, Kalamazoo, Mich.**

[*] **Notice:** This patent is subject to a terminal disclaimer.

[21] **Appl. No.:** **09/009,657**

[22] **Filed:** **Jan. 20, 1998**

Related U.S. Application Data

[63] **Continuation of application No. 08/559,133, Nov. 17, 1995, Pat. No. 5,718,608, which is a continuation of application No. 08/649,144, Apr. 19, 1995, Pat. No. 5,470,305.**

[51] **Int. Cl.⁷** **A65M 3/00**

[52] **U.S. Cl.** **601/155; 239/926; 239/373; 604/33; 604/153; 604/43; 601/151**

[58] **Field of Search** **601/154, 155, 601/160, 161, 162, 163, 165; 604/33, 35, 39, 43, 153; 128/DIG. 10, DIG. 12; 433/80; 74/523, 537, 538, 489; 300/522, 352.2, 293.1; 239/525, 526, 373; 222/333**

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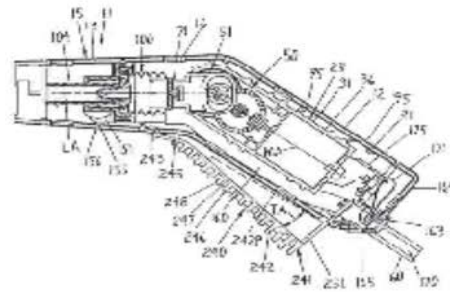
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[57] **ABSTRACT**

A pulsed irrigation handpiece comprises a pulsed irrigation liquid outlet for applying liquid pulses to a surgical site, a pump unit reciprocatingly driveable for pumping pulses of irrigation liquid through the outlet, an electric powered drive unit for reciprocatingly driving the pump unit, and a housing containing the pump and drive units. A irrigation inlet hose leads from the pump unit out of the handpiece housing and is connectable to a remote irrigation liquid source. An irrigation inlet hose adjacent the remote end thereof and electric conductors extending along the irrigation inlet hose transfer electric power from the supply unit to the drive unit in the handpiece. Removable tips are alternatively removably attachable to the irrigation liquid outlet adjacent the front end of the handpiece.

10 Claims, 17 Drawing Sheets



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Where were the Justices during oral argument?

Sotomayor/Kagan

Protect interest of patent owners and so need to lower the standard for awarding enhanced damages.

Roberts

Allow more room for district court discretion.

Breyer

Favors current standard as a way to deter frivolous patent litigation.

(Asymmetry between 284 and 285)



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Other Judges

Ginsburg

Standard of appellate review?

Alito

Section 298, opinion of counsel,
and intent

Kennedy

Punitive and compensatory role of
enhanced damages



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Take Away Issues for Discussion

- Patent law reform and views on litigation
- Relationship between Federal Circuit and Supreme Court
- Responding to Cease and Desist Letters to avoid enhanced damages
- Technology Commercialization and Start-ups



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Questions?

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