Enhanced Damages for Patent Infringement:

Catching Trolls or Pirates?

Supreme Court in Halo v Pulse and Stryker v Zimmer
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)
35 USC § 285

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

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

Octane Fitness and Section 285
ABSTRACT
An electronic surface mount package provides a one piece construction package (with an open bottom) with one or more terminal pins molded into the package. Each of the pins have a notched post upon which a wire is wound which is from a second terminal serves to carry the package. Each of the pins are molded to the respective wire, and the assembly is repeated, one after another, to prevent arcing. The ears is opened at the bottom which prevents burns from expansion or cracking.
<table>
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<th>Justice</th>
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<td>Sotomayor/Kagan</td>
<td>Protect interest of patent owners and so need to lower the standard for awarding enhanced damages.</td>
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<td>Roberts</td>
<td>Allow more room for district court discretion.</td>
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<td>Breyer</td>
<td>Favors current standard as a way to deter frivolous patent litigation. (Asymmetry between 284 and 285)</td>
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<td>Ginsburg</td>
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<td>Alito</td>
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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
Questions?

• For additional questions on this topic email nysstlc@law.syr.edu
• A recording of this webcast will be made available at nysstlc.syr.edu/webcasts