



Applying New Halo Standard, the Federal Circuit Reverses Course and Affirms Finding of Willful Infringement

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The parties involved in this appeal represent the two main competitors in the orthopedic pulsed lavage device market. In 2010, Stryker sued Zimmer for infringement of three patents. On summary judgment, the district court found that Zimmer infringed two of the three asserted patents. The parties then proceeded to trial on the issue of infringement of the third patent, willfulness of all three patents and Zimmer's invalidity defenses. Following a jury verdict in which Zimmer was found to willfully infringe all three asserted patents and the patents were found to be not invalid, the district court awarded treble damages to Stryker. The district court also found the case exceptional, awarded fees to Stryker and entered a permanent injunction against Zimmer.

In its initial review, the Federal Circuit reversed the jury's finding of willfulness. However, the Supreme Court granted certiorari to consider whether the test for willfulness articulated in *Seagate* was consistent with the Patent Act. In its *Halo* decision, the Supreme Court described the *Seagate* test as too restrictive for district courts to exercise their discretion and held that willfulness should be evaluated under a preponderance of the evidence standard. In view of this decision, the Supreme Court vacated the Federal Circuit's earlier decision in this case. On remand, the Federal Circuit affirmed the jury's finding that Zimmer willfully infringed Stryker's patents because the jury made its finding under the clear and convincing evidentiary standard, which exceeds the preponderance of the evidence standard articulated by the Supreme Court in *Halo*. However, the Federal Circuit vacated the award of enhanced damages and remanded the case to allow the district court the opportunity to

“exercise its discretion” and determine whether enhancement is appropriate in view of the circumstances of the case.

Stryker Corporation v. Zimmer, Inc., No. 2013-1668 (Fed. Cir. September 12, 2016).

Categories

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Patent Infringement

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