

Supreme Court Eases Test For Awarding Enhanced Damages For Willful Patent Infringement

June 14, 2016

DC Client Alert

By Kevin M. Bell, Scott A.M. Chambers, Ph.D. and Richard J. Oparil

In a June 13, 2016 decision, *Halo Electronics, Inc. v. Pulse Electronics Inc.*, the Supreme Court unanimously reversed the Federal Circuit and its test for enhancing damages against defendants who were found to have willfully infringed a patent. The Court lowered not only the requirement for justification for enhancing damages, but also the standard of proof necessary to show the factual predicates. The case reaffirms the value of timely seeking a non-infringement or invalidity opinion of competent patent counsel.

Halo goes a long way to increasing the importance of discussing concerns regarding freedom to operate with competent counsel and seeking a written or oral opinion of non-infringement or invalidity from them. In his concurring opinion, Justice Breyer noted that "consulting counsel may help draw the line between infringing and non-infringing uses."

