

Cantor Colburn Client Alert: *Halo Electronics*

***Halo Electronics*: In Summary**

On June 13, 2016, the Supreme Court, in *Halo Electronics, Inc. v. Pulse Electronics*, lowered the standard for awarding attorneys' fees and multiple damages in patent cases. The trial court will now need to determine whether the accused infringer "more likely than not" acted recklessly, i.e. "knowingly or had reason to know" that they were infringing. Based on this ruling, clients are strongly encouraged to consult with counsel regarding a "freedom to operate opinion" before any new product is introduced to avoid future pitfalls if litigation ensues.

Implications for your Intellectual Property

Prior to the *Halo* decision, courts were guided by the decision in *In Re Seagate Technology, LLC*, where the court found that the patent owner could receive enhanced patent damages by showing through clear and convincing evidence that (1) the infringer acted despite an objectively high likelihood that its actions constituted infringement of a valid patent; and (2) that the infringement was either known or so obvious it should have been known to the infringer. The clear and convincing standard applied in *Seagate* is a considerably higher burden of proof than the preponderance of evidence standard, which is normally applied in most civil cases.

The Supreme Court's decision in *Halo Electronics* overturned the *Seagate* standard, stating that the lower courts should take the particular circumstances of each case into consideration, but patent owners do not need to meet the higher "clear and convincing" standard. Similar to other civil matters, the trial court will now need to determine whether the accused infringer "more likely than not" acted recklessly.

The *Halo* decision enhances the value of patents by lowering the standard needed for patent owners to succeed in winning enhanced damages. Further, competitors should be aware of this ruling when developing a product and releasing it into the marketplace. Competitors should consider consulting counsel early regarding a "freedom to operate" opinion before selling or offering to sell the product, to avoid enhanced damages if challenged by a patent owner. These opinions may be used as evidence that the competitor did not act recklessly, and had a reasonable basis for believing that its product did not infringe, or that the patent was invalid. Freedom to operate opinions have thus gained renewed importance as protection against a finding of willful infringement.

For Further Information and Assistance

Cantor Colburn's attorneys are prepared to answer any questions you may have about *Halo* and its implications for your intellectual property. Please do not hesitate to contact us if we can be of further assistance; please contact your attorney or William J. Cass, Partner and Litigation Department Co-Chair, at 860.286.2929, ext. 1130 and wcass@cantorcolburn.com.

Please note that each situation has its own unique circumstances and ramifications. This Client Alert is for informational purposes only and is not legal advice.