

[특허분쟁] 미국 특허법상 고의침해(willful infringement)의 경우 전보배상액의 3배까지

증액할 수 있는 징벌적 손해배상 관련 법규정 및 실무적 포인트



1. 미국 특허법은 법원의 재량으로 규정

35 U.S.C. § 284	35 U.S.C. § 285
"[T]he Court may increase the damages up to three times the amount found or assessed."	"The court in exceptional cases may award reasonable attorney fees to the prevailing party."

2. 결정 권한의 분배 - 판례법리

A. 배심(Jury) - 고의침해 여부 판단 및 결정 "The entire willfulness determination is to be decided by the jury." Exmark Mfg. Co. Inc. v. Briggs & Stratton Power Prod. Grp., LLC, 879

F.3d 1332, 1353 (Fed. Cir. 2018)

B. 1심 법원 판사(judge) – 징벌적으로 손해배상액 증액 여부 및 그 액수 판단 및 결정

C. “The jury must decide whether the infringement was intentional, and then the court must decide whether the intentional conduct was egregious enough to justify enhanced damages.”

3. 징벌적 손해배상 판단 및 결정 기준 – Halo 판결 등 판례법리

Supreme Court’s Halo Decision

- District court discretion implications
 - Enhancement appropriate:
 - “The sort of conduct warranting enhanced damages has been variously described in our cases as *willful*, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Halo*, slip op. at 8.
 - “intentionally infringes another’s patent—with no doubts about its validity or any notion of a defense—for no purpose other than to *steal the patentee’s business*.” *Halo*, slip op. at 9.

- Read factors -

Supreme Court's Halo Decision

- District court discretion implications
 - *Read Corp. v. Portec, Inc.*, 970 F. 2d 816 (Fed. Cir. 1992) (considerations for enhancing damages)
 - (1) whether the infringer deliberately copied the ideas or design of another; (2) whether the infringer, when he knew of the other's patent protection, investigated the scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed; (3) the infringer's behavior as a party to the litigation; (4) defendant's size and financial condition; (5) closeness of the case (6) duration of defendant's misconduct; (7) remedial action by the defendant; (8) defendant's motivation for harm; (9) whether defendant attempted to conceal its misconduct.
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