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Technology Law - IP Prosecution - Transactions

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6/13 – Topics for Discussion (Correction)

🕒 June 14, 2016 👤 SKELJ 📁 Uncategorized 💬 0

- **TPP** – Congress is still considering the Trans-Pacific Partnership Agreement (**TPP**). It's not clear what the post-enforcement world will be like but I can offer some comments. Some aspects can be anticipated for transnational distribution / activities.
(Newsfeed correction made regarding previous passage of the TPP)
- **Enhanced Patent Damages** – The Supreme Court published their **Halo v. Pulse** opinion. Generally, SCOTUS wasn't pleased with the subjective/objective divide in the existing Seagate test:

*The principal problem with Seagate's two-part test is that it requires a finding of **objective recklessness** in every case before district courts may award enhanced damages. Such a threshold requirement excludes from discretionary punishment many of the most culpable offenders, such as the "wanton and malicious pirate" who 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. Seymour, 16 How., at 488. Under Seagate, a district court may not even consider enhanced damages for such a pirate, unless the court first determines that his infringement was "**objectively**" reckless.*

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(emphasis added). I.e., the pirate may have “subjectively” known he was infringing, but the plaintiff is still going to have to show that his behavior was “objectively” reckless.

Instead, SCOTUS would prefer that:

. . . district courts are “to be guided by [the] sound legal principles” developed over nearly two centuries of application and interpretation of the Patent Act. Martin, 546 U. S., at 139 (internal quotation marks omitted).

which is admittedly rather amorphous compared to the nice, bright-line test that was in use. Optimistically, this may mean that only “egregious” behavior warrants enhanced damages, as compared to behavior mechanically falling within the old test. The remanded decision may offer some application guidance in this regard.

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