

## High Court Eases Ability to Recover Enhanced Remedies in Patent and Copyright Cases by John Jackson

Within the past week, the U.S. Supreme Court handed down two unanimous rulings that could make it easier for prevailing parties in patent cases to recover enhanced damages and for winning parties in copyright cases to recover their attorney's fees.

### Patents

The Patent Act allows federal district courts to award up to three times actual damages to a prevailing party. For nearly ten years, the U.S. Court of Appeals for the Federal Circuit's decision in *In Re Seagate Technology* provided the standard for deciding when such enhanced awards are appropriate. *Seagate* required the district court to find, by clear and convincing evidence, that the losing party was both objectively reckless and subjectively willful. In *Halo Electronics, Inc. v. Pulse Electronics, Inc.*, however, the Supreme Court overturned this standard in favor of a more relaxed one. Now, a district court must simply find by a preponderance of the evidence (i.e., more likely than not) that the losing party's actions are sanctionable for egregious behavior. On appeal, the decision whether to enhance damages will be reviewed for an abuse of discretion—a standard that gives significant deference to the district court's decision.

### Copyrights

The Supreme Court in *Kirtsaeng v. John Wiley & Sons* clarified the standard that federal district courts should use to assess whether to award attorney's fees to a "prevailing party" under the Copyright Act. In *Kirtsaeng*, a Thai student who won a copyright case against a publisher relating to the student's importation of textbooks appealed the district court's decision not to award him attorney's fees as the prevailing party. The U.S. Court of Appeals for the Second Circuit affirmed the district court's decision, finding that, because the losing party (publisher) had nonetheless



asserted a reasonable litigation position, the district court was within its discretion to deny fees to the prevailing party (student). The Supreme Court reversed the Second Circuit, holding that, while the reasonableness of the losing party's litigation position is a substantial factor in deciding whether to award fees, it is not the only factor, and the district court should have considered all other relevant factors that further the purpose of the Copyright Act—i.e., enriching the general public through access to creative works—before denying fees. The Supreme Court suggested additional factors could include litigation misconduct, overly aggressive assertion of infringement claims, the losing party's motivation, and the need in particular circumstances to advance considerations of compensation and deterrence. The "all relevant factors" standard thus gives district courts significant discretion to award fees to prevailing parties in copyright cases.