

Halo v. Pulse: A Must Read, Very Important Opinion

Yesterday in *Halo Elecs., Inc. v. Pulse Eng'g, Inc.*, ___ F.3d ___ (Fed. Cir. 2014)(Lourie, J.), the panel provided a patent piñata to the patent community with issues too numerous to pinpoint in a short note.

Call for En Banc Review of Seagate; Bard: Of greater significance than the “majority” opinion, is the “concurrence” by a majority of the panel which “urges the full court to reevaluate our willfulness jurisprudence in light of the Supreme Court’s decisions in *Highmark [Inc. v. Allcare Health Management Systems, Inc.*, 134 S.Ct. 1744 (2014)] and *Octane[Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S.Ct. 1794 (2014)].” *Halo v. Pulse*, ___ F.3d at ___ (O’Malley, J., joined by Hughes, J., concurring). The concurrence specifically points to inconsistency between both *Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs., Inc.*, 682 F.3d 1003 (2012), and *In re Seagate Technology, LLC*, 497 F.3d 1360 (Fed. Cir. 2007)(en banc), and the Supreme Court opinions in *Highmark* and *Octane Fitness*.

§ 271(a) Inducement through Offshore Activity: The panel unanimously affirmed an active inducement judgment under 35 USC § 271(b) against an Asian component manufacturer who sold Asian-made components in Asia to an Asian manufacturer who sold finished end products to the retailer in the United States. The Court “affirm[ed]... the judgment of inducement with respect to [component] products that the [component manufacturer] delivered outside the United States but were ultimately imported into the United States by others[.]” *Halo v. Pulse*, ___ F.3d at ___.

Transocean, it’s Back! The panel stirs the muddied waters of *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Contractors USA, Inc.*, 617 F.3d 1296 (Fed. Cir. 2010), that concluded that an infringing offer for sale under § 271(a) could take place in Scandinavia. The controversial *Transocean* has issues that undoubtedly must be resolved by the Supreme Court.

But Wait, there’s More: There are other issues in the opinion which are yellow highlight-marked in the concurrently distributed copy of the opinion.

Regards,
Hal