

14-1520 STRYKER CORPORATION V. ZIMMER, INC.

DECISION BELOW: 782 F.3d 649

LOWER COURT CASE NUMBER: 2013-1668

QUESTION PRESENTED:

The Patent Act provides that district courts "may increase ... damages up to three times the amount found or assessed." 35 U.S.C. § 284. Despite this permissive and discretionary language, the Federal Circuit requires, as a prerequisite to awarding enhanced damages under §284, that a patentee prove by clear and convincing evidence that infringement was "willful," meaning both that (1) there was an objectively high likelihood that the infringer's actions constituted infringement, and (2) this likelihood was either known or so obvious that it should have been known to the accused infringer.

The questions presented are:

1. Has the Federal Circuit improperly abrogated the plain meaning of 35 U.S.C. § 284 by forbidding any award of enhanced damages unless there is a finding of willfulness under a rigid, two-part test, when this Court recently rejected an analogous framework imposed on 35 U.S.C. § 285, the statute providing for attorneys' fee awards in exceptional cases?

2. Does a district court have discretion under 35 U.S.C. § 284 to award enhanced damages where an infringer intentionally copied a direct competitor's patented invention, knew the invention was covered by multiple patents, and made no attempt to avoid infringing the patents on that invention?

CONSOLIDATED WITH 14-1513 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/19/2015