

# Supreme Court Extends U.S. Patents to Cover Certain Types of Overseas Manufacturing Activities

Earlier this summer the US Supreme Court decided the case of *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. \_\_\_\_ (2018). The ruling is expected to have a positive effect for United States' patent owners, who may now recover damages for lost profits even for infringing products assembled abroad.

*WesternGeco* has not received anywhere near as much attention as the Court's other patent-related decisions earlier this year. But the case has significantly extended the reach of United States patents. And the availability of foreign lost profits damages in certain cases will likely motivate infringement complaints to be filed under 35 U.S.C. 271(f)(2) more often.

In the wake of this decision, a patent owner may be able to prove infringement even when only one "specialized component" was supplied from within the United States. This change in the law clearly expands the number and types of patents that can be enforced against foreign actors. Obvious examples are found in the consumer electronics industry, where components sourced in the United States (such as integrated circuits) are shipped for final assembly overseas. Other areas, such as the automobile industry, will likely be affected as well.

Although not addressed directly by the Supreme Court, the decision leaves open the very real possibility that the necessary "specialized component" may be software. Subsequent cases will no doubt test that theory, as it is of course now quite common to embed United States'-origin software into products assembled elsewhere.

*WesternGeco* also permits additional damages to be recovered where it can be shown that the infringer's conduct "*actually caused*" a patent owner's lost profits. Justice Thomas' majority opinion concluded that an award of lost profits was appropriate given the specific facts in *WesternGeco*. But the types of proof needed to show "proximate cause" were not completely addressed in his decision, and further jurisprudence exploring its applicability to foreign sales is expected.

We should not be surprised to see other countries eventually issue reciprocal rulings, imposing damages for infringement of foreign patents as a result of conduct occurring at least in part within the United States.