

Post-Suit Reasonableness Of A Parties' Defenses Only One Factor In Evaluating Willfulness Claim (Farnan, J.)

In *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 2010 US Dist Lexis 74644 (D. Del. July 22, 2010), Judge Farnan reconciled the Federal Circuit's decisions in *In re Seagate Tech, LLC*, 497 F.3d 1360 (Fed. Cir. 2007), and *Black & Decker, Inc., v. Robert Bosch Tool Corp.*, 260 Fed. Appx. 284 (Fed. Cir. 2008). In the *Seagate* decision, the Court noted that the Federal Circuit had stated that willfulness depends on an infringer's pre-litigation conduct. However, in the *Black & Decker* case, the Federal Circuit stated that legitimate defenses to infringement claims and credible invalidity arguments demonstrate the lack of an objectively high likelihood that a party took actions constituting willful infringement of a valid patent.

The Court reconciled these cases by holding that the reasonableness of a parties' post-suit defenses is only one factor to be considered in the totality of the circumstances when determining willfulness. It is also noteworthy that the Court in this case considered the existence of pre-litigation opinions of counsel as relevant to both the subjective and objective prongs of the willfulness determination. This case demonstrates the continued importance of patent opinions post-*Seagate*.