

IN THE SUPREME COURT OF THE UNITED STATES

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No. 16-1011

WESTERNGECO LLC, PETITIONER

v.

ION GEOPHYSICAL CORPORATION

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE  
TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has consented to the allocation of ten minutes of argument time to the United States.

This case concerns the interpretation of 35 U.S.C. 284, which provides that, when the owner of a U.S. patent prevails in an

infringement action, "the court shall award the claimant damages adequate to compensate for the infringement." 35 U.S.C. 284. An award of actual damages can include lost profits that the patent owner would have earned absent the infringement. E.g., Yale Lock Mfg. Co. v. Sargent, 117 U.S. 536, 552-553 (1886). The question in this case is whether, when a U.S. patent owner has proved that its patent was infringed inside the United States, it may recover damages to reflect the loss of profits that the patentee would have earned outside the United States if that domestic infringement had not occurred.

The United States has filed a brief as amicus curiae supporting petitioner, arguing that the U.S. patentee can recover such damages. In particular, the United States argues that the extent of a damages award for lost profits under Section 284 depends on the amount of profits the domestic infringement caused the patentee to lose, not on where the patentee would have earned those profits. The brief for the United States contends that this approach is necessary to ensure that the damages awarded are "adequate to compensate for the infringement," 35 U.S.C. 284, and that inclusion of such lost profits in a damages award does not violate the presumption against extraterritorial application of U.S. law.

The United States has a substantial interest in the resolution of this case, because it concerns the measure of recovery for infringing a patent issued by the United States Patent and Trademark

Office, and because analogous compensatory-damages issues have arisen under the copyright laws. The government also has a broader interest in the proper application of the presumption against extraterritorial application of U.S. law. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

The United States has participated in oral argument as amicus curiae in prior cases involving interpretation of U.S. patent laws, e.g., Life Techs. Corp. v. Promega Corp., 137 S. Ct. 734 (2017); Samsung Electronics Co. v. Apple Inc., 137 S. Ct. 429 (2016); Kimble v. Marvel Entertainment, LLC, 135 S. Ct. 2401 (2015); Microsoft Corp. v. AT&T Corp., 550 U.S. 437 (2007), including prior cases involving the interpretation of Section 284, see Halo Electronics, Inc. v. Pulse Electronics, Inc., 136 S. Ct. 1923 (2016). Oral presentation of the views of the United States is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

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