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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 PAVO SOLUTIONS, LLC

15 *Plaintiff,*

16 v.

17
18 KINGSTON TECHNOLOGY
19 COMPANY, INC.,

20 *Defendant.*
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Case No. 8:14-cv-01352-JLS-KES
Honorable Josephine L. Staton

**PLAINTIFF PAVO SOLUTIONS,
LLC'S MOTION FOR ENHANCED
DAMAGES PURSUANT TO 35
U.S.C. §284 FOR WILLFULNESS**

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1 **I. INTRODUCTION**

2 After finding that Defendant Kingston Technology Company, Inc.
3 (“Kingston”) infringed claims 1, 4, and 24 (the “Asserted Claims”) of U.S. Patent
4 No. 6,926,544 (“’544 patent”), the jury also found that Kingston willfully infringed
5 the ’544 patent. The jury’s willfulness finding, plus additional *Read* factors (such as
6 Kingston’s failure to present evidence that its continued infringement, after
7 receiving notice of its infringement of the ’544 patent, was in good faith; the fact
8 that the case was not close; and Kingston’s improper litigation conduct) all weigh in
9 favor of enhanced damages under 35 U.S.C. § 284.

10 The record in this case makes clear that Kingston used its financial strength
11 to employ a strategy of unjustifiably multiplying proceedings and increasing the
12 costs and time required of Pavo (and its predecessor-in-interest, CATR) to enforce
13 the ’544 patent. It employed this strategy (successfully driving CATR out of the
14 case) despite weak noninfringement positions and an invalidity defense so deficient
15 that Kingston ultimately did not present it to the jury.

16 The record is replete with examples of Kingston’s conduct, after receiving
17 notice of its infringement through the end of trial, that justify enhanced damages.
18 For example, Kingston served knowingly false discovery responses; attempted to
19 rewrite deposition testimony; had its witnesses directly contravene sworn deposition
20 testimony; withheld evidence of accused product costs from both Pavo and its own
21 damages expert, and then prejudiced Pavo by having its fact witness introduce the
22 withheld evidence for the first time at trial; multiple attempts to introduce for the
23 first time at trial new noninfringement, willfulness, and invalidity arguments that
24 were not previously disclosed; represented that it would raise a new “pair”
25 noninfringement argument only for impeachment, even though Kingston knew (or
26 should have known) that no impeachment existed, necessitating a curative
27 instruction from the Court; and presented an expert who admittedly did not write
28 portions of his expert reports, did not know who his coauthors were, and could not

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