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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAVO SOLUTIONS, LLC

Plaintiff,

v.

KINGSTON TECHNOLOGY COMPANY, INC.,

Defendant.

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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I. INTRODUCTION

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

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

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

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