



Spectralytics, Inc. v. Cordis Corp.
Failure to Consult with Legal Counsel May Affect Damages

In a recent opinion, the Federal Circuit held that a willful infringer's failure to obtain legal advice may affect an award for enhanced damages:

In *Spectralytics, Inc. v. Cordis Corp.*, the plaintiff appealed the district court's denial of plaintiff's request for enhanced damages and attorney fees following the jury's finding of willful infringement. 649 F.3d 1336, 1339 (Fed. Cir. 2011). The Federal Circuit vacated the denial, holding that the district court incorrectly ignored evidence of defendant's failure to adequately investigate its rights under plaintiff's patent. In determining whether to award enhanced damages, the Federal Circuit held that a court should apply the factors identified in *Read Corp. v. Porte, Inc.* *Id.* at 1348 (citing *Read Corp. v. Porte, Inc.*, 970 F.2d 816 (Fed. Cir. 1992)). One *Read* factor for awarding enhanced damages is whether the infringer adequately investigated the infringed patent upon learning of its existence. *Id.* at 1348. The Federal Circuit also held that "the failure to obtain an opinion of counsel or otherwise investigate the patent situation can be considered." *Id.*

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