



Will this US patent court ruling reshape how to plead wilful infringement?

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A recent ruling by one of the nation's top patent courts has the potential to alter how patentees plead wilful infringement to win enhanced damages awards.

Chief Judge Colm Connolly of the US District Court for the District of Delaware ruled in *Inari Medical Inc v Inquis Medical* on 14 October that an assertion of wilful patent infringement does not state its own legal “claim”, and therefore an accused infringer may not seek to defeat a patentee’s allegations of wilful infringement through a Rule 12(b)(6) motion to dismiss.

Furthermore, he concluded that in a patentee’s complaint, it merely needs to set forth a “simple demand” for enhanced damages without having to plead factual allegations that show a plausible theory of wilful infringement. Making a unique judicial pronouncement, he accordingly instructed that “going forward, I will not entertain in a **Rule 12(b)(6)** motion a request to dismiss, or otherwise preclude a plaintiff from seeking, a demand for enhanced damages under **§ 284**”.

As his justification, the court noted that “§ 271 of the Patent Act, which creates causes of action for direct, induced, and contributory infringement, does not mention or suggest such a thing as ‘willful infringement’”. Instead § 284 provides that a court may grant enhanced damages as a type of relief for infringement.

The ruling further noted that while Rule 8 requires a plaintiff provide “a short and plain statement of the *claim* showing that the pleader is entitled to relief”, it “requires only that the complaint ‘contain ... a *demand* for the relief sought’”. Thus “because [enhanced damages] are a form of *relief*, a plaintiff need *not* allege in the complaint facts that show it is entitled to them”. Consequently, “regardless of whether a demand for enhanced damages under § 284 is based on willful conduct or on behavior that is wanton, malicious, deliberate, consciously wrongful, flagrant, done in bad faith, or characteristic of a pirate, such a demand is not a claim that can be dismissed pursuant to Rule 12(b)(6)”.

Outlying ruling

Connolly’s ruling has controversial aspects. First, it is an outlier. Other district courts have held a patentee must plead wilful infringement as a “claim”, even though they also concluded that wilful infringement is not a true “claim”. Some of these rulings are listed in Table 1.

Table 1: Rulings about pleading wilful infringement

Case	Court	Ruling	Date
<u><i>CRH Medical Corp v MDE Medical</i></u>	District of Delaware (Federal Circuit Judge William Curtis Bryson presiding)	Dismissed pre-suit wilful infringement claim; noted that ‘wilful infringement’ is not a distinct cause of action, but courts often consider whether to dismiss allegations pleading that infringement was wilful.	2 September

<u><i>Tiger Tool International Inc v One Stop Distributors</i></u>	Southern District of Florida	Distinguished between a prayer for relief for enhanced damages and a claim warranting enhanced damages; held that wilful patent infringement is most like a claim warranting enhanced damages and thus subject to the motion to dismiss standard.	26 September 2023
<u><i>Valjakka v Netflix Inc</i></u>	Northern District of California	Rejected argument that motion to dismiss wilful infringement is procedurally improper; emphasized that jury decides wilfulness only if properly framed by pleadings, and wilful infringement is not an independent claim under Rule 8(a)(2).	11 October 2022
<u><i>Novitaz Inc v inMarket Media</i></u>	Northern District of California	Rejected contention that separate pleading of wilful infringement is unnecessary; stated that wilfulness remains a factual determination and can be treated as a separate claim subject to dismissal post-Halo.	26 May 2017

Connolly did not address any of these opinions in his analysis or the rationales contained therein. Second, he made this aspect of his ruling *sua sponte*.

Should the court's analysis become the prevailing view, patentees will no longer have to plead factual allegations of wilful infringement in their complaints, nor defend those allegations from Rule 12(b)(6) motions to dismiss. But this does not mean the allegations of wilful infringement will always make it to the jury.

Indeed, in *CRH Medical*, Circuit Judge William Curtis Bryson instructed that “permitting the plaintiff to inject willful infringement allegations into nearly every case regardless of whether such allegations are warranted”, raises concerns because it permits the patentee “to invite the jury to conclude that the defendant is a ‘bad actor’”, which “risks prejudicing the jury against the defendant rather than focusing the jury’s attention principally on the issue of infringement”. As such, Bryson cautioned that should the patentee fail to produce evidence of wilful infringement beyond the filing of its complaint, by the time the case gets to the summary judgment stage, he would be “disinclined” to let the patentee present its wilfulness allegations to the jury.

Continue pleading wilfulness

Given that district court opinions have no precedential weight, and that other district courts in considering the same issue have held that patentees must plead factual allegations that show a plausible “claim” of wilful infringement, prudent and cautious litigants will continue to strive to include in their complaints factual allegations that show wilful infringement. Then, if challenged on a motion to dismiss, they can consider relying on *Inari* and its holding that wilful infringement cannot be challenged via a Rule 12(b)(6) motion as one argument to oppose the motion to dismiss, while also arguing that it has sufficiently pled wilful infringement. Table 2 shows resources about pleading wilfulness.

Table 2: Resources about pleading wilful infringement

Case	Court	Ruling	Date
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<u>Mitutoyo Corp v Central Purchasing</u>	US Court of Appeals for the Federal Circuit	Pleading that infringement occurred with 'full knowledge' of the patent and was 'willful and deliberate' was sufficient under Rule 8(a)(2) to plead wilful infringement and avoid dismissal under Rule 12(b)(6).	5 September 2007
<u>IOENGINE v PayPal Holdings Inc</u>	District of Delaware (Bryson presiding)	No requirement to plead additional facts beyond knowledge of the patent for a wilful infringement claim to survive a motion to dismiss.	25 January 2019
<u>Annotated Patent Digest</u>	N/A	§ 39:11 Pleading Wilful Infringement, § 39:11.05 Cases Granting Motion to Dismiss Wilful Infringement Claim, § 39:11.10 Cases Denying Motion to Dismiss Wilful Infringement Claim.	N/A



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