

To prove willfulness, a patent owner must prove by clear and convincing evidence that the accused infringer acted with reckless disregard of the claims of the asserted patent. Willfulness requires you to determine three things: first, that the accused infringer was aware of the asserted patent; second, that the alleged infringer acted despite an objectively high likelihood that its actions infringed a valid patent; and third, that this objectively high risk was either known or so obvious that it should have been known to the alleged infringer. That is, the patent holder must prove willfulness in such a way that you have been left with a clear conviction that the infringement was willful.

In deciding whether or not the alleged infringer committed willful infringement, you must consider all of the facts, which include but are not limited to:

- (1) Whether or not the alleged infringer possessed a reasonable basis to believe that it has a substantial defense to infringement and reasonably believed that the defense would be successful if litigated, including the defense that the patent is invalid; and
- (2) Whether or not the alleged infringer made a good faith effort to avoid infringing the patent, for example the alleged infringer took remedial action upon learning of the patent by ceasing infringing activity or attempting to design around the patent.