In re Seagate Tech., 497 F.3d 1360 (Fed. Cir. 2007)

Abandoned <u>Underwater Devices, Inc. v.</u>

<u>Morrison-Knudson Co. Inc.,</u> 717 F. 2d 1380 (Fed. Cir. 1983) and its affirmative duty of due care,

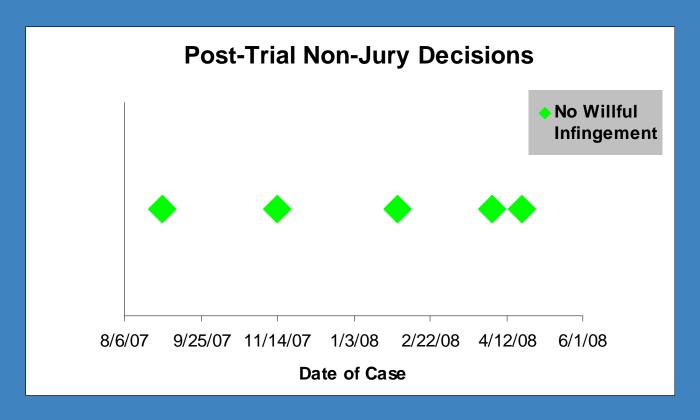
Adopted recklessness as a standard of care for determining liability for willful infringement of a patent.

District Court Decisions Since Seagate

 In 15 of 20 decisions the trial judge denied the defendant's pretrial motion for a summary judgment of no willful infringement or to stay discovery on willful infringement.

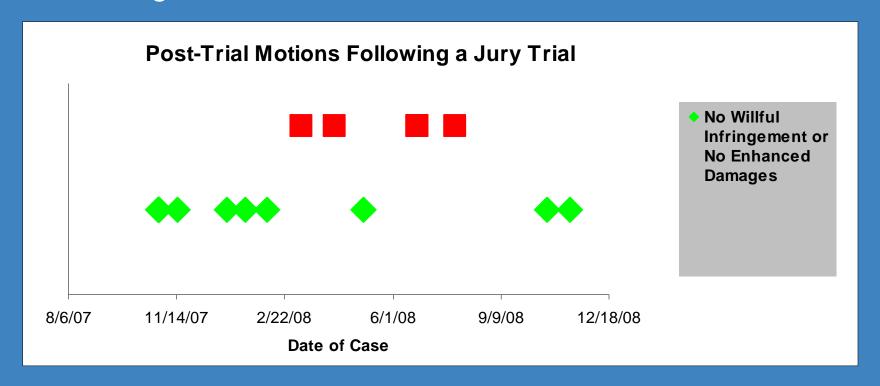
District Court Decisions Since Seagate

 In five of five post-trial decisions following a non-jury trial, the judge found no willful infringement.



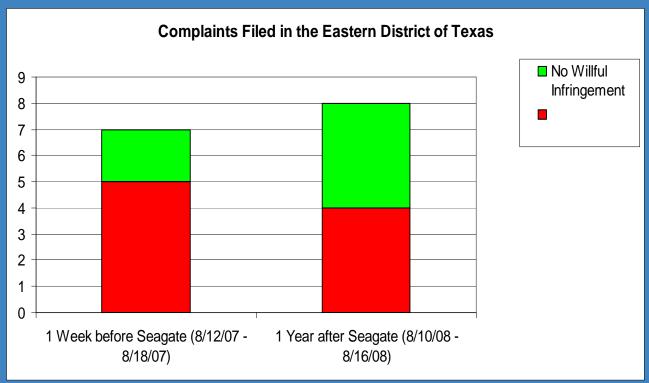
District Court Decisions Since Seagate

 In nine of fifteen decisions on post trial motions following a jury trial, the judges granted motions to either set aside a finding of willful infringement or reported that the judge would not enhance the damages.



Snapshot of a Week's Complaints Filed in the Eastern District of Texas

- In the week prior to the <u>Seagate</u> decision, 5 out of 7 patent complaints asserted willful infringement.
- One year later, 4 out of 8 patent complaints asserted willful infringement.



What do these decisions tell us?

1) Do changes in the law of willful infringement based on the <u>Seagate</u> decision eliminate the concerns of some firms that lead them to avoid reading competitors' patents?

Probably not

What do these decisions tell us?

2) Has <u>Seagate</u> eliminated the need that companies previously felt to obtain exculpatory legal opinions to defend against potential charges of willful infringement?

Probably not

What do these decisions tell us?

3) Did <u>Seagate</u> eliminate the need for previously introduced legislation that would require as a predicate to willful infringement written notice of infringement from the patentee or deliberate copying by the infringer?

Probably not

Solutions?

- 1. Federal Circuit decisions that impose predictability by confirming that willfulness claims should be tested by an early summary judgment motion.
- 2. Change in the law to provide willfulness can not be plead until after the defendant's liability has been established.
- 3. Make willfulness as an issue for the judge rather than the jury.