



SHIMOKAJI & ASSOCIATES, P.C.

Intellectual Property Lawyers
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NEWSLETTER

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We specialize in the litigation and registration of patent, trademark, and copyright matters. The clients we serve range from start-ups to Fortune 500 companies, government entities, and universities. Though located in the US, our expertise and representation has an emphasis in Asia.

— LATEST NEWS & EVENTS —

US Intern'l Trade Commission to Investigate Infringement of AUO Patents

The US ITC has decided to investigate alleged infringement by Samsung and certain of its distributors. The patents relate to AUO's flat panel display technology. Six patents are alleged to be infringed.

More information can be obtained at info@shimokaji.com

Federal Circuit Confirms the Continuing Need For Non-Infringement Opinions

In *Spectralytics v. Cordis*, the jury found that defendants had willfully infringed the patent. However, the trial court denied enhanced damages and attorney fees, notwithstanding the jury verdict of willful infringement.

The Federal Circuit referred back to its earlier opinion to explain that in "*Seagate* this court held that failure to exercise due care by obtaining an exculpatory opinion of counsel before commencing infringing activity is not of itself probative of willful infringement; the court held that there must be 'objective recklessness,' before failure to obtain an exculpatory opinion of counsel can establish willful infringement." The Federal Circuit also noted that in one of its prior opinions "the timing as well as the content of an opinion of counsel may be relevant to the issue of willful infringement, for timely consultation with counsel may be evidence that an infringer did not engage in objectively reckless behavior."

The Federal Circuit went on to reconfirm that "the test for willfulness is distinct and separate from the factors guiding a district court's discretion regarding enhanced damages." One factor to determine whether damages should be enhanced is whether the infringer investigated the patent and formed a good faith belief that it was invalid or not infringed. As further explained, "*Seagate* removed the presumption of willful infringement flowing from an infringer's failure to exercise due care to avoid infringement, but *Seagate* did not change the application of the . . . factors with respect to enhancement of damages."

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