WesternGeco LLC v. ION Geophysical Corp., No. 16-1011

A party commits patent infringement if it supplies “components of a patented invention” “from the United States,” knowing or intending that the components will be combined “outside of the United States” in a manner that “would infringe the patent if such combination occurred within the United States.” 35 U.S.C. § 271(f). The Federal Circuit has held that a plaintiff successfully proves a claim under this provision is not entitled to the lost profits normally available to patent owners who prevail on infringement claims. That court’s view is that even when Congress has overridden the presumption against extraterritorial application of a statute in creating *liability* (as it did with § 271(f)), the presumption must be applied a second time to restrict *damages*. The Supreme Court has granted certiorari to resolve the question of “[w]hether the court of appeals erred in holding that lost profits arising from prohibited combinations occurring outside of the United States are categorically unavailable in cases where patent infringement is proven under 35 U.S. § 271(f).”