

## Russ Emerson in Law360 on International Reach of U.S. Patent Damages Law

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**PRACTICES** Patent Litigation, Patent Office Trials, Patents, Intellectual Property

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*Law360* quoted Haynes Boone Partner [Russ Emerson](#) in previewing arguments before the U.S. Supreme Court in a case involving recovery of profits that patent owners lose abroad because of infringement occurring in the United States.

Arguments in *WesternGeco LLC v. Ion Geophysical Corp.* are set for April 16. *Law360* [reported](#) that the justices will consider whether the U.S. Court of Appeals for the Federal Circuit was correct to discard \$93 million in lost profits that Schlumberger Ltd. unit WesternGeco LLC won from Ion Geophysical Corp. in a patent suit over devices used to search for oil and gas under the ocean.

The Federal Circuit held that the presumption that U.S. patent law does not extend outside the country means WesternGeco cannot recover profits it would have earned overseas absent Ion's infringement. WesternGeco maintains that the presumption against extraterritoriality applies only to liability, not to damages, so it should have been awarded lost profits. ...

The case puts a spotlight on the interaction between the patent damages statute, which calls for patent owners to be awarded "damages adequate to compensate for the infringement," and the Supreme Court's long-standing precedent that American law doesn't extend beyond the country's borders. ...

If the court were to find that WesternGeco were entitled to lost profits in this case, it could still be difficult for patent owners in the future to tie lost sales suffered in other countries to infringement in the U.S., said Russ Emerson of Haynes Boone. But even if the floodgates don't open to broader damages in most cases, such a ruling would be significant.

"It would make clear that, to the extent patentees could prove it up, lost profits damages in other countries could result from domestic conduct. That's a fairly big deal," he said.

Excerpted from *Law360*. To read the full article, click [here](#). (Subscription required)