

Phillip Philbin in World IP Review on SCOTUS Arguments Over Patent Damages

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World Intellectual Property Review quoted Haynes Boone Partner Phillip Philbin on arguments at the Supreme Court over patent holders' ability to collect profits they lost abroad from infringement occurring in the United States.

During arguments April 16 in *WesternGeco v Ion Geophysical*, justices voiced concerns over recovery of damages in multiple countries, *WIPR* [reported](#).

WesternGeco, a subsidiary of global oilfield services company Schlumberger, asked the court to overturn a ruling by the U.S. Court of Appeals for the Federal Circuit a dispute involving competitor Ion Geophysical Corporation, which offers geoscience services. ...

"Some justices seemed concerned with how this decision could subject a single actor to multiple liabilities in a myriad of countries based on a single act of allegedly infringing conduct," explained Haynes Boone Partner Phillip Philbin.

The arguments before the Supreme Court focused on the interplay of the availability of extraterritorial damages with principles of comity, including the risk of multiple recoveries in multiple countries, he added. ...

On Friday, April 13, the solicitor general was granted leave to participate in the oral arguments as amicus curiae, and Zachary Tripp, assistant to the solicitor general, represented the government.

Philbin noted that the government sought a "sweeping declaration" from the court, asking for an "elimination of the ban" on extraterritorial damages throughout the Patent Act, as contrasted with the more limited circumstances proposed by WesternGeco. ...

The court needs to balance its concern over comity against the issue of preventing a patent owner from obtaining a full recovery because the infringing acts were geographically distributed, Philbin said.

He added that multiple justices seemed to suggest that the guidelines of proximate cause and foreseeability could provide "adequate direction to navigate the comity concerns." ...

Philbin added that Ion's rejection of extraterritorial damages provoked questions about how 35 USC section 271(f)(1) could be read in a manner consistent with Ion's position. ...

Excerpted from *World Intellectual Property Review*. To read the full article, click [here](#).