IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BOSTON SCIENTIFIC CORP. and BOSTON SCIENTIFIC NEUROMODULATION CORP., Plaintiffs, v. NEVRO CORP., Defendant.	Civil Action No. 16-1163-CFC CONSOLIDATED

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Counsel for Defendant Nevro Corp.

MEMORANDUM OPINION

September 20, 2021
Wilmington, Delaware

COLM F. CONNOLLY
CHIEF JUDGE

Plaintiffs Boston Scientific Corporation and Boston Scientific Neuromodulation Corporation (collectively, Boston Scientific) accused Defendant Nevro Corporation in both the original Complaint (D.I. 1) and the operative First Amended Complaint (D.I. 13) of infringing, among other patents, U.S. Patent Numbers 7,437,193 (the #193 patent) and 8,644,933 (the #933 patent). The asserted claims of the #193 patent, titled "Microstimulator Employing Improved Recharging Reporting And Telemetry Techniques," cover certain electronic medical devices that are configured to be implanted beneath a patient's skin for tissue stimulation to prevent and/or treat various disorders. The asserted claims of the #933 patent, titled "Techniques For Controlling Charging Of Batteries In An External Charger And An Implantable Medical Device," cover technology for controlling the charging of batteries used with such devices. Boston Scientific alleges that Nevro's Senza System, a high frequency spinal cord stimulator, and Nevro's inducement of health care providers and patients to use that system infringe the asserted claims of the asserted patents. Boston Scientific also alleges that Nevro's infringement was and is willful. Pending before me is Nevro's motion for "summary judgment of no willfulness with respect to the alleged infringement" of the #193 and #933 patents. D.I. 673.

I. LEGAL STANDARDS

A. Summary Judgment

A court must grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those "that could affect the outcome" of the proceeding. *Lamont v. New Jersey*, 637 F.3d 177, 181 (3d Cir. 2011). "[A] dispute about a material fact is genuine if the evidence is sufficient to permit a reasonable jury to return a verdict for the non-moving party." *Id.* (internal quotation marks omitted). A non-moving party asserting that a fact is genuinely disputed must support such an assertion by: "(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, . . . admissions, interrogatory answers, or other materials; or (B) showing that the materials cited [by the opposing party] do not establish the absence . . . of a genuine dispute . . . ." Fed. R. Civ. P. 56(c)(1). The non-moving party's evidence "must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance." *Williams v. Borough of West Chester, Pa.*, 891 F.2d 458, 460–61 (3d Cir. 1989).

B. Willful Infringement

Section 284 of the Patent Act "gives district courts the discretion to award enhanced damages against those guilty of patent infringement." *Halo Elecs., Inc.*

v. Pulse Elecs., Inc., 136 S. Ct. 1923, 1935 (2016). The statute provides that "the court may increase the damages up to three times the amount found or assessed." 35 U.S.C. § 284. Although the Court in *Halo* intentionally "eschew[ed] any rigid formula for awarding enhanced damages under § 284," 136 S. Ct. at 1934, the Court held that the legal principles "developed over nearly two centuries of application and interpretation of the Patent Act . . . channel the exercise of [the district court's] discretion" and "limit[ ] the award of enhanced damages to egregious cases of misconduct beyond typical infringement," *id.* at 1935. Thus, enhanced damages awards under § 284 are available only in "egregious cases" of misconduct that involve more than "typical" infringement. *Id.* As the Court explained, the enhanced damages award provided by § 284 was "designed as a 'punitive' or 'vindictive' sanction for egregious infringement behavior . . . [that] has been variously described in [the Court's] cases as willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate." *Id.* at 1932.

Although "§ 284 allows district courts to punish th[is] full range of culpable behavior," *id.* at 1933, in the vast majority of patent cases filed today, claims for enhanced damages are sought based on allegations of willful misconduct—so much so that, even though the words "willful" and "willfulness" do not appear in § 284, plaintiffs and courts more often than not describe claims for enhanced

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