

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

IRONBURG INVENTIONS LTD. a  
United Kingdom Limited Company,

Plaintiff,

vs.

VALVE CORPORATION, a  
Washington Corporation,

Defendant.

Civil Action No.

1:15-cv-04219-MHC

**PLAINTIFF'S OPPOSITION AND RESPONSE TO DEFENDANT VALVE  
CORPORATION'S MEMORANDUM OF LAW IN SUPPORT OF  
PARTIAL MOTION TO DISMISS FIRST AMENDED COMPLAINT, AND  
MOTION FOR LEAVE TO FILE A FIRST SUPPLEMENTAL  
COMPLAINT**

Plaintiff Ironburg Inventions Ltd. (“Plaintiff”) hereby opposes Defendant Valve Corporation’s (“Defendant”) Partial Motion to Dismiss First Amended Complaint. Plaintiff also hereby moves for leave to file a First Supplemental Complaint.

## **I. INTRODUCTION**

This Court should deny Valve’s Partial Motion to Dismiss. The Supreme Court’s recent decision in *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, No. 14-1513, 2016 WL 3221515 (U.S. June 13, 2016) – issued eleven days after Valve filed its Partial Motion to Dismiss – reversed the strict two-part *Seagate* standard for awarding enhanced damages under Section 284 for willful infringement. In its *Halo* decision, the Supreme Court emphasized that district courts have broad discretion to award enhanced damages, and that they should take into account the totality of circumstances when exercising that discretion. *See id.* at \*7, 9. The Supreme Court also explained that “culpability is generally measured against the knowledge of the actor at the time of the challenged conduct.” *Id.* at \*10. In light of the Supreme Court’s *Halo* decision, the First Amended Complaint sufficiently alleges a claim for enhanced damages based on Ironburg’s allegations of Valve’s ongoing infringement despite having notice that the continued marketing of its gaming controllers violated Ironburg’s patent rights.

This Court should also grant, pursuant to Rule 15(d), Ironburg's Motion for Leave to File a First Supplemental Complaint. That Motion for Leave should be granted based on the recent issuance (on May 31, 2016) of another patent (the '229 Patent) directed towards video game controllers with controls located on the back of the controller. Ironburg, the assignee of the '229 Patent, could not have included allegations relating to the '299 Patent in its earlier complaints, and because this case is still in its infancy Valve will not suffer undue prejudice if those supplemental allegations are allowed. The proposed First Supplemental Complaint also alleges additional facts related to enhanced damages (the Supreme Court makes clear in *Halo* that there is no rigid test that is required, although willful infringement has traditionally sufficed) that took place after the Original Complaint was filed, including additional notice of infringement of each of the four patents at issue.

## **II. STATEMENT OF FACTS**

Valve has moved to dismiss willful infringement allegations in Ironburg's First Amended Complaint, claiming that willful infringement of the '770 and '688 Patents is not sufficiently alleged. That complaint includes the following allegations:

- "Defendant is presently making, using, importing, marketing, selling, and/or offering to sell gaming controllers, including but not limited to

Defendant's Steam Controller [FN1], in this District and elsewhere in the United States that incorporate Plaintiff's patented technology. [FN1: Pictures of Defendant's Steam Controller from Defendant's website (<http://store.steampowered.com>), which has been marketing its controller at least since March 2014, are annexed hereto as Exhibit D]" FAC ¶ 11.

- “At least as early as March 7, 2014, in written and oral communications with Valve, Ironburg informed Valve that its marketing of gaming controllers, including Defendant's Steam Controller, infringe Ironburg patents. In those pre-suit communications with Valve, Ironburg specifically identified Claim 1 and Claim 20 of the '525 Patent (the two independent claims of that patent), as well as Ironburg's then-pending patent applications, including one now issued as the '770 Patent placed at issue in this Complaint.” FAC ¶ 12.
- “On information and belief, Defendant acted despite an objectively high likelihood that its actions, including but not limited to its marketing and sales of Defendant's Steam Controller, constituted infringement of Patents-in-Suit. Defendant acted despite the fact that the objectively defined risk of infringement was either known or should have been known to the Defendant. Defendant's infringement, including but not limited to its marketing and sales of Defendant's Steam Controller, has been with actual notice of Patents-in-Suit, including as a result of Ironburg's pre-suit communications with Valve regarding Defendant's Steam Controller, the '525 Patent, and Ironburg's patent applications, including one that has now issued as the '770 Patent. Defendant's infringement, therefore, has been and is willful, so Plaintiff is entitled to enhanced damages for willful infringement. ” FAC ¶ 26.

The First Amended Complaint also includes copies of the '525, '770 and '688 Patents, which show that each of the patents is directed towards a video game controller with controls located on the back of the controller, as well as the

following relevant dates:

- The ‘525 Patent: Issued on February 14, 2014 from U.S. Application No. 13/162,727, filed on June 17, 2011. *See* FAC, Exhibit A (copy of the ‘525 Patent).
- The ‘770 Patent: Issued on July 28, 2015 from U.S. Application No. 14/141,840, filed on December 27, 2013. The ‘840 application is a continuation of U.S. Application No. 13/162,727, which issued as the ‘525 Patent-in-Suit. *See* FAC, Exhibit B (copy of the ‘770 Patent).
- The ‘688 Patent: Issued on March 22, 2016 from U.S. Application No. 14/832,211, filed on August 21, 2015. *See* FAC, Exhibit C (copy of the ‘688 Patent).

*See* FAC, Exhibits A-C (Copies of the ‘525, ‘770, and ‘688 Patents).

In connection with Ironburg’s Motion for Leave to File a First Supplemental Complaint, in addition to the allegations above – including that Valve had notice of its gaming controllers’ infringement at least as early as March 7, 2014, but continued to market those controllers (*see* FAC ¶¶ 12, 26) – the following supplemental allegations are relevant:

- On May 31, 2016, two weeks after Ironburg filed its First Amended Complaint, United States Patent No. 9,352, 229 entitled “CONTROLLER FOR A GAMES CONTROLLER,” was duly and legally issued to Ironburg. *See* [Proposed] FSC ¶ 6 and Exhibit 1 (copy of the ‘229 Patent).
- Plaintiff Ironburg is the owner and assignee of record of the ‘229 Patent. *See* [Proposed] FSC ¶ 7.
- The ‘229 Patent and the ‘525, ‘770, and ‘688 Patents (patents at issue

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