

Patent Act Permits Recovery Of Lost Profits From Foreign Patent Infringement

22 Jun 2018

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In [WesternGeco LLC v. ION Geophysical Corp.](#), WesternGeco sued ION for patent infringement under the [Patent Act](#) for creating an identical ocean floor surveying system that ION assembled overseas from parts made in America. A jury awarded WesternGeco damages and lost profits. ION moved to set aside the lost profits since it argued the Patent Act did not apply outside the U.S. The trial court denied the motion but the Federal Circuit reversed, holding that the Act did not permit the award of foreign lost profits. The Court, in a 7-2 decision by Justice Thomas, reversed, holding that the presumption against the application of a federal statute extraterritorially could be rebutted by considering the focus of the statute. In this case, the majority held that the nature of the infringement involved the exporting of component parts from the U.S., so the conduct subject to the focus of the Act occurred in the U.S., and permitted the recovery of lost profits. Justice Gorsuch, joined by Justice Breyer, dissented, agreeing that while WesternGeco's claim did not offend the presumption against extraterritorial application of federal statutes, the Patent Act's terms did not permit recovery of lost profits from sales outside the U.S.

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