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Is *Brumfield* Quietly Rewriting the Rules of Patent Damages?

By Henry Thomas, Eric Lohrenz and Autumn Klein

For decades, patent damages were governed by a simple premise: A United States patent confers a domestic right, and damages should reflect only domestic harm. Foreign harm was generally unrecoverable. That paradigm has evolved in recent years following two landmark decisions, *WesternGeco LLC v. ION Geophysical Corp.*¹ and *Brumfield v. IBG LLC*.²

This article traces the evolution of doctrine governing foreign patent damages from *WesternGeco* through *Brumfield* and into the emerging body of district court decisions applying the new framework. It examines how courts are refining the causation requirement, testing the boundaries of expert admissibility, and grappling with the discovery implications of a world in which foreign conduct is on the table for patent damages. For practitioners, the stakes are significant. *Brumfield* may be quietly reshaping the rules of patent damages, and those who understand the new landscape will be best positioned to advance their clients' interests while controlling exposure to downside risks, such as an adverse court ruling or judgment.

The authors, attorneys with Willkie Farr & Gallagher LLP, may be contacted at hthomas@willkie.com, elohrenz@willkie.com and aklein@willkie.com, respectively.

WESTERNGECO OPENS THE DOOR

In *WesternGeco LLC v. ION Geophysical Corp.*, the Supreme Court made a sharp departure from the prior line of cases on extraterritoriality and lost profits, opening the door to foreign damages in patent infringement actions.

The plaintiff, WesternGeco, owned patents covering an ocean floor surveying system.³ ION Geophysical (ION) sold a competing system abroad, built from components that were manufactured domestically and exported for assembly.⁴ WesternGeco sued ION for infringement under 35 U.S.C. § 271(f).⁵ At trial, WesternGeco proved that ION's exports had caused it to lose survey contracts abroad.⁶ The jury agreed and found ION liable for infringement under § 271(f). ION was ordered to pay both royalties on the infringing system components and lost profits that encompassed foreign use.⁷

On appeal, the Federal Circuit reversed the lost profits award. Relying on *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*,⁸ in which the Federal Circuit held that § 271(a) bars recovery for lost foreign sales, the Federal Circuit reasoned that foreign lost profits under § 271(f) should be similarly restricted.⁹

The Supreme Court disagreed. In 2018, the Supreme Court reversed and held that lost profits

abroad are recoverable for infringement under § 271(f).

In reaching its decision, the Court laid out the two-step framework used to analyze extraterritoriality, as follows:¹⁰ First, the Court asks whether the presumption against extraterritoriality had been rebutted.¹¹ If not, the Court moves to step two, which asks whether the case involves a domestic application of the statute at issue.¹² The crux of the second step's inquiry is the focus of the statute and whether the conduct relevant to that focus occurred domestically.¹³

Exercising its discretion to proceed directly to step two, the Court identified “the infringement” as the focus of 35 U.S.C. § 284.¹⁴ The Court concluded that § 271(f)(2) regulates the domestic act of supplying components from the United States; the award of lost profits damages was a domestic application of the statute.¹⁵

The Supreme Court left several critical questions unanswered. In reaching its holding, the Court questioned the role that other limiting doctrines, such as proximate causation, might play in constraining foreign damage awards.¹⁶ This critical question was relegated to a footnote, and the Court explicitly declined to provide guidance.

MURMURS OF UNCERTAINTY AMONG DISTRICT COURTS

In the aftermath of *WesternGeco*, district courts struggled to discern the full reach of the Court's holding. Unable to grasp the extent of the ruling, different district courts diverged in their approach between territorial expansion and restraint.

The Fate of *Power Integrations*

At the heart of the uncertainty was the threshold question of whether *WesternGeco* overruled the Federal Circuit's holding in *Power Integrations*, which had categorically barred recovery of foreign damages for domestic infringement under § 271(a).

Courts in several districts concluded that the Supreme Court had overruled *Power Integrations*. For example, the District of Delaware, on remand from the Federal Circuit's *Power Integrations* decision, took the question head-on.¹⁷ Judge Stark held that *WesternGeco* had implicitly overruled the Federal Circuit's bar on worldwide damages.¹⁸ The court reasoned that *WesternGeco*'s analysis of § 284

applied equally to infringement under § 271(a) as it did to the § 271(f)(2) infringement claims at issue in *WesternGeco*.¹⁹ On that basis, the court allowed the plaintiff to seek recovery of worldwide damages for § 271(a) infringement.²⁰ The Eastern District of Texas similarly held that foreign damages are compensable for domestic infringement under § 271(a).²¹

Not all district courts were in agreement. In *MLC Intellectual Prop., LLC v. Micron Tech., Inc.*,²² the Northern District of California landed squarely on the other side. Relying on the Federal Circuit's *Power Integrations* decision, the district court granted a motion to exclude evidence of foreign sales.²³ The court directly addressed Judge Stark's opinion in *Power Integrations*, acknowledging the uncertain legal landscape following *WesternGeco*, but declining to deviate from the Federal Circuit's decision, which it viewed as controlling precedent.²⁴

District courts were outwardly uncomfortable with the state of the law. Judges expressed concern that allowing patent damages for foreign use could effectively extend the monopoly granted by a United States patent overseas, permitting patentees to collect the same damages they would have obtained had the foreign use itself constituted infringement.²⁵

Searching for a Causal Link

As courts split on the state of *Power Integrations*, a second strand of confusion emerged. *WesternGeco* had gestured toward the relevance of causation, but the Court offered no concrete guidance on how courts should apply such a requirement. District courts found themselves charting their own course, and the results were predictably inconsistent. Sketches of a causation requirement began to take shape, but courts lacked uniformity as to what a plaintiff must prove.

Various causation formulations emerged throughout the district courts. For example, the Eastern District of Texas imposed a causation requirement, without elaborating on the required proof. In *Plastronics Socket Partners v. Dong Weon Hwang*,²⁶ the defendant moved for summary judgment, arguing that foreign sales were categorically unrecoverable.²⁷ The court denied the motion, finding a genuine dispute of material fact as to whether the plaintiff's foreign damages were “a result of”

the defendant's domestic infringement.²⁸ The court framed the inquiry in general causation terms, holding that the plaintiff could recover foreign damages at trial if it proved such damages were "caused by" domestic infringement.²⁹ The court did not specify a more demanding standard.

Other courts embraced the proximate causation standard hinted at by the Supreme Court. In *SIMO Holdings v. H.K. uCloudlink Network Tech. Ltd.*,³⁰ the Southern District of New York granted a motion to supplement damages to include foreign sales of service credits purchased abroad for use with devices sold domestically.³¹ The court explained that, under *WesternGeco*, patentees may recover for foreign injuries "proximately caused" by domestic acts of infringement.³² On the merits, the court held that it was "plainly foreseeable" that owners of infringing devices sold in the United States would purchase service credits while traveling abroad.³³

Adding yet another formulation in *ArcherDX, LLC v. Qiagen Sciences, LLC*,³⁴ the District of Delaware instructed the jury using a "substantial cause" standard.³⁵ The court's jury instruction permitted an award of damages on foreign sales if the jury found that (1) defendant's infringement in the United States was a "substantial cause" of the foreign sale, and (2) the defendant made or sold the product within the United States.³⁶

Taken together, *Plastronics*, *SIMO Holdings*, and *ArcherDX* illustrate a landscape in disarray: three different district courts, three different causation formulations, and no appellate guidance to harmonize them.

BRUMFIELD: THE FEDERAL CIRCUIT STEPS IN

Against this backdrop of doctrinal uncertainty, the Federal Circuit took up *Brumfield v. IBG LLC*.³⁷ In *Brumfield*, Trading Technologies sued IBG for infringement of patents related to graphical user interfaces for commodity trading.³⁸ The district court excluded a reasonable royalty damages theory that accounted for foreign damages foreseeably caused by IBG making accused software domestically.³⁹ The district court held that *Power Integrations* remained the governing law, even after *WesternGeco*.⁴⁰

The Federal Circuit stepped in to clarify the scope of *WesternGeco* and build on its provided framework.

The *Brumfield* court held that *WesternGeco*'s patent damages framework extends to infringement under § 271(a).⁴¹ The Federal Circuit reasoned that *WesternGeco*'s analysis of § 284 was not confined to infringement under § 271(f)(2).⁴² *WesternGeco*'s analysis holds true regardless of whether "the infringement" at issue falls under § 271(a) or (f), the Court explained.⁴³

The Federal Circuit further clarified that *WesternGeco*'s patent damages holding was not confined to lost profits. Because the Supreme Court's analysis of § 284 made no distinction based on the type of damages sought, the *Brumfield* court concluded that the same framework applies to reasonable royalty awards.⁴⁴ That is not to say the form of damages sought is irrelevant to the analysis. Application of the *WesternGeco* framework must reflect the differences between award types.⁴⁵

As the Federal Circuit explained, when a patentee seeks reasonable royalty damages that account for foreign conduct not independently constituting infringement, the starting point remains the value of the domestic infringement.⁴⁶ A patentee may seek to increase the baseline by demonstrating that foreign conduct enhances the value of the domestic infringement.⁴⁷ For example, if the domestic infringement enables otherwise unavailable profits from conduct abroad, those profits may properly factor into the royalty calculation.⁴⁸ Importantly, however, the Federal Circuit made clear that *Brumfield* does not provide a backdoor around apportionment principles. Patentees may not recover for value attributable to non-patented features or conduct unrelated to practicing the patent.⁴⁹

Where the Supreme Court noted open questions on causation, the *Brumfield* court provided guidance. The Federal Circuit clarified that causation is a "necessary part" of the *WesternGeco* framework.⁵⁰ The focus of § 284, the "infringement," must have a causal relationship to the foreign conduct recovery is sought for.⁵¹ The court explained that the causal relationship is evaluated through the lens of proximate causation.

Ambiguity nonetheless remained. Although the *Brumfield* court made clear that a proximate cause relationship is required to connect infringement to foreign profits, the district courts were left to determine the precise contours of causation that would satisfy this standard.

THE WAKE OF *BRUMFIELD*

Brumfield resolved several threshold questions district courts had been grappling with, but questions remain open for further debate. In the years since *Brumfield*, district courts have refined the causation requirement, tested the boundaries of admissible damages theories, and grappled with the potentially far-reaching discovery implications. The emerging case law offers early guideposts of how courts interpret *Brumfield* in practice.

A Refined Causation Requirement

District courts in the post-*WesternGeco* era lacked consensus on the causation showing required to recover foreign damages. *Brumfield* provided clarity that domestic infringement must bear a proximate cause relationship, but the Federal Circuit stopped short of prescribing an exact evidentiary standard.

A functional distinction has emerged from the district court decisions that followed *Brumfield*. Domestic conduct that creates, enables, or drives foreign value can satisfy the causal requirement, whereas domestic conduct that merely confirms, measures, or monitors performance does not.

*Synopsys v. Siemens Indus. Software*⁵² illustrates *Brumfield* operating as a constraint on royalty theories. In *Synopsys*, the defendant moved to preclude the plaintiff from including foreign sales in its reasonable royalty base.⁵³ The Northern District of California granted the motion.⁵⁴ The court held that the plaintiff failed to establish the causal connection required by *Brumfield*, finding that domestic development of the accused product, standing alone, was not a sufficient nexus.⁵⁵ In short, courts may reject foreign damages theories that rest on attenuated or purely incidental domestic ties.

The Eastern District of Virginia also found that a plaintiff failed to meet the proximate cause standard defined by *Brumfield*. In *DivX, LLC v. Amazon.com, Inc.*,⁵⁶ the plaintiff sought to recover foreign revenue based on domestic testing and quality assurance activities performed on the accused products.⁵⁷ At the close of discovery, the defendant moved for summary judgment on foreign damages.⁵⁸ In evaluating the defendant's motion, the court applied "but-for causation plus more" as the relevant proximate cause standard.⁵⁹ On the merits, the court held that there was insufficient evidence that the domestic testing was necessary for the realization of foreign profits.⁶⁰ Although the performance metrics

demonstrated economic value, the metrics did not create such value.⁶¹ Similarly, the domestic testing did not enable otherwise unavailable foreign profits.⁶² At bottom, the court held that testing that merely confirms or monitors product performance does not satisfy *Brumfield*'s causal requirement.

Not every causation theory fails under *Brumfield*. Where domestic conduct actively contributes to the generation of foreign sales, the causation requirement may be satisfied. In *10X Genomics v. Vizgen, Inc.*,⁶³ the defendant sought summary judgment on the availability of damages based on defendant's foreign sales of the accused product.⁶⁴ The plaintiff alleged that domestic testing and lab programs generated data and images for marketing materials, which ultimately drove foreign sales of the accused product.⁶⁵ The plaintiff supported its contention with deposition testimony.⁶⁶ At the threshold, the court permitted the plaintiff's damages expert to calculate the reasonable royalty *assuming* that causation for foreign sales would be established.⁶⁷ The evidence proffered by the plaintiff was sufficient to permit a reasonable jury to find that domestic infringement had enabled otherwise unavailable profits from foreign sales.⁶⁸ The court relegated challenges to plaintiff's causation evidence to cross examination.⁶⁹

The Admissibility Hurdle

Proving *Brumfield* causation and admitting a *Brumfield*-based damages opinion are related, yet distinct, inquiries. The evidentiary question asks whether the record supports a finding that domestic infringement caused foreign profits. The admissibility question, on the other hand, asks whether the expert's methodology for incorporating foreign revenue is sufficiently reliable to be presented to the jury.

A damages theory can survive *Daubert* but fail at summary judgment if the underlying facts do not support the causal link. Conversely, a factually backed theory can fall at *Daubert* if the expert fails to adequately explain the methodology connecting domestic infringement to worldwide revenue.

*Vidstream, LLC v. Twitter, Inc.*⁷⁰ illustrates how courts apply this distinction in practice. In *Vidstream*, the defendant moved to exclude the plaintiff's damages expert's opinion on recoverability of foreign sales.⁷¹ Plaintiff's expert opined that Twitter operated a worldwide ecosystem in which

content generated from domestic applications drove engagement abroad, generating advertising revenue attributable to foreign markets.⁷² The court denied defendant's motion, holding that a sufficient basis for foreign damages calculations existed under Rule 702.⁷³ The court emphasized that challenges to the strength of the causal nexus went to *weight*, not *admissibility*, and could be properly addressed through cross-examination and the introduction of contrary evidence.⁷⁴

Taken together, *Vidstream* and *10X Genomics* illustrate an important procedural point. A plaintiff may present a damages figure to the jury through expert testimony while establishing the requisite causal link through fact witnesses and evidence. For defendants, this bifurcation means that an effective challenge to foreign damages should operate on two fronts. Defendants should (1) question the reliability of the damages expert's methodology, and (2) attack the underlying factual basis for causation at summary judgment or through contrary evidence at trial.

Foreign Sales Discovery

Before *Brumfield*, courts were uncertain whether foreign sales were relevant in § 271(a) reasonable royalty cases. Some courts allowed foreign sales discovery while expressly reserving whether those sales would ultimately be recoverable, while others denied such discovery outright.⁷⁵

Following *Brumfield*, parties seeking such discovery may try arguing that foreign sales, even if non-infringing, are relevant to damages from domestic infringement. However, discovery remains cabined by proportionality requirements, and the burden of collecting and producing records of foreign sales may well outweigh the probative value that non-infringing sales has in calculating damages.

*Yangtze Memory Techs. Co., Ltd. v. Micron Tech., Inc.*⁷⁶ illustrates the potential breadth of discovery in the post-*Brumfield* era. In *Yangtze*, Micron moved to compel discovery into Yangtze's foreign sales of the accused products.⁷⁷ Yangtze disputed whether such discovery would be proper if Micron would never be capable of making the causal showing required to recover for foreign conduct.⁷⁸ The court granted the motion to compel, holding that, under *Brumfield*, foreign conduct may be relevant to patent damages if sufficiently tied to domestic infringement.⁷⁹

Although Yangtze disputed whether Micron could bring to bear such causal evidence, the court reasoned that the merits need not be proven to take discovery.⁸⁰ The court simultaneously imposed proportionality limits, narrowing interrogatory requests to information that could be pulled from databases.⁸¹

BRUMFIELD'S IMPLICATIONS

Brumfield confirms that foreign conduct and non-infringing activity are not categorically barred from reasonable royalty analysis, but it demands a disciplined causal showing that foreign activities increase the value of the domestic infringement itself.

The post-*Brumfield* landscape demands attention at every stage of litigation. A litigant's ability to recover for foreign conduct is highly dependent on how parties frame pleadings discovery, expert opinions, jury instructions, and verdict forms.

At the pleading and contention stages, plaintiffs should identify the domestic hook and causal theory early on to ensure they are preserving a *Brumfield* theory of foreign damages. Waiting until trial to articulate the connection risks waiver or exclusion. In discovery, plaintiffs should tie foreign sales requests to an articulated causal theory, linking foreign revenue to specific domestic infringement. Requests untethered to a domestic act invite proportionality objections and may be denied outright. Defendants, on the other hand, should focus on distinguishing wholly foreign sales from those with a potential domestic nexus. When plaintiffs attempt to cast too wide a foreign net, defendants should focus on proportionality objections.

Summary judgment presents a meaningful opportunity for defendants to defeat foreign damages theories before trial. As *Synopsys* and *DivX* confirm, courts will grant summary judgment of no foreign damages where the alleged domestic activity lacks a sufficient causal connection to the foreign damages sought.

As always, parties must attend carefully to preservation throughout the course of litigation. *Trs. of Columbia Univ. in the City of New York v. Gen. Digit. Inc.*⁸² is a cautionary tale. In *Columbia*, the plaintiff attempted to reframe its damages theory under *Brumfield* on appeal.⁸³ The Federal Circuit denied this request; Columbia had not requested a jury instruction based on this damages theory, and the jury had not been so instructed.⁸⁴ *Columbia*

underscores that *Brumfield* damages theories must be pleaded, disclosed, supported by expert analysis, and properly included in jury instructions to be viable.⁸⁵

Brumfield may be reshaping the landscape of patent damages as we know it. While the Federal Circuit has opened the door to foreign damages in a broader range of cases, it simultaneously demands a disciplined showing that domestic infringement drives foreign value. Practitioners who understand this framework, and build their case accordingly, will be best positioned to navigate the evolving doctrine.

Notes

1. 585 U.S. 407 (2018).
2. 97 F.4th 854 (Fed. Cir. 2024).
3. *WesternGeco*, 585 U.S. at 411.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. 711 F.3d 1348 (Fed. Cir. 2013).
9. *WesternGeco*, 585 U.S. at 411.
10. *Id.* at 413.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.* at 414-15.
15. *Id.* at 414-15.
16. *Id.* at 417 n.3.
17. *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, No. 04-1371, 2018 WL 4804685 (D. Del. Oct. 4, 2018).
18. *Id.* at *1.
19. *Id.*
20. *Id.* at *2.
21. *Plastronics Socket Partners v. Dong Weon Hwang*, No. 18-14, 2019 WL 4392525 (E.D. Tex. June 11, 2019).
22. *MLC Intellectual Prop., LLC v. Micron Tech., Inc.*, No. 14-03657, 2019 WL 2437073 (N.D. Cal. June 11, 2019).
23. *Id.* at *3.
24. *Id.* (“Whether Judge Stark is correct that *WesternGeco*[] implicitly overruled *Power Integrations*[] remains to be seen, but at this time controlling law holds that MLC may not seek damages under § 271(a) based on Micron’s wholly foreign sales.”).
25. *ArcherDX, LLC v. Qiagen Sciences, LLC*, No. 18-1019, 2021 WL 3857460 (D. Del. Aug. 30, 2021).
26. No. 18-14, 2019 WL 4392525 (E.D. Tex. June 11, 2019).
27. *Id.* at *4.
28. *Id.* at *5.
29. *Id.*
30. 396 F. Supp. 3d 323 (S.D.N.Y. 2019).
31. *Id.* at 350-51.
32. *Id.* at 351.
33. *Id.*
34. No. 18-1019, 2021 WL 3857460 (D. Del. Aug. 30, 2021).
35. *Id.* at *2.
36. *Id.*
37. *Brumfield*, 97 F.4th 854 (Fed. Cir. 2024).
38. *Id.* at 863.
39. *Id.* at 866-67.
40. *Id.* at 866.
41. *Id.* at 875.
42. *Id.*
43. *Id.*
44. *Id.* at 875-76.
45. *Id.* at 876.
46. *Id.* at 876-77.
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.* at 877.
51. *Id.* at 877-78.
52. No. 20-cv-4151, 2024 WL 1683637 (N.D. Cal. Apr. 17, 2024).
53. *Id.* at *14.
54. *Id.*
55. *Id.* at *14 n.3.
56. No. 24-cv-2061, 2026 WL 1223103 (E.D. Va. May 4, 2026).
57. *Id.* at *15.
58. *Id.*
59. *Id.*
60. *Id.* at *15-16.
61. *Id.*
62. *Id.*
63. No. 22-595, 2025 WL 26734 (D. Del. Jan. 3, 2025).
64. *Id.* at *3.
65. *Id.* at *3-4.
66. *Id.*
67. *Id.* at *3.
68. *Id.* at *4.
69. *Id.*
70. No. 16-764, 2025 WL 624514 (N.D. Tex. Feb. 25, 2025).
71. *Id.* at *1.
72. *Id.* at *1-2.
73. *Id.* at *4.
74. *Id.* at *4.
75. See *MLC Intellectual Prop., LLC v. Micron Tech., Inc.*, No. 14-03657, 2018 WL 6175982 (N.D. Cal. 2018) (granting motion to compel discovery regarding foreign sales); *Signify North Am. Corp. v. Robe Lighting Inc.*, No. 20-62302 (S.D. Fla. 2022) (denying motion to compel production of documents concerning foreign sales).

76. No. 23-5792, 2024 WL 4527110 (N.D. Cal. Oct. 18, 2024).

77. Id. at *1.

78. Id.

79. Id.

80. Id.

81. Id. at *2.

82. 169 F.4th 1320 (Fed. Cir. 2026).

83. Id. at 1338-39.

84. Id. at 1339.

85. See also *Kawasaki Jukogyo Kabushiki Kaisha v. Rorze Corp. et al.*, No. 22-04947 (N.D. Cal. 2025).

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