Nos. 14-1513, 14-1520

In the Supreme Court of the United States

HALO ELECTRONICS, INC., *Petitioner*,

v.

PULSE ELECTRONICS, INC., *et al.*, *Respondents*.

STRYKER CORPORATION, *et al.*, *Petitioners*,

v.

ZIMMER, INC., *et al.*, *Respondents*.

On Writs of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF CERTAIN MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici are a bipartisan, bicameral group of six current United States Senators and Members of the United States House of Representatives who were instrumental in Congress's efforts to reform the patent laws between 2005 and 2011 and, in particular, in the development, drafting, and passage of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (the "AIA").[2]

Amici have a strong interest in ensuring that this Court has accurate information regarding Congress's objective and intent in enacting the AIA. In particular, in considering whether to amend the enhanced-damages provision of 35 U.S.C. § 284 at issue in this case, Congress was fully aware of the willful-infringement standard that the U.S. Court of Appeals for the Federal Circuit established in *In re Seagate Technology, LLC*, 497 F.3d 1360 (Fed. Cir. 2007) (en banc). Although it considered numerous proposed amendments over a six-year period, Congress ultimately did not alter the enhancement provision of

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[1] Pursuant to Supreme Court Rule 37.3(a), the *Stryker* parties have consented to the filing of this brief, and the *Halo* parties have granted blanket consent for all briefs. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and neither such counsel nor any party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than *amici* and their counsel, made a monetary contribution to fund the preparation or submission of this brief.

[2] A complete list of *amici* Members of Congress is attached hereto in the Appendix.

Section 284, knowing that it was leaving *Seagate* in place.

SENATOR PATRICK J. LEAHY has been a Democratic Senator since 1975 and is currently the Ranking Member of the Senate Judiciary Committee after having served as its Chairman from June 2001 through January 2003, and again from January 2007 until January 2015. Senator Leahy has been a leading advocate for protecting intellectual property and promoting innovation in the United States. He was instrumental in Congress's patent-law reform efforts leading up to its passage of the AIA, which bears his name, along with his cosponsor, Representative Lamar Smith. Senator Leahy was involved in introducing to the Senate several pre-AIA bills aimed at comprehensively reforming the patent laws. He joined Senator Hatch in introducing the Patent Reform Act of 2006, S. 3818, 109th Cong. (2006). Subsequently, as Chairman of the Senate Judiciary Committee, Senator Leahy introduced the Patent Reform Act of 2007, S. 1145, 110th Cong. (2007), the Patent Reform Act of 2009, S. 515, 111th Cong. (2009), and the Patent Reform Act of 2011, S. 23, 112th Cong. (2011).

SENATOR ORRIN G. HATCH has been a Republican Senator since 1977. Senator Hatch is currently the Chairman of the Senate Finance Committee and a member of the Senate Judiciary Committee, on which he served twice as Chairman, and variously as the Ranking Member, between 1993 and 2005. Senator Hatch was highly active in Congress's patent-law reform efforts leading up to its passage of the AIA, introducing one of the first pre-AIA bills aimed at comprehensively reforming the patent laws, the Patent

Reform Act of 2006, S. 3818, 109th Cong. (2006). Moreover, Senator Hatch joined Senator Leahy in introducing the Patent Reform Act of 2007, S. 1145, 110th Cong. (2007), the Patent Reform Act of 2009, S. 515, 111th Cong. (2009), and the Patent Reform Act of 2011, S. 23, 112th Cong. (2011).

REPRESENTATIVE LAMAR S. SMITH has been a Republican Member of the House of Representatives since 1987. Representative Smith is currently the Chairman of the House Science, Space, and Technology Committee and a member of the House Judiciary Committee, on which he served as Chairman from January 2011 through January 2013, when the AIA was passed and the House Judiciary issued its report on the bill. Representative Smith was instrumental in Congress's patent-law reform efforts leading up to its passage of the AIA, which bears his name along with his cosponsor, Senator Patrick Leahy. As Chairman of the House Judiciary Committee's Subcommittee on Courts, the Internet, and Intellectual Property, he introduced the first pre-AIA bill aimed at comprehensively reforming the patent laws, the Patent Reform Act of 2005, H.R. 2795, 109th Cong. (2005). Representative Smith later joined in the introduction of both the Patent Reform Act of 2007, H.R. 1908, 110th Cong. (2007), and the Patent Reform Act of 2009, H.R. 1260, 111th Cong. (2009). Subsequently, while Chairman of the House Judiciary Committee, Representative Smith introduced the bill that ultimately became the AIA, the America Invents Act, H.R. 1249, 112th Cong. (2011).

REPRESENTATIVE ROBERT W. GOODLATTE has been a Republican Member of the House of Representatives since 1993. Representative Goodlatte currently serves as Chairman of the House Judiciary Committee. As Chairman of that Committee's Subcommittee on Intellectual Property, Competition, and the Internet from January 2011 through January 2013, Representative Goodlatte was highly active in Congress's patent-law reform efforts leading up to its passage of the AIA, including holding Subcommittee hearings in 2011 that addressed *Seagate* and the willful-infringement standard. Representative Goodlatte joined in the introduction of multiple pre-AIA bills aimed at comprehensively reforming the patent laws, including H.R. 2795, introduced by Representative Lamar Smith; H.R. 1908, introduced by Representative Howard Berman; and H.R. 1260, introduced by Representative John Conyers. Representative Goodlatte also joined Representative Smith in introducing H.R. 1249, which ultimately became the AIA.

REPRESENTATIVE STEVEN J. CHABOT has been a Republican Member of the House of Representatives for 19 years, serving in that role from 1995 through 2008 and again from 2011 to the present. Representative Chabot serves on the House Judiciary Committee, as well as its Subcommittee on Courts, Intellectual Property, and the Internet, having also served on both during the patent-reform debates that preceded the AIA. Representative Chabot also currently serves as Chairman of the House Committee on Small Business. Representative Chabot testified on the House floor with respect to the Patent Reform Act of 2007, H.R. 1908, 110th Cong. (2007), as well as the

bill that ultimately became the AIA, the America Invents Act, H.R. 1249, 112th Cong. (2011).

SENATOR MICHAEL F. BENNET has been a Democratic Senator since 2009. Senator Bennet is currently a member of the Senate Finance Committee, as well as the Senate Committees on Agriculture, Nutrition and Forestry, and Health, Education, Labor, and Pensions. During the debates in early 2011 on S. 23, the Senate bill that immediately preceded the AIA, Senator Bennet contributed to a manager's amendment, No. 121, to the bill and provided testimony on the Senate floor in support of the amended bill. Subsequently, Senator Bennet testified in support of the Senate's passage of the AIA in September 2011.

SUMMARY OF THE ARGUMENT

In 2011, when Congress enacted the Leahy-Smith America Invents Act, or "AIA," the Federal Circuit's standard for willful infringement under *In re Seagate Technology, LLC*, 497 F.3d 1360 (Fed. Cir. 2007) (en banc), was the established judicial interpretation of 35 U.S.C. § 284 with respect to awarding enhanced damages in a patent case. The legislative history of Section 284 in the period following *Seagate* shows that Congress was well aware of the *Seagate* standard and explored *Seagate*'s impact on the issue of enhanced damages. Ultimately, Congress did not substantively amend Section 284, knowing that the *Seagate* standard would remain in place and continue to govern the enhancement analysis under Section 284.

ARGUMENT

I. IN PASSING THE AIA, CONGRESS UNDERSTOOD THE *SEAGATE* STANDARD WOULD CONTINUE TO GOVERN THE ASSESSMENT OF ENHANCED DAMAGES UNDER 35 U.S.C. § 284.

Section 284 permits a court to increase damages in a patent case "up to three times the amount found or assessed." 35 U.S.C. § 284. The Federal Circuit has long held that, "[a]bsent a statutory guide[,] . . . an award of enhanced damages [under Section 284] requires a showing of willful infringement." *In re Seagate Tech., LLC*, 497 F.3d 1360, 1368 (Fed. Cir. 2007) (en banc).

On August 20, 2007, the en banc Federal Circuit in *Seagate* changed the standard for finding willful infringement. The court's previous willfulness

standard, established in *Underwater Devices Inc. v. Morrison–Knudsen Co.*, 717 F.2d 1380 (Fed. Cir. 1983), "set[] a low[] threshold for willful infringement that [was] more akin to negligence," *Seagate*, 497 F.3d at 1371, and had created a variety of unintended consequences, *see id.* at 1368–70. Therefore, the court overruled *Underwater Devices* and reset its willfulness standard, holding that "proof of willful infringement permitting enhanced damages [under Section 284] requires at least a [two-part] showing of objective recklessness." *Id.* at 1371. First, "a patentee must show by clear and convincing evidence that the infringer acted despite an objectively high likelihood that its actions constituted infringement of a valid patent." *Id.* Second, if the "threshold objective standard is satisfied, the patentee must also demonstrate that this objectively-defined risk . . . was either known or so obvious that it should have been known to the accused infringer." *Id.*

Seagate came in the midst of Congress's long-running efforts to reform the patent laws. Those efforts culminated in the enactment of the Leahy-Smith America Invents Act, or "AIA," which was signed into law on September 16, 2011. Pub. L. No. 112-29, 125 Stat. 284. Both before and after the *Seagate* decision, between 2005 and 2011, Congress considered a variety of proposed amendments to Section 284 but, in full view of the Federal Circuit's interpretation of Section 284 in *Seagate*, ultimately adopted none of them. In declining to amend Section 284's enhancement provision, Congress understood that *Seagate* would remain in place and continue to govern the enhancement analysis under Section 284.

A. The Legislative History of Congress's Patent-Law Reform Efforts Confirms that Congress Was Well Aware of *Seagate*.

Before *Seagate*, there was considerable dissatisfaction with the state of the law on willful infringement and enhanced damages under Section 284. Many believed that this law was in dire need of legislative attention. *See, e.g.*, COMMITTEE ON INTELLECTUAL PROPERTY RIGHTS IN THE KNOWLEDGE-BASED ECONOMY, BOARD ON SCIENCE, TECHNOLOGY, AND ECONOMIC POLICY, POLICY AND GLOBAL AFFAIRS DIVISION, NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, A PATENT SYSTEM FOR THE 21ST CENTURY, 83, 118–20 (Stephen A. Merrill, Richard C. Levin & Mark B. Myers, eds., 2004) ("The legal doctrine subjecting 'willful' infringers to enhanced damages should be modified or eliminated."); H.R. REP. NO. 110-314, at 28 (2007) (noting, shortly before *Seagate* came down, that "there is substantial question as to whether the current standards used by the court[s] to determine willfulness are appropriate").

In keeping with that view, numerous pre-*Seagate* bills introduced in both houses of Congress proposed amendments to Section 284 that would have expressly made willful infringement the standard for awarding enhanced damages but provided specific circumstances under which a court could (and could not) find willfulness. *See* Patent Reform Act of 2005, H.R. 2795, 109th Cong. § 6(2) (2005); Patent Reform Act of 2006, S. 3818, 109th Cong. § 5(a)(2) (2006); Patent Reform Act of 2007, H.R. 1908, 110th Cong. § 5(a)(2) (2007); Patent Reform Act of 2007, S. 1145, 110th Cong. § 5(a)(2) (2007).

The legislative history shows that Congress knew about *Seagate* almost immediately after it was decided. A House Committee Report on H.R. 1908, dated September 4, 2007, just over two weeks after *Seagate* came down, notes that "[j]ust before this Committee Report went to print, the Court of Appeals for the Federal Circuit amended its rule for finding willful patent infringement." H.R. REP. NO. 110-314, at 28 n.20 (citing *Seagate*, 497 F.3d 1360). A January 24, 2008, Senate Committee Report on S. 1145, which was introduced contemporaneously with H.R. 1908, similarly noted the Federal Circuit's then-recent decision in *Seagate*, stating that "[a]fter this bill emerged from Committee, the Federal Circuit raised the standard for willful infringement." S. REP. NO. 110-259, at 16 n.66 (2008) (citing *Seagate*, 497 F.3d 1360).

The Senate Committee Report also included pertinent Minority Views by Senators Coburn, Grassley, Kyl, and Brownback. *Id.* at 74–77. These Senators urged Congress to take time to scrutinize the then-recent decisions of this Court and the Federal Circuit before making legislative changes to the patent laws. They noted that "since the inception of the legislative reform effort, the patent playing field has been dramatically altered" by several "significant Supreme Court and Federal Circuit decisions on patent rights and remedies," including *Seagate*, which "heightened the standard for proving willful infringement." *Id.* at 75–76. Since the courts were already working to "rectify perceived imbalances in the patent system," these Senators believed that Congress should proceed with caution, "tak[ing] the necessary time to further scrutinize and assess the combined

impact of these key patent decisions before moving forward with particular reforms that may no longer be needed and will likely do more harm than good." *Id.* at 76.

Following *Seagate*, Congress continued to consider the issue of enhanced damages. One new bill made no changes to Section 284's enhancement provision. *See* Patent Reform Act of 2008, S. 3600, 110th Cong. § 4 (2008). Other bills proposed amending Section 284 to incorporate portions of the *Seagate* willfulness standard. *See* Patent Reform Act of 2009, H.R. 1260, 111th Cong. § 5(a) (2009); Patent Reform Act of 2009, S. 515, 111th Cong. § 4(a) (2009); Patent Reform Act of 2011, S. 23, 112th Cong. § 4(a)(4) (2011) (as introduced on Jan. 25, 2011); *see also* S. REP. NO. 111-18, at 10 (2009).

Congress also continued to consider *Seagate*'s impact on its legislative efforts. During a March 10, 2009, Senate Judiciary Committee hearing on S. 515, Herbert Wamsley, the Executive Director of the Intellectual Property Owners Association ("IPO"), testified that the IPO "supported the reform of the law of willful infringement and treble damages," but that the proposed reforms "need[] to be reviewed in light of the court's . . . decision in the Seagate case." *Patent Reform in the 111th Congress: Legislation and Recent Court Decisions: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 12 (2009). Mark Lemley of Stanford Law School testified that "[s]ince Congress began debating patent reform 4 years ago, the courts have acted to fix a number of . . . problems that were the focus of initial congressional reform . . . . [I]n the Seagate case, the [Federal Circuit] effectively solved

the problem of abuse and overuse of willfulness." *Id.* at 13.

The Senate Judiciary Committee's May 12, 2009, Report on an amended version of S. 515 stated that recent decisions of this Court "have moved in the direction of improving patent quality and making the determination of patent validity more efficient." S. REP. NO. 111-18, at 2–3. The Report continued: "The decisions reflect a growing sense that questionable patents are too easily obtained and are too difficult to challenge. Recent decisions by the Federal Circuit reflect a similar trend in response to these concerns." *Id.* at 3 (footnotes omitted). The Report specifically cited *Seagate* as an example of one of these "[r]ecent decisions by the Federal Circuit." *Id.* at 3 & n.9. The Committee noted that, in "a positive development," *Seagate* had "addressed the problem created by the lack of statutory guidance as to when enhanced damages are authorized." *Id.* at 12.

Senators Kyl, Feingold, and Coburn provided Minority Views in the Committee Report. *See id.* at 53–61. In criticizing portions of S. 515's willfulness provisions, they noted the provisions "[a]ppear to substantially unravel the progress made by the Seagate decision" and did not "fully assimilate the teachings of Seagate." *Id.* at 60. Among other concerns, they argued that "[t]he bill's willfulness provisions" constituted "a step backward for accused infringers, returning us to the pre-Seagate world of inquiries into the infringer's subjective intent and the cottage industry of opinion counsel." *Id.*

B. Congress Did Not Amend Section 284's Enhancement Provision in the AIA Knowing that *Seagate* Would Remain in Place.

The 111th Congress concluded without taking further action on S. 515, but near the beginning of the 112th Congress, Senator Leahy introduced the Patent Reform Act of 2011, S. 23. Like several prior bills, S. 23 made willful infringement an express requirement for awarding enhanced damages. *See* S. 23 § 4(a)(4) (as introduced, Jan. 25, 2011). But S. 23 provided a different willfulness standard than prior bills. *See id.* Among other things, S. 23 moved out of Section 284, and into a new, separate Section 298, a provision included in prior bills, such as S. 515, that would have precluded a patent holder from using an accused infringer's failure to obtain the advice of counsel to prove willfulness. *See* S. 23 § 4(d) (as introduced, Jan. 25, 2011).

Just days later, the Senate Judiciary Committee marked up and approved S. 23 with amendments that, among other things, entirely removed the bill's willfulness standard, *see* S. 23, 112th Cong. § 4(a)(3) (as reported by S. Comm. on the Judiciary, Feb. 3, 2011), but maintained the separate section establishing Section 298, *id.* § 4(d). The Senate subsequently passed S. 23 as amended and reported by the Senate Judiciary Committee. *See* AIA, S. 23, 112th Cong. (as passed by Senate, Mar. 8, 2011) (containing no mention of or substantive amendment to Section 284).

A few weeks later, on March 30, 2011, Representative Lamar Smith, then-Chairman of the House Judiciary Committee, introduced a House

version of the AIA, H.R. 1249, 112th Cong. (2011). Just like the version of S. 23 that the Senate had passed on March 8, 2011, H.R. 1249 contained no substantive amendments to Section 284, but included the new provision, Section 298, that precluded a patent holder from using an accused infringer's failure to obtain the advice of counsel to prove willfulness. *See* H.R. 1249 § 16.

Leading up to the introduction of H.R. 1249, the House Judiciary Committee's Subcommittee on Intellectual Property, Competition, and the Internet held two hearings on patent reform, one on February 11, 2011, and the second on March 10, 2011. *See Crossing the Finish Line on Patent Reform: What Can and Should Be Done: Hearing Before the Subcomm. on Intellectual Prop., Competition, and the Internet of the H. Comm. on the Judiciary*, 112th Cong. (2011) [hereinafter *February Hearing*]; *Review of Recent Judicial Decisions on Patent Law: Hearing Before the Subcomm. on Intellectual Prop., Competition, and the Internet of the H. Comm. on the Judiciary*, 112th Cong. (2011) [hereinafter *March Hearing*].

At the *February Hearing*, Representative Goodlatte, then-Chairman of the Subcommittee, cautioned that

> [s]ince we began debating comprehensive patent reform over a half decade ago, the Federal courts have issued numerous opinions that have touched on some of the very reforms we have been working on, including . . . willfulness . . . . We need to assess those decisions carefully and factor them into any legislation we move.

Id. at 1–2. Other witnesses testified that, in light of *Seagate*, in which "the Federal Circuit . . . clarified the standard of willful infringement to require proof of objective recklessness by the infringer before trouble [sic] damages may be awarded," there was simply no need to legislatively address willfulness. *Id.* at 18 (statement of Carl Horton, Chief Intellectual Property Counsel, General Electric); *see id.* at 11–12 (statement of David Simon, Associate General Counsel, Intellectual Property Policy, Intel Corporation); *id.* at 40 (statement of J. Paul R. Michel (Ret.), former Chief Judge, United States Court of Appeals for the Federal Circuit).

At the *March Hearing*, Representative Goodlatte reiterated his views expressed at the *February Hearing*:

> My belief is that Congress can learn from what the courts are doing and if the courts sufficiently have addressed an area of patent reform, then that may obviate the need for the Congress to act. In fact, one reason we are making greater progress on patent reform is because some of the more controversial issues that engendered the most disagreements are no longer addressed in the Senate bill. That is because the Supreme Court and the Federal Circuit have handed down decisions addressing many of the contentious issues we have grappled with over the years.

March Hearing 2. Representative Conyers shared a similar view, stating that "the courts have helped us, as you have said, Chairman Goodlatte, in ferreting out

a lot of issues that seems to me that we can take mostly off the table," including "willfulness." *Id.* at 3.

Other witnesses further echoed the testimony at the *February Hearing*, testifying that the *Seagate* decision had obviated the need for Congress to address willfulness. *See March Hearing* 14–15 (stating that the "Federal Circuit . . . [had] been quite active in clarifying previously uncertain or unjustified legal principles," and opinions of this Court and the Federal Circuit had already "addressed, and largely cured, [several] imbalances in the law" for which the Subcommittee had previously considered legislation, including by overturning the "low standard for proof of willfulness" (statement of Andrew Pincus, Partner, Mayer Brown LLP)); *id.* at 31–32 (stating that the court decisions during the patent reform debates "have related directly to the [legislative] proposals" being considered by Congress, and nearly "all of the decisions on these particular issues have gone the way that the legislation was headed," including by "the courts limit[ing] the scope" of "enhanced damages for willful infringement" (statement of Dennis Crouch, Associate Professor of Law, University of Missouri School of Law)); *cf. id.* at 47–48 ("There was a principle, you get multiple damages for willful conduct, but somehow a series of decision[s] had turned willfulness into negligence. And so [in *Seagate*] the Federal Circuit said, you know what, we are going to go back to what this really means." (statement of Mr. Pincus)).

In the hearing that accompanied the introduction of H.R. 1249, on March 30, 2011, Representative Goodlatte stated that H.R. 1249 was "the culmination of years of work in both the House and Senate . . . over

four Congresses," including, among other things, "watch[ing] judicial decisions in the courts." *America Invents Act: Hearing on H.R. 1249 Before the Subcomm. on Intellectual Prop., Competition, and the Internet of the H. Comm. on the Judiciary*, 112th Cong. 2 (2011). Once again, various witnesses testified that there was simply no need to legislate on issues that the courts had, by then, already addressed, including willfulness. *Id.* at 78 (discussing "issues that are clearly no longer necessary because of Federal Circuit decisions" and stating that "willful infringement . . . was effectively addressed by the *en banc* decision of the Federal Circuit in *In re Seagate* [and] was stricken from S. 23 before Senate passage" (testimony of Steven W. Miller, Vice President and General Counsel for Intellectual Property, Procter & Gamble Company)); *see id.* at 45 ("In light of recent court decisions relating to . . . willfulness, . . . we support removal of related provisions in patent reform legislation." (testimony of Hon. David J. Kappos, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office)).

On April 14, 2011, the House Judiciary Committee marked up and passed H.R. 1249, with no substantive changes to Section 284 but inclusive of new Section 298, which provided that failure to obtain advice of counsel could not be used as proof of willfulness. During the mark-up session, the Committee Chairman, Representative Lamar Smith, noted that "the bill doesn't address many litigation reform issues because the courts are addressing these issues through decisions on damages, venue, and other subjects." *Markup of H.R. 1249, the America Invents Act: Hearing Before the H. Comm. on the Judiciary*, 112th Cong. 9

(2011), http://www. uspto.gov/sites/default/files/aia_implementation/20110414-house_judiciary_mark-up_transcript.pdf.

The House Judiciary Report on H.R. 1249, H.R. REP. NO. 112-98, at 38–40 (2011), which the Judiciary Committee issued under the Chairmanship of Representative Lamar Smith, sets forth a statement of the House's purpose and intent in implementing the AIA. *See Garcia v. United States*, 469 U.S. 70, 76 (1984). The Report acknowledges that throughout Congress's patent reform debates, this Court and the Federal Circuit issued decisions addressing several significant concerns with the patent system. H.R. REP. NO. 112-98, at 39. Indeed, the Report cites *Seagate* as the sole example of a "[r]ecent decision[] by the Federal Circuit" that had responded to those concerns. *Id.* at 39 & n.9.

On June 1, 2011, the Committee reported the bill to the House. H.R. 1249, 112th Cong. (as reported by H. Comm. on the Judiciary, June 1, 2011); H.R. REP. NO. 112-98. On June 23, 2011, for purposes of the provisions relevant to this case, the House passed H.R. 1249 in the form in which it had been reported by the House Judiciary Committee. H.R. 1249, 112th Cong. (as passed by House, June 23, 2011). Less than three months later, the Senate likewise passed the bill. H.R. 1249, 112th Cong. (as passed by Senate, Sept. 8, 2011). Finally, President Obama signed the AIA into law on September 16, 2011.[3]

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[3] The enacted version of the AIA includes a minor, technical amendment to Section 284 unrelated to enhanced damages. *See* Pub. L. No. 112-29, § 20(j)(1), 125 Stat. 335 (2011).

CONCLUSION

The legislative history of the AIA demonstrates that in considering whether to amend the enhancement provision of Section 284, Congress was fully aware of the *Seagate* standard. That history also demonstrates that, despite considering numerous proposed amendments over a six-year period, Congress ultimately did not alter the enhancement provision of Section 284, knowing that it was leaving *Seagate* in place.

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JANUARY 20, 2016

APPENDIX

APPENDIX

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Amici Curiae **Members of Congress**

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SEN. ORRIN G. HATCH (R - UT)

SEN. MICHAEL F. BENNET (D - CO)

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REP. ROBERT W. GOODLATTE (R - VA)

REP. STEVEN J. CHABOT (R - OH)