

# Hyper-Divergence: Halo and the Preliminary Injunction Requirement for Enhanced Damages

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A recent report and recommendation issued in the District of Massachusetts is one of the first cases to interpret – and arguably, to extend – the Supreme Court’s recent decision on willful infringement, *Halo Electronics, Inc. v. Pulse Electronics, Inc.*

In *Simplivity Corporation v. Springpath, Inc.*, plaintiff Simplivity alleged infringement of U.S. Patent No. 8,478,799, which allegedly claims a file system that improves upon traditional data storage architectures. Simplivity describes itself as a company focused on efficient data storage and operations. The defendant, Springpath, allegedly sells a solution that infringes the ’799 Patent. Both companies claim to focus on “hyperconvergence” – the combination of data services related to and virtualization in an hardware appliance.

Springpath moved to dismiss the second amended complaint alleging patent infringement – and specifically sought to dismiss any claim for enhanced damages arising from post-filing conduct since Simplivity, the plaintiff, failed to seek a preliminary injunction.

Under the *Seagate* willfulness standard that preceded *Halo*, the Federal Circuit had suggested that a plaintiff seeking enhanced damages based on post-filing conduct must first move for a preliminary injunction. But while the Supreme Court, in *Halo*, rejected the objective/subjective test under *Seagate*, the Supreme Court remained silent on the preliminary injunction issue.

The District of Massachusetts court referred the motion to dismiss to Magistrate Hennessy, who recommended denying the motion to dismiss. Among other things, Magistrate Hennessy found that the Supreme Court's silence concerning the preliminary injunction issue was not controlling: since the Supreme Court ruled that enhanced damages are now committed to the sound discretion of trial courts based on the particular circumstances of each case, Magistrate Hennessy ruled that a preliminary-injunction requirement would impose a “formal restriction” upon the award of enhanced damages – a concept contrary to the Supreme Court's ruling in *Halo*.

The case is *Simplivity Corporation v. Springpath, Inc.*, No. 15-cv-1345-TSH, in the District of Massachusetts. A copy of the opinion can be found [here](#).

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