

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide the sense of Congress with respect to the prevailing standard for willful infringement in patent cases.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

H. R. 2578

AMENDMENT NO 4748

By Hatch _____ of Commerce
 for the fiscal
 or other pur-
 To: Amor No 4685 _____
 _____ and

3
 Page(s) _____

 GPO: 2010 03-070 (mm)

HATCH to the amendment (No. 4685) proposed by Mr. SHELBY

Viz:

- 1 At the appropriate place, insert the following:
- 2 **SEC. ____ . SENSE OF CONGRESS WITH RESPECT TO WILL-**
- 3 **FUL INFRINGEMENT IN PATENT CASES.**
- 4 (a) FINDINGS.—Congress finds the following:
- 5 (1) On June 13, 2016, the Supreme Court of
- 6 the United States held in Halo Electronics, Inc. v.
- 7 Pulse Electronics, Inc. (in this section referred to as
- 8 “Halo”), that the 2-part test for awarding enhanced
- 9 damages under section 284 of title 35, United States
- 10 Code, as articulated in In re Seagate Technology,

1 LLC, 497 F.3d 1360 (Fed. Cir. 2007) (en banc) (in
2 this section referred to as “Seagate”), was incon-
3 sistent with the intent of that section.

4 (2) In 2011, when Congress enacted Public
5 Law 112–29, the standard articulated by the Fed-
6 eral Circuit for willful infringement under Seagate
7 was the established judicial interpretation of section
8 284 of title 35, United States Code, with respect to
9 awarding enhanced damages in a patent case. The
10 legislative history of section 284 after Seagate was
11 decided shows that Congress was well aware of the
12 Seagate standard and explored the impact of
13 Seagate on the issue of enhanced damages.

14 (3) Ultimately, Congress did not substantively
15 amend section 284 of title 35, United States Code,
16 knowing that no action from Congress would be re-
17 quired to ensure that the standard established in
18 Seagate would remain in place and continue to gov-
19 ern the enhancement analysis under that section.

20 (b) SENSE OF CONGRESS.—It is the sense of Con-
21 gress that—

22 (1) the Seagate standard has governed and con-
23 tinues to govern the enhanced damages analysis
24 under section 284 of title 35, United States Code;
25 and

- 1 (2) this intent of Congress should be considered
- 2 in any decisions interpreting that section.