

Exploring Patent Damages: Gino Cheng Discusses the Federal Circuit's *Brumfield* Decision at FRONTEO's IP Webinar

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Winston & Strawn partner Gino Cheng presented during FRONTEO's Intellectual Property webinar, "Update: Revisiting Damages Under U.S. Patents for Foreign Conduct," on September 25, 2024.

The discussion explored the trajectory of patent infringement liability under 35 U.S.C. § 271(a) and § 271(f) and the Federal Circuit's recent decision in *Brumfield v. IBG*.

In 2015, the Federal Circuit ruled that patent infringement liability under 35 U.S.C. § 271(f) for exports couldn't exceed that for domestic infringement under § 271(a), denying lost foreign profits to a patentee. The U.S. Supreme Court overturned this in its 2018 *WesternGeco II* decision, allowing for the recovery of lost foreign profits. Recently, in the *Brumfield* decision (March 27, 2024), the Federal Circuit sought to expand damages under § 271(a) to match those under § 271(f), with the patentee claiming nearly one billion dollars for foreign use. Will this lead to a Supreme Court petition in November?

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[Read Winston's summary and analysis of the *Brumfield* decision here.](#)

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