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Supreme Court Rejects New Federal Circuit Defense to Induced Patent Infringement

Today, the U.S. Supreme Court reversed a recent Federal Circuit opinion that allowed, for the first time, a party to escape induced infringement liability based on a good-faith belief that the patent was invalid. This case continues the Supreme Court trend of reversing the Federal Circuit when it determines that the lower court has gone astray but is unusual in that it reinforces patent holders' rights rather than reducing them, as has been the trend of late in the High Court.

INDUCED PATENT INFRINGEMENT

Direct patent infringement is a strict liability offense; the act itself makes a party liable regardless of the state of mind of the offender. Induced infringement is different. For induced infringement liability to attach under 35 U.S.C. § 271(b), the infringer must "actively induce" the infringement; courts have long held this implies that intent is required. Even with this requirement, however, courts have also held that a good-faith belief that one (or the party one is inducing) is not, in fact, infringing the patent is a valid defense to induced infringement liability. Recently, the Federal Circuit gave life to a new defense for the first time, namely, that a good-faith belief that the patent one is accused of indirectly infringing is invalid is a valid defense to induced infringement. The Supreme Court granted *certiorari* to determine if this new defense was proper and has now reversed, declaring the Federal Circuit's new defense improper.

TODAY'S DECISION

The Court split 5-2¹, as foreshadowed at oral argument. Several of the justices seemed willing to allow the new defense because it is similar to aiding and abetting in the criminal context (Scalia) or because good-faith beliefs of noninfringement and invalidity are two sides of the same coin (Kagan). In the end, however, Justice Sotomayor carried the day, arguing that the statutory presumption of patent validity could not be overcome by a good-faith belief of invalidity, noting there is no such statutory presumption in the infringement area.

WHY THE CASE MATTERS

While this case follows the trend of the last several years in that the Supreme Court showed once again it is willing to reverse the Federal Circuit, when necessary, to prevent it from going astray, this case bucks the other recent Supreme Court patent trend of reducing patent holders' rights. For example, in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), the Court severely scaled back the types of computerized business methods eligible for patenting. In *Octane Fitness, LLC v. Icon Health & Fitness, Inc.*, 134 S. Ct. 1749 (2014), the Court reduced the standard for awarding attorneys' fees in patent cases.

As a final example, in *Highmark Inc. v. Allcare Health Management System, Inc.*, the Court held that the Federal Circuit's practice of reviewing attorneys' fees awards *de novo* was improper and that a review under the abuse of discretion standard was more appropriate.

Here, however, the Court has undeniably strengthened the rights of patent holders by blocking a potentially extremely powerful defense to induced patent infringement. This new defense was potentially powerful because an alleged induced infringer could possibly escape indirect inducement liability with an opinion of counsel that the asserted patent is invalid. This new avenue for avoiding indirect infringement liability is now, however, foreclosed. The Court's reversal not only prevents derogating patent rights in this particular case but also sends a strong message to the Federal Circuit that creating another new defense to infringement liability in the future is likely to meet an untimely end at the High Court. [Commil USA, LLC v. Cisco Systems, Inc.](#), No. 13-896, 575 U.S. ____ (2015).

¹Justice Kennedy authored the majority opinion. Justice Scalia authored a dissent, joined by Chief Justice Roberts. Justice Thomas joined the majority but only as to Parts II-B and III. Justice Breyer took no part in considering the case.

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[Nuala E. Droney](#) | [Craig A. Raabe](#) | [Brian E. Moran](#)

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