

## Litigation Alert

June 5, 2014

### Supreme Court Limits Induced Infringement Liability—For Now

On June 2, 2014, in *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, et al., No. 12-786, the Supreme Court unanimously rejected the Federal Circuit's conclusion that a defendant can be liable for inducing infringement of a patent under Section 271(b) of the Patent Act where no one has directly infringed that patent. The Court (Alito, J.) held that induced infringement must be predicated on a finding of direct infringement and that, under the Federal Circuit's prevailing interpretation of Section 271(a), a method patent could not be infringed unless a single entity performed each step. The Court assumed without deciding the direct-infringement question under Section 271(a).

#### Background

In *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318, 1329 (2008), the Federal Circuit held that "where the actions of multiple parties combine to perform every step of a claimed method, the claim is directly infringed only if one party exercises 'control or direction' over the entire process such that every step is attributable to the controlling party."

In *Limelight*, respondents sued Limelight for directly infringing a method patent by practicing some elements of the patent itself and leaving its customers to perform the remainder. Relying on *Muniauction*, a district court dismissed the respondents' claim because Limelight did not itself perform each element of the claimed method. A panel of the Federal Circuit affirmed.

The *en banc* Federal Circuit then reversed the panel's decision, holding that Limelight instead could be held liable for induced patent infringement under Section 271(b) because induced infringement liability arises "when a defendant carries out some steps constituting a method patent and encourages others to carry out the remaining steps — even if no one would be liable as a direct infringer" under Section 271(a).

#### No Induced Infringement Without Direct Infringement

The Supreme Court rejected that conception of induced infringement liability. The Court reasoned that such a rule would "deprive Section 271(b) of ascertainable standards" by making it impossible for courts to assess when a patent holder's rights have been invaded and "would require the courts to develop two parallel bodies of infringement law: one for liability for direct infringement, and one for liability for inducement." Assuming without deciding that the *Muniauction* standard for direct infringement was correct, the Court held that the lack of any direct infringement under Section 271(a) precluded a finding of induced infringement under Section 271(b).

The Court reversed the Federal Circuit's judgment and remanded the case, noting that the Federal Circuit would then be free to revisit its interpretation of Section 271(a) if it so chose.

**Practice Tips**

The Federal Circuit may well revisit the question of direct infringement liability under Section 271(a) in an appropriate case at a later date. But unless and until it does, *Limelight* will make succeeding on infringement claims in method patent cases more difficult where multiple entities are involved. After *Limelight*, a patent holder must show not only that a would-be defendant induced a third party's conduct under Section 271(b), but also that the third party's actions would constitute direct infringement of the patented method under Section 271(a).

The Supreme Court's decision is particularly important for network-based industries, where a company may be targeted for an infringement suit based on conduct involving third parties outside of its control. Akin Gump filed an amicus brief in *Limelight* on behalf of a non-profit wireless communications industry association urging the Court's holding.

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