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Supreme Court Holds That "Good Faith" Belief in Patent Invalidity is No Defense to Induced Infringement

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The U.S. Supreme Court today in *Commil USA, LLC v. Cisco Systems, Inc.* ruled that a "good faith" belief that a patent is invalid was not a defense to a claim of induced infringement. Reversing the Federal Circuit, the Court held that liability for inducing a third party to infringe a patent, which requires that a defendant know of the patent and that the induced acts constitute patent infringement, was a separate issue from validity of the patent. According to the Court, when infringement is the issue, the validity of the patent is not the question to be confronted.

Commil USA owned a patent for a method for implementing short-range wireless networks. It sued Cisco Systems, which makes and sells wireless networking equipment, alleging direct infringement by making and using networking equipment and inducing others to infringe by selling the infringing equipment for others to use. The first jury verdict found direct infringement, but not induced infringement. The district court granted a new trial on induced infringement because of comments made during trial by defense counsel, and the jury returned a verdict for Commil on induced infringement and awarded \$63.7 million in damages. Cisco had offered evidence of its good-faith belief in the invalidity of the patent, but the district court excluded this evidence.

On appeal, the Federal Circuit concluded that the jury was improperly instructed that Cisco could be liable for induced infringement if it "knew or should have known" that its customers infringed, since this allowed the jury to find liability based on mere negligence where knowledge is required. That ruling was not raised before the Court. What was at issue before the Court was the Federal Circuit's further holding that the district court had erred in excluding evidence that Cisco had a good-faith belief that the patent was invalid.

On appeal, the majority of the Court reversed the Federal Circuit. Importantly, the Court first reaffirmed that under 35 USC 271(b), liability for induced infringement exists only if the defendant *knew* of the patent and *knew* that the induced acts constitute patent infringement. Otherwise, even if a defendant reasonably read the patent's claims differently from the plaintiff, it would still be liable because it knew the acts *might* infringe. Liability requires more.

The Court then held that a good-faith belief regarding validity was not a defense to a claim of induced infringement. Infringement and validity are separate issues and appear in separate parts of the Patent Act. Further, under the Patent Act a patent is "presumed valid," and that bar can only be overcome by clear and convincing evidence. Allowing a defendant to avoid liability if it proved that it reasonably believed the patent was invalid would lessen the force of that presumption.

Justice Scalia and Chief Justice Roberts agreed with the reaffirmation that inducement requires knowledge that the acts constitute infringement, but dissented on the good-faith belief regarding validity as a defense. Interestingly, both the majority opinion and the dissent commented on "abusive patent assertion" and frivolous cases. The majority explained that the district courts have the tools of Rule 11 sanctions and awarding of fees to address the problem. The dissent, however, asserted that the majority approach "increases the *in terrorem* power of patent trolls."

If you have questions regarding how this Supreme Court decision may affect your business, or other questions about your company's intellectual property, contact the author of this alert, W. Edward Ramage, or a member of the Firm's Intellectual Property group.