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The Supreme Court Holds That Induced Infringement Requires Knowledge That the Induced Acts Constitute Patent Infringement

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The Supreme Court has resolved a long-standing ambiguity in the patent statute relating to “whether a party who actively induces infringement of a patent ... must know that the induced acts constitute patent infringement.” In *Global-Tech Appliances v. SEB*, the Court held that induced infringement requires knowledge that the induced acts constitute patent infringement. The Court also applied the doctrine of willful blindness to satisfy the knowledge requirement for inducement.

First, the Supreme Court interpreted the patent statute to determine what it means to “actively induce” infringement. The Patent Act states that, even where a party does not, itself, directly infringe a patent, it will be liable for any infringement it actively induces another party to commit. “Whoever actively induces infringement of a patent shall be liable as an infringer.” 35 U.S.C § 271(b). The Court determined that “actively inducing” infringement requires intent.

“Although the text of §271(b) makes no mention of intent, we infer that at least some intent is required. ... The addition of the adverb ‘actively’ suggests that the inducement must involve the taking of affirmative steps to bring about the desired result When a person actively induces another to take some action, the inducer obviously knows the action that he or she wishes to bring about.”

The knowledge required for inducement is “knowledge that the induced acts constitute patent

infringement,” the Supreme Court held. This conclusion was reached by interpreting the knowledge requirement for inducement consistently with the knowledge needed for contributory infringement. Contributory infringement “requires knowledge of the existence of the patent that is infringed” and “it follows that the same knowledge is needed for induced infringement.”

Second, the Supreme Court applied the doctrine of willful blindness to induced patent infringement, holding that a defendant cannot escape liability for induced infringement by willfully avoiding gaining actual knowledge of relevant patents. “Given the long history of willful blindness [in criminal law] and its wide acceptance in the Federal Judiciary, we can see no reason why the doctrine should not apply in civil lawsuits for induced patent infringement.”

Willful blindness requires that “(1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact.” For example, “a willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts.”

Although the Supreme Court held that the Federal Circuit applied the wrong standard – “deliberate indifference to a known risk that a patent exists is not the appropriate standard” – it affirmed the Federal Circuit’s decision because “the evidence in this case was plainly sufficient

to support a finding of [defendant's] knowledge under the doctrine of willful blindness."

Defendant Global-Tech Appliances copied SEB's deep fryer, manufactured a knock-off deep fryer overseas, and sold it to a business partner, who in turn sold it in the United States. The defendant knew that SEB's deep fryer was an innovation in the American market and embodied advanced technology. The defendant, therefore, must have known there was a high probability that this technology was patented in the United States.

The defendant also deliberately avoided learning about the plaintiff's patent on the fryer. First, it purchased an overseas model of the plaintiff's fryer to serve as the model for its knock-off. The Court inferred that the reason for

purchasing an overseas model was that such a product would likely not bear U.S. patent markings.

Second, and "even more telling" the defendant did not tell its patent attorney, from whom it sought a right-to-use opinion, that it had modeled its product directly off the plaintiff's product. The Supreme Court could "not fathom what motive [the defendant] would have had for withholding this information other than to manufacture a claim of plausible deniability in the event that his company was later accused of patent infringement."

Thus, applying the willful blindness doctrine, the Supreme Court affirmed that the defendant was liable for induced infringement.

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