

Induced infringement: Are you being willfully blind?

U.S Supreme Court holds that actual knowledge is required for induced infringement

The U.S. Supreme Court's recent decision in *Global-Tech. App., Inc. v. SEB S.A.* clarified the knowledge requirement for inducing patent infringement and held that liability for inducing patent infringement requires knowledge that the induced acts constitute patent infringement. The Court stated that inducement under 35 U.S.C. 271(b) requires the same knowledge that is also required under contributory infringement – knowledge of the existence of the patent that is infringed. The Court rejected the Federal Circuit's "deliberate indifference" test for assessing the knowledge requirement of inducing infringement, which allowed a finding of knowledge when there is merely a known risk that a patent may exist covering the infringing product. While deliberate indifference will not satisfy the knowledge requirement, the Supreme Court stated that knowledge may be found under the doctrine of willful blindness.

Pentalpha Enterprises copied an SEB deep fryer and supplied it to Sunbeam, who resold the fryer in the U.S. under its own trademarks. SEB sued Sunbeam. After settling with Sunbeam, SEB sued Pentalpha for inducing Sunbeam and other resellers to infringe SEB's patents. In bringing the deep fryer to resellers such as Sunbeam, Pentalpha had purchased an SEB deep fryer in Hong Kong and copied the fryer except for the cosmetic features. Pentalpha hired a patent attorney to conduct a right-to-use analysis, but failed to tell the attorney that the fryer was copied directly from SEB's product.

A jury found Pentalpha induced infringement, and the Federal Circuit affirmed the District Court's judgment. *SEB S.A. v. Montgomery Ward & Co., Inc.*, 594 F.3d 1360, 1377 (Fed. Cir. 2010). The Federal Circuit found that the facts demonstrated "considerable evidence of deliberate indifference" and that Pentalpha deliberately ignored the risk that SEB had a patent covering its product.

The Supreme Court rejected that standard and stated that the "deliberate indifference to a known risk that a patent exists is not the appropriate standard" for induced infringement. Rather, inducement requires knowledge of the patent and that the acts constitute infringement.

Despite rejecting the Federal Circuit's "deliberate indifference" standard, the Supreme Court affirmed the judgment of induced infringement because Pentalpha's actions constituted willful blindness, which can satisfy the knowledge requirement. A party is willfully blind when they: (1) believe there is a high probability that a fact exists, and (2) take deliberate actions to avoid learning of that fact. In the *Global-Tech* case, Pentalpha and its CEO were well versed in the patent system. Pentalpha was aware that SEB's product was in the U.S. market but copied a foreign model, which would not bear any U.S. patent markings. In seeking "clearance" to make the product, Pentalpha failed to tell its attorney that its product was a direct knockoff of SEB's deep fryer. The Supreme Court found that these facts demonstrated that Pentalpha willfully blinded itself to the infringing act because it: (1) believed there was a high probability that SEB's fryer was patented, and (2) deliberately took steps to avoid knowing that fact.

The rejection of the deliberate indifference standard is beneficial to parties accused of indirect infringement. This is because a known risk that the sale of the product may induce infringement cannot satisfy the knowledge requirement. The Supreme Court decision, however, still highlights the need for companies to be proactive when they believe that there is a high probability that a patent exists covering its product.

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