Armstrong Teasdale

Client Alert

June 2, 2011

Supreme Court Ruling Redefines the Standard for Proving Inducement of Patent Infringement

On May 31, 2011, the Supreme Court issued an opinion in *Global-Tech Appliances, Inc. v. SEB S.A.*, No. 10-6, 2011 WL 2119109 that redefines what is necessary to establish a claim for inducement and clarifies the language of § 271(b). The ruling establishes a heightened standard that will undoubtedly make it more difficult to prove inducement in future patent infringement cases.

Generally speaking, induced infringement occurs when a party instructs (or "induces") another to perform some process, or manufacture some product, that infringes a third-party's patent rights. An example would be a company that sells a kit containing all the parts to an infringing product, along with instructions that tell the buyer how to assemble the product such that it falls within the scope of the patent. That company may be liable for inducing patent infringement when a customer purchases the kit and uses the infringing product as instructed by the company. According to 35 U.S.C. § 271(b), a party that induces another to infringe can be held liable for the infringement: "whoever actively induces infringement of a patent shall be liable as an infringer."

In its 8-1 decision, the Supreme Court determined that inducement requires an additional element previously applied only to inducement's sister doctrine, contributory infringement - *knowledge* on the part of the accused inducer. Specifically, the accused inducer must *know* that his conduct will lead another to perform in a way that constitutes an infringement of a third-party's patent. This decision results in the Court's abandonment of the Federal Circuit's previously used "deliberate indifference" test.

In our example, the company can only be held liable for inducing infringement if it *knows* that its kit contains a product and assembly instructions that will infringe on a third-party's patent rights.

It is worth noting, however, that the Supreme Court's decision establishes a broad definition for knowledge that includes not only *actual* knowledge, but also "willful blindness." Accordingly, someone that does not know it is inducing infringement can still be held liable if he subjectively believes his inducement *could* lead to infringement and he deliberately acts to avoid learning of that infringement. In his dissent, Justice Kennedy disagreed with this broad definition of knowledge, stating that "willful blindness is not knowledge; and judges should not broaden a legislative proscription by analogy."

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