



U.S. Supreme Court: Good Faith Belief That a Patent Is Invalid Is No Defense to Induced Patent Infringement

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In a sharply divided opinion, the Supreme Court has determined that a party may be liable for inducing the infringement of a patent even if it has a good faith belief that the patent is invalid. The decision, *Commil USA, LLC v. Cisco Systems, Inc.*, found that because by statute a patent is presumed to be valid, subjective beliefs about its validity are irrelevant. The decision is a significant victory for patent holders and strengthens their position with respect to accused infringers, both prior to and in litigation.

Induced infringement is akin to other legal theories that hold someone liable for the actions of another, such as aiding and abetting or *respondeat superior*. It applies when one party induces another to take actions that amount to patent infringement. The doctrine allows a patent holder to seek redress from the party that is primarily responsible for infringing the patent, even if that party's conduct, by itself, does not actually infringe.

Examples of induced infringement include designing a product and employing a third party to manufacture the product, which when completed infringes on a patent. Or more commonly, a manufacturer may induce infringement where it instructs others on how to use a product in an infringing way. In both situations it is usually preferable to pursue the entity whose actions are the driving force behind infringement. The Supreme Court's decision makes it easier for patent holders to sue the inducing party, which is important because the cost of chasing smaller, downstream users may make enforcement impractical.

The decision is remarkable in that it dramatically curtails a decision issued by the Supreme Court only two years ago, *Global-Tech Appliances, Inc. v. SEB S.A.*, which found that a party cannot induce patent infringement unless it knows that the induced acts would constitute infringement. The *Commil USA* decision distinguishes *Global-Tech* by noting that infringement and invalidity are separate issues. Dissenting, Justice Scalia highlighted the tension between the two cases, noting that because one cannot infringe an invalid patent, it would be "impossible for anyone who believes that a patent cannot be infringed [because it is invalid] to induce actions that he *knows* will infringe it."

Practice Note: Changing the Standard for Willful Infringement?

The *Commil USA* decision can be read to make it easier to show that infringement is willful, thus potentially triggering heightened damages and other penalties. Currently, patent law provides that a defendant's good faith belief that a patent is invalid is a factor that may be considered in deciding whether a party infringed willfully. That law has been developed only in lower courts.

Although the Supreme Court certainly did not intend for its decision in *Commil USA* to be cited in this manner, its holding that subjective beliefs about validity are irrelevant in the face of the statutory presumption that issued patents are valid may be applied in the willfulness context, making it easier for a patent holder to establish that a defendant's actions were willful and further increasing the financial risk for accused infringers.

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