

Latest Intellectual Property News



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Welcome to The Latest Intellectual Property News, a newsletter for updating you with recent information about Intellectual Property.

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VALIDITY BELIEF IS NO DEFENSE FOR INDUCEMENT

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The United States Supreme Court held (6-2) that knowledge of, or belief in, a patent's validity is not required for induced infringement under §271(b). *Commil USA, LLC v. Cisco Sys., Inc.*, slip op. 13-896 (May 26, 2015). In other words, an accused infringer's belief of a patent's invalidity is not a defense to inducement. Although the precise issue addressed concerns a claim of improper inducement to infringe, the Court clearly stated its analysis also applies to direct infringement and contributory infringement.

Commil sued Cisco for patent infringement under a theory of direct and indirect (inducement) infringement. During trial, Cisco sought to defend willfulness by proffering its good-faith belief that Commil's patent was invalid. The district court excluded this evidence, and, following two trials, the jury rendered a verdict of infringement under both theories and awarded Commil \$64 million in damages. The district court denied Cisco's post-trial motions and entered judgment in Commil's favor.

On appeal to the United States Court of Appeals for the Federal Circuit, Cisco argued that the trial court erred in excluding Cisco's evidence that it had a good-faith belief that Commil's patent was invalid. Beginning with the observation that it is "axiomatic that one cannot infringe an invalid patent," the Federal Circuit reasoned that "evidence of an accused inducer's good-faith belief of invalidity may negate the requisite intent for induced infringement."

The Court reversed the Federal Circuit. For inducement, *Global-Tech* requires proof that the defendant knew its acts were infringing. The scienter requirement for inducement concerns infringement, i.e., per §271(b) "actively induce[d] infringement." The plain meaning requires intent to "bring about [infringement]." Belief about validity is irrelevant to negate the scienter required under §271(b). Validity and infringement are separate matters. Invalidity is merely a defense to liability.

ADDITIONAL INFORMATION

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