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# The U.S. Supreme Court Rules On Induced Infringement

**June 3, 2014**

On June 2, 2014, the U.S. Supreme Court issued its decision in *Limelight Networks Inc. v. Akamai Technologies Inc. et al.*[1], holdingthat to prevail on a theory of patent inducement one party must be responsible for performing every step of a patent claim.

Akamai Technologies Inc. ("Akamai") is the exclusive licensee of U.S. Patent No. 6,108,703 (the "'703 patent"), claiming a method of storing and accessing Internet-based files. Akamai sued Limelight Networks Inc. ("Limelight") for patent infringement of the '703 patent in 2006. The '703 patent requires the host to "tag" the stored data. Limelight performed all the required steps of the '703 patent except for the tagging step. As a result, Akamai pursued a theory of induced infringement on the grounds that Limelight instructed users how to perform the tagging step.

A jury in the District of Massachusetts found Limelight liable for infringement and awarded Akamai $40 million. Shortly thereafter, the Court of Appeals for the Federal Circuit issued a decision in *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318 (2008), holding that a defendant that performed some steps of a claimed method and instructed customers to perform the remaining steps did not induce infringement because no single party performed every step of the claimed method. The *Muniauction* decision further explained that the single infringer requirement can be met if a single defendant "exercises 'control or discretion' over the entire process such that every step is attributable to the controlling party."[2]

Limelight moved for reconsideration in light of the *Muniauction* decision and the District Court agreed, holding that Limelight did not infringe. The Federal Circuit took up the case, ultimately affirming the District Court.[3] The Federal Circuit then took up the case *en banc* and reversed itself, holding that a party that performs some steps of a claimed method and encourages others to carry out the remaining steps is liable for inducement under 35 U.S.C. § 271(b).[4]

The Supreme Court granted Limelight's request for certiorari to address "whether a defendant may be liable for inducing infringement of a patent under 35 U.S.C. § 271(b) when no one has directly infringed the patent under § 271(a) or any other statutory provision."

Justice Alito, writing for a unanimous Supreme Court, held that “The Federal Circuit’s [en banc decision] fundamentally misunderstands what it means to infringe a method patent. . . . Assuming without deciding that the Federal Circuit's holding in *Muniauction* is correct, there has simply been no infringement of the method in which respondents have staked out an interest, because the performance of all the patent's steps is not attributable to any one person."[5] Accordingly, the Supreme Court held that because Limelight did not perform all the claimed steps in the Akamai patent and cannot otherwise be held responsible for all those steps, Limelight does not induce infringement. Further, the Supreme Court denied Akamai's request to review the Federal Circuit's *Muniauction* decision, at least for the time being, leaving that holding intact.[6]

Thus, *Akamai* stands for the proposition that in order to induce infringement, a single party must perform every step of a claimed method by itself or must exercise control or discretion over the entire process such that every step is attributable to that party.

[1] 572 U.S. __ (2014).

[2] 532 F.3d at 1329.

[3] 629 F.3d 1311,1320.

[4] 692 F.3d 1301, 1319 (*per curiam*).

[5] 572 U.S. at 5-6.

[6] *Id.* at 10.

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