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Supreme Court Holds That Belief of a Patent's Invalidity Is Not a Defense to Inducement of Infringement

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On May 26, 2015, in *Commil v. Cisco*,[1] the Supreme Court held by a 6-2 vote that an accused infringer's belief that a patent is invalid does not serve as a defense to charges of inducing infringement of the patent under § 271(b) of the Patent Act.

The petitioner, Commil, owned a patent for a method of implementing short-range wireless networks. It claimed that Cisco's networking equipment directly infringed that patent and that Cisco had induced its customers to infringe the patent by selling the networking equipment, knowing that its customers would use the equipment for wireless networks. At trial, Cisco was found liable for direct and induced infringement, and the jury awarded damages of approximately $64 million for the indirect infringement. Cisco appealed to the U.S. Court of Appeals for the Federal Circuit, arguing that its good-faith belief that the patent was invalid should have provided a defense to inducement liability. The Federal Circuit agreed and held that evidence of an accused inducer's good-faith belief of invalidity may negate the requisite intent for induced infringement.

On appeal, the U.S. Supreme Court reversed the Federal Circuit. In doing so, the Court first affirmed the holding in *Global-Tech*,[2] under which liability for induced infringement may attach only if the defendant knew of the patent and knew that the induced acts constituted patent infringement. Though direct infringement is a strict-liability offense in which the defendant's mental state is irrelevant, *Global-Tech* requires a higher threshold for liability for inducement. The Court then addressed the question of the appeal: *Whether a defendant's belief that a patent is invalid is a defense to induced infringement under 35 U.S.C. § 271(b)*. The Court held that it is not.

The Court explained that non-infringement and invalidity are two separate defenses with separate provisions in the Patent Act, and treating them the same would "conflate" issues of infringement and validity.[3] Moreover, legally speaking, a patent is "presumed valid" under the Patent Act.[4] While some Justices harped, during oral argument, on the irony of the so-called presumption of validity given the overall outcome of *inter partes* reviews, in its written opinion, the Court found that the presumption of validity fits into a statutory framework that sets the procedures, burdens of proof and time frames for challenging a patent's validity. The Court reasoned, essentially, that a belief-of-invalidity defense to inducement would short-circuit this statutory framework and would undermine the "orderly administration" of the patent system.[5]

While some commentators have argued that the Court should allow a belief-of-invalidity defense in order to fight back against abusive patent assertion entities, the Court stated that District Courts have other means to combat abusive patent litigations.[6] Namely, when faced with frivolous lawsuits, District Courts may sanction the attorneys under Rule 11 of the Federal Rules of Civil Procedure, and may shift costs to prevailing parties under 35 U.S.C. § 285.

Justices Scalia and Roberts dissented, arguing that, semantically speaking, one cannot infringe an invalid patent, and thus a defendant who believed that a patent was invalid could not have known that she was infringing the patent. Yet under the majority's decision, patentees may celebrate the Court's disavowal of a formidable defense to inducement. However, the euphoria that may otherwise be felt by patentees is tempered by the Court's confirmation that inducement requires proof that the accused infringer knew its acts were an infringement of the asserted patent claims.

[1] *Commil USA, LLC v. Cisco Systems, Inc.*, 575 U.S. ____ (2015).

[2] *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. ____ (2011).

[3] *Commil USA, LLC v. Cisco Systems, Inc.*, 575 U.S. ____ (2015) (slip op., at 10).

[4] *Id.*

[5] *Id.*, at ____ (slip op., at 11).

[6] *Id.*, at ____ (slip op., at 13–14).

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