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35 U.S.C. § 271(b) imposes liability on anyone who “actively induces infringement of a patent.” In 2011, the Supreme Court held that Section 271(b) requires actual “knowledge that the induced acts constitute patent infringement.” *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068 (2011). Today, the Supreme Court granted certiorari in *Commil USA, LLC v. Cisco Systems, Inc.*, No. 13-896, to decide whether a defendant’s good-faith belief that a patent is invalid defeats the actual-knowledge requirement.

Commil USA holds a patent on a method for implementing wireless networks. Commil claimed that Cisco induced its customers to infringe Commil’s patent through the use of certain networking equipment manufactured by Cisco. Prior to trial, Cisco sought to introduce evidence of its good-faith belief that Commil’s patent was invalid. The district court excluded the evidence, and the jury returned a verdict finding Cisco liable for inducing infringement.

A divided panel of the Federal Circuit vacated in part and remanded for a new trial. The majority held that the district court had erred by excluding Cisco’s evidence of its good-faith belief that the patent was invalid. It stated that “evidence of an accused inducer’s good-faith belief of invalidity may negate the requisite intent for induced infringement” because “[i]t is axiomatic that one cannot infringe an invalid patent.” *Commil USA, LLC v. Cisco Systems, Inc.*, 720 F.3d 1361, 1368-69 (Fed. Cir. 2013). The majority also stated, however, that a belief of invalidity would not necessarily “preclud[e] a finding of induced infringement,” and would merely provide additional evidence relevant to the actual-knowledge determination. *Id.* at 1369. Judge Newman dissented, arguing that a defendant’s liability for induced infringement cannot be negated by its belief “that it might succeed in invalidating the patent.” *Id.* at 1374.

After Commil filed a petition for a writ of certiorari, the Supreme Court invited the United States to file an *amicus* brief expressing the views of the United States regarding the case. The Solicitor General’s brief urged the Court to grant certiorari and reverse the Federal Circuit’s holding. It argued that a defense based on the accused inducer’s good-faith belief in the patent’s invalidity is inconsistent with the Patent Act’s text and structure and that it may undermine Section 271(b)’s efficacy in deterring and remedying infringement.

The Supreme Court’s decision in this case will be significant for holders of intellectual property and companies accused of inducing infringement. If the Court affirms the Federal Circuit majority, defendants accused of inducing others to infringe a patent may assert a powerful defense based on their own analysis of the validity of patent claims. In that environment, companies may take a hard look at asserted patent claims in order to determine whether there is a good-faith basis for questioning the patent’s validity.

Absent extensions, *amicus* briefs in support of the petitioner will be due on January 27, 2015, and *amicus* briefs in support of the respondent will be due on February 26, 2015. Any questions about this case should be directed to Andrew Pincus (+1 202 263 3220) or Paul Hughes (+1 202 263 3147) in our Washington Office.