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*Commil USA, LLC v. Cisco Systems, Inc.*, No. 13-896 (previously described in the December 5, 2014, Docket Report)

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, in *Commil USA, LLC v. Cisco Systems, Inc.*, No. 13-896, the Court held that a defendant’s good-faith belief that a patent is invalid is not a defense to a claim of inducing infringement of that patent.

Commil USA holds a patent on a method for implementing wireless networks. Commil claimed that Cisco induced its customers to infringe Commil’s patent. Prior to trial, Cisco sought to introduce evidence of its 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 belief that the patent was invalid because such evidence could negate the requisite intent for induced infringement.

Today, the Supreme Court vacated the Federal Circuit’s decision. In an opinion written by Justice Kennedy, the majority began by reaffirming the Court’s holding in *Global-Tech* that induced infringement can attach only if the defendant knew of the patent and also knew that “the induced acts constitute patent infringement.” 131 S. Ct. at 2068. The Court clarified that knowledge of the patent alone is insufficient and that induced-infringement claims also require proof that the defendant knew that the induced acts were infringing. The Court next held that a defendant’s belief that a patent is invalid is not a defense to a claim of induced infringement. The Court explained that infringement and validity are separate matters under patent law and appear in separate parts of the Patent Act. In addition, the Court stated, allowing this defense would undermine the presumption of patent validity and circumvent the requirement that a defendant must show by clear and convincing evidence that a patent is invalid.

The Court also identified practical reasons not to create a defense based on the defendant’s belief that the patent was invalid. Specifically, the Court noted that accused inducers who believe that a patent is invalid have other ways to obtain a ruling to that effect, including seeking *ex parte* reexamination of the patent by the Patent and Trademark Office. The Court also found that creating such a defense could render litigation more burdensome for all involved.

Justice Scalia wrote a dissenting opinion, joined by the Chief Justice. The dissent argued that only valid patents may be infringed, and thus anyone with a good-faith belief in a patent’s invalidity necessarily believes that the patent cannot be infringed. Accordingly, the dissent would hold that a good-faith belief in a patent’s invalidity is a defense to a claim for induced infringement of the patent.

The Supreme Court’s decision is of significant importance to holders of intellectual property and companies accused of inducing patent infringement. Under the ruling, defendants accused of inducing infringement will not be able to rely on evidence of their belief that the patent was invalid.

Any questions about this case should be directed to Andrew Pincus (+1 202 263 3220) in our Washington Office.