



Induced Infringement Requires Actual Knowledge that Induced Acts Constitute Patent Infringement

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In *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. ____ (May 31, 2011), the Supreme Court held that induced infringement under 35 U.S.C. §271(b) requires actual knowledge that the induced acts constitute patent infringement. The Court further held that “willful blindness”—defined as “deliberate actions to avoid confirming a high probability of wrongdoing”—satisfies the actual knowledge requirement.

The Infringing Acts

The plaintiff, SEB, sold a patented and commercially successful deep fryer for home use. Sunbeam, a competitor of SEB, hired Hong Kong-based Global-Tech to manufacture a deep fryer for Sunbeam to sell in the United States. Global-Tech purchased an SEB fryer in Hong Kong and copied all but its cosmetic features. Because the SEB fryer was purchased in Hong Kong, it bore no U.S. patent markings.

Global-Tech then retained a patent attorney to perform a right-to-use search. Global-Tech did not tell the attorney that it had copied SEB’s fryer. The attorney failed to locate SEB’s patent, and issued an opinion letter stating that Global-Tech’s fryer did not infringe any patents that he had found. Global-Tech began selling its deep fryers to Sunbeam and other companies, who resold them in the U.S. at a lower price than SEB’s fryers.

SEB Wins a Jury Verdict; The Federal Circuit Affirms

SEB sued, asserting direct and induced infringement claims against Global-Tech. On appeal from a jury verdict for SEB, the Federal Circuit agreed with Global-Tech that induced infringement under §271(b) requires proof that the alleged infringer knew of the patent, but the court still affirmed the judgment on the grounds that Global-Tech had “deliberately disregarded a known risk” that SEB’s fryer was patented. In the court’s opinion, this “deliberate disregard” fulfilled the actual knowledge requirement. The Supreme Court granted Global-Tech’s petition for certiorari.

Induced Infringement Under 35 U.S.C. § 271(b) Requires Knowledge of the Patent

The Supreme Court first considered whether §271(b) requires proof that the alleged infringer knew of the patent. Section 271(b) states: “Whoever actively induces infringement of a patent shall be liable as an infringer.” The ambiguity was whether inducement requires only that the alleged infringer induce another to engage in conduct that *happens* to infringe a patent, regardless of whether the alleged infringer knows of the patent, or whether the alleged infringer must induce another to engage in conduct that the alleged infringer *knows* infringes a patent.



To resolve the ambiguity, the Court first analyzed the case law that predated the statute's enactment in 1952, but that did not resolve the issue. The Court observed that inducement was historically treated as simply one type of contributory infringement. When Congress enacted the Patent Act in 1952, it separated induced infringement and contributory infringement into separate offenses under §§271(b) and (c).

Because inducement has its roots in contributory infringement, the Court next looked to its decision in *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476 (1964) ("*Aro II*"). According to the Court, the *Aro II* court held that contributory infringement under §271(c) required that the accused infringer know of the patent. The Court held that induced infringement under §271(b) should likewise require proof that the accused infringer know of the patent.

Willful Blindness Constitutes Knowledge

Having decided that issue, the Court then considered whether the evidence supported a finding that Global-Tech knew of SEB's patent. The Court first held that the Federal Circuit had applied the wrong standard, because "deliberate disregard" did not fulfill the actual knowledge requirement. The Court nevertheless affirmed the judgment under the doctrine of willful blindness. The Court noted that the doctrine of willful blindness is well established in criminal law, and has been adopted by every Court of Appeals. The Court therefore thought it appropriate to apply the doctrine to patent law as well.

Willful Blindness Defined: More than Negligence or Recklessness

The Supreme Court synthesized prior Court of Appeals decisions on willful blindness as having two core elements: (1) the defendant must subjectively believe that there is a high probability that a fact exists; and (2) the defendant must take deliberate actions to avoid learning of that fact. Willful blindness, therefore, represents a higher level of culpability than recklessness or negligence. A willfully blind party "is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts."

Global-Tech was Willfully Blind

The Court found that Global-Tech was willfully blind. The Court relied on many facts, including Global-Tech's belief that SEB's fryer embodied advanced technology, Global-Tech's decision to copy a foreign model of the fryer which would not have included U.S. patent markings even though it knew it was designing a product for the U.S. market, and Global-Tech's decision not to tell its patent attorney that its fryer was simply a knockoff of SEB's fryer. All these facts led the Court to conclude that Global-Tech subjectively believed there was a high probability that SEB's fryer was patented, and that Global-Tech took deliberate steps to avoid knowing that fact.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors:

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