



## ARE Patent Litigation Alert: Federal Circuit Takes On Divided Infringement Issue

April 22, 2011

Author(s): Charles R. Macedo

On April 20, 2011, the U.S. Court of Appeals for the Federal Circuit granted a petition for rehearing en banc in *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, No. 2009-1372, -1380, -1416, -1417, 2011 U.S. App. LEXIS 8167, at \*2 (Fed. Cir. Apr. 20, 2011) to address the question:

If separate entities each perform separate steps of a method claim, under what circumstances would that claim be directly infringed and to what extent would each of the parties be liable?

*Akamai* is one of several recent cases by the Federal Circuit requiring that all joint infringers be under the "direction or control" of a single entity in order to find direct infringement of a method claim.

The correctness of a "single infringer" rule and the requirement of "direction or control" recently was questioned by a divided panel decision in *McKesson Technologies Inc. v. Epic Systems Corp.*, No. 2010-1291, 2011 U.S. App. LEXIS 7531, at \*13-15 (Fed. Cir. Apr. 12, 2011).

For more information on how these recent developments may affect your organization, please contact one of our attorneys.

\*Charles R. Macedo is a partner and Jessica Rasmussen is an associate at Amster, Rothstein & Ebenstein LLP. Their practice specializes in intellectual property issues including litigating patent, trademark and other intellectual property disputes. They may be reached at [cmacedo@arelaw.com](mailto:cmacedo@arelaw.com) and [jasmussen@arelaw.com](mailto:jasmussen@arelaw.com).

Mr. Macedo is also the author of *The Corporate Insider's Guide to U.S. Patent Practice*, published by Oxford University Press in 2009.