



ARE Patent Litigation Alert: U.S. Supreme Court Addresses Knowledge Element of Claims for Inducing Patent Infringement

June 1, 2011

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On May 31, 2011, the U.S. Supreme Court issued its decision in *Global-Tech Appliances, Inc. v. SEB S.A.*, No. 10-6, 563 U.S. ___ (S. Ct. May 31, 2011) which addresses the knowledge requirement in a claim for inducing patent infringement under 35 U.S.C. § 271(b). The statute provides that one who actively induces another to infringe a patent is liable as an infringer.

In an 8-1 decision, the Supreme Court found that "induced infringement under § 271(b) requires knowledge that the induced acts constitute patent infringement." (Slip op. at 10). Of note, the Court went on to find that this knowledge requirement could be met by "willful blindness." As articulated by the Court, "a willfully blind defendant is one who take deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts." (Slip op. at 14).

In so ruling, the Supreme Court rejected the Federal Circuit's prior "deliberate indifference" standard as departing from the Supreme Court standard. The Court stated that the knowledge requirement may not be satisfied "when there is merely a 'known risk' that the induced acts are infringing" or merely "deliberate indifference" without "active efforts by an inducer to avoid knowing about the infringing nature of the activities." (Slip op. at 14).

Despite the Supreme Court's rejection of the standard applied by the Federal Circuit, the Supreme Court upheld the finding of induced infringement under the newly announced "willful blindness" standard.

Justice Kennedy authored a short dissent disagreeing with the majority's ruling that willful blindness could satisfy § 271(b) since the statute required actual knowledge. The Court had never before held that willful blindness could substitute for a statutory requirement of knowledge and Justice Kennedy believed it was improper to find Defendants liable in this case.

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



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