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U.S. Supreme Court Agrees to Address Law of Inducement

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On October 14, 2010, the U.S. Supreme Court granted certiorari in *Global-Tech Appliances, et al. v. SEB S.A.*, in which the Court will have an opportunity to clarify the law of inducement of patent infringement.

Below, the Federal Circuit held that a claim for inducement is viable even where the patentee has not produced direct evidence that the alleged infringer had knowledge of the patent in suit. *SEB S.A. v. Montgomery Ward & Co., Inc.*, 594 F.3d 1360, 1377 (Fed. Cir. 2010). The Court concluded that the alleged infringer "deliberately disregarded a known risk" and found inducement despite the lack of direct evidence that the he was actually aware of the patent prior to the lawsuit. The alleged infringer had copied the design of an existing product (although several cosmetic features were changed) and then sought a right-to-use opinion without advising the attorney of the copying. The Federal Circuit found that the alleged infringer's copying of the competitor's product without first checking whether it was covered by a patent was sufficient to show an intent to induce infringement.

Previously, in *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304 (Fed. Cir. 2006) (*en banc*), the Federal Circuit held that to establish inducement of infringement, a plaintiff must show that the alleged infringer knew or should have known that his actions would induce actual infringement. *DSU* at 1304 ("The requirement that the alleged infringer knew or should have known his actions would induce actual infringement necessarily includes the requirement that he or she knew of the patent."). As recognized in SEB, the *DSU* Court left for another day the specific definition of the contours of the knowledge requirement.

The specific question presented to the Supreme Court in *Global-Tech* is whether the legal standard for the state of mind requirement for inducement of patent infringement is the "deliberate indifference" standard articulated in the Federal Circuit's decision, or the more exacting standard announced by the Supreme Court in the copyright context in *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005). In *Grokster*, the Court held that inducement in the copyright context requires more than "mere knowledge of infringing potential or of actual infringing use." *Grokster* at 937. Rather, the Court found that inducement in the copyright context requires "'purposeful, culpable expression and conduct' to encourage an infringement," a heightened standard that, if applied to inducement of patent infringement,

could dramatically impact the viability of inducement in patent law. Id.

We will continue to monitor this case and provide further updates as the parties and other interested members of the public file briefs with the Court. Oral argument is not expected until next year.

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