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“Tip of the Month”

Update on Joint Liability in Patent Infringement

In tort law, two or more parties may be jointly liable when the actions of the parties combine to result in harm. Does this theory of joint liability apply to patent infringement? In a long-awaited patent infringement case, the Court of Appeals for the Federal Circuit addressed this question as it relates to a patented method.

As a general matter, a method patent is infringed when every step of the method is performed as claimed. Infringement may be direct or induced. Direct infringement occurs when the accused party itself performs every step of the method. Indirect infringement occurs when one party actively induces a second party, such as its customer, to infringe a patent. Induced infringement requires that the second party directly infringes the patent by performing every step as claimed.

The question of joint infringement arises in method patents when no single party performs every step of the patented method. Joint infringement became a critical question in the case of *Akamai Technologies, Inc., v. Limelight Networks, Inc.*, a lawsuit originally filed in 2006. In that case, Akamai accused Limelight of patent infringement for a method that calls for “tagging” certain components of a content provider’s website to be stored on a server and accessed from those servers by Internet users. While Limelight performed many steps of the method, Limelight’s customers performed the tagging step. Akamai argued that Limelight infringed the patent because it required its customers to perform the tagging step.

After many years of litigation, the Court of Appeals for the Federal Circuit decided whether joint infringement should be interpreted more narrowly under a single entity rule or more broadly as with joint tortfeasors. The *Akamai* Court affirmed that the narrower single party rule applies in patent cases. Under the single party theory, joint or divided infringement occurs when all steps of a method claim are performed by or attributable to a single entity. That is, a single party is a direct infringer if it performs all steps of the method or exercises direction or control over each step in the patented method.

The court held that Limelight did not infringe Akamai’s patent because Limelight did not direct or control the actions of its customers. This single party rule stems from the theory of vicarious liability and includes joint enterprises, a contractual relationship between the parties, and principal-agent relationships.

Whether your company seeks to reduce its exposure to liability for patent infringement or other acts, contact the attorneys at Mesmer & Deleault, today at (603) 668-1971 or send an email to mailbox@biz-patlaw.com.

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