

## Federal Circuit Resurrects ‘Induced Infringement;’ Narrows ‘Joint Infringement Defense’

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Last Friday, in the cases ***Akamai Tech. v. Limelight Networks*** and ***Mckesson Tech. v. Epic Systems***, the Federal Circuit sitting *en banc* ruled that a single party no longer needs to practice all steps of a patented method claim in order to allow for a finding of infringement. The court split 6-5 in overturning its previous rule that in order to succeed on a claim for induced infringement of a method claim, a plaintiff had to show that the induced entity practiced every step of the claim. That rule, commonly known as the Joint Infringement Defense, no longer applies in the context of induced patent infringement. As the *per curiam* opinion put it: “To be clear, we hold that all the steps of a claimed method must be performed in order to find induced infringement, but that it is not necessary to prove that all the steps were committed by a single entity.”

The Federal Circuit was careful to explain that its holding only applies in the context of a “knowing” inducer and expressly declined to apply its decision to the “strict liability” direct infringement context. Nonetheless, the decision will likely have a sweeping impact because patent holders that previously would have focused on direct infringement will now likely attempt to repackage their cases to focus on inducement. In this manner, the holding provides patent plaintiffs a potential path around the Joint Infringement Defense, which had been a thorn in the side of patent plaintiffs since it was established by the Federal Circuit.

Despite the fact that liability for inducement still requires a showing of knowledge that the induced acts constitute patent infringement, this decision is a significant change to the patent landscape. It increases the value of obtaining method claims covering the operation of multi-actor systems, including software systems implemented over the Internet. It may also embolden potential plaintiffs, including Non-Practicing Entities, who may begin asserting these types of method claims even more frequently and aggressively than before.

Given these potential ramifications and the close split in the Federal Circuit, this decision will undoubtedly be appealed to the Supreme Court, and this area of law will remain in a closely watched state of flux for the foreseeable future.

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