

# Supreme Court May Decide if Good Faith is Sufficient to Avoid Induced Infringement Claim

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When the U.S. Solicitor General (SG) responds to a request from the Supreme Court for the SG's views as to whether case is important enough to be heard by the Supreme Court, the Court has followed the SG's recommendation almost 80% of the time. Recently, the [SG recommended](#) that the Supreme Court grant certiorari review in [Commil USA, LLC v. Cisco Systems, Inc.](#), 720 F.3d 1361 (Fed. Cir. 2013), on the issue of whether a defendant's good-faith belief that a patent is invalid is a defense to a claim of inducing infringement. Accordingly, chances are good that the Supreme Court will review this issue.

A defendant directly infringes a patent by committing certain acts, regardless of intent, knowledge or negligence. The patent laws also provide that persons who actively induce conduct by another that directly infringes a patent can themselves be liable as an infringer. However, liability for inducement requires both knowledge of the existence of the patent and knowledge that the acts induced would cause direct patent infringement. At trial in *Commil*, Cisco sought to argue it did not have the required knowledge that the acts it induced would cause direct infringement because it believed the patent to be invalid. The trial court prevented Cisco from offering evidence that it held a good-faith (albeit incorrect) belief that the asserted patent was invalid. A divided Federal Circuit panel reversed, holding that a "good-faith belief of invalidity is evidence that may negate the specific intent to encourage another's infringement, which is required for induced infringement."

The SG saw the Federal Circuit's decision as a fundamental change in inducement suits. He noted that practitioners are already recommending that clients who are notified of a claim of inducement obtain "quickly" an invalidity opinion from counsel to support a good-faith defense. While certain procedural aspects of this case may persuade the Court not to grant cert notwithstanding the SG's views, this is a case to watch.

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