

Supreme Court to Consider Scope of “Good Faith” Belief and the Intent Requirement of § 271(b)

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Commil USA v. Cisco Systems

Earlier this year, the **U.S. Court of Appeals for the Federal Circuit** ruled that a good-faith belief that a patent **is invalid may negate the element of intent required to prove induced infringement**. In that split-panel decision (with Judge Newman dissenting), Judge Prost explained that “[w]e see no principled distinction between a good-faith belief of invalidity and a good-faith belief of non-infringement for the purpose of whether a defendant possessed the specific intent to induce infringement of a patent.” *Commil USA v. Cisco Systems*, see [IP Update, Vol. 16, No. 7](#).

Now the U.S. Supreme Court has agreed to review whether a good-faith belief that a patent is invalid is sufficient to avoid liability under the active inducement statute. *Commil USA v. Cisco Systems*, Case No. 13-896 (Supr. Ct., Dec. 5, 2014).

The sole issue to be decided by the Supreme Court is whether the Federal Circuit erred in holding that a defendant’s belief that a patent is invalid is a defense to induced infringement under 35 U.S.C. § 271(b).

The solicitor general had urged the Supreme Court to take this question for review but to deny review of the second question originally proposed, which went to an issue relating to the jury instructions in the case.

Justice Breyer did not participate in the order granting certiorari.

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