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US Supreme Court Eliminates "Good-Faith Belief of Invalidity" Defense for Induced Patent Infringement

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On May 26, 2015, the US Supreme Court handed down an important decision regarding induced infringement under 35 U.S.C. §271(b). *Commil USA, LLC v. Cisco Systems, Inc.*, __ U.S. __ (May 26, 2015). Unlike direct infringement under §271(a), induced infringement under §271(b) requires the defendant to have a certain mental state—the accused infringer must (1) know of the patent and (2) know that "the accused acts constitute patent infringement." The question before the Court was "whether a defendant's belief regarding patent validity is a defense to a claim of induced infringement." The Court held "it is not" and, in a 6-2 opinion, reversed a Federal Circuit decision that allowed Cisco (the accused infringer) to avoid liability because it thought the patent was invalid.

However, the Court made clear that a defendant's knowledge of the patent alone (i.e., without knowledge that it was infringing) was insufficient for inducement liability, despite arguments to the contrary from Commil and the Government. In short, Commil's and the Government's reading of another Supreme Court inducement case, *Global-Tech Appliances, Inc. v. SEV S.A.*, 563 U.S. __ (2011), "would contravene [its] explicit holding that liability for induced infringement can only attach if the defendant knew of the patent and knew as well that 'the induced acts constitute patent infringement.'" (quoting *Global-Tech*, slip op., at 10). The *Commil* opinion went on to state that accepting the Government and Commil's argument would lead to the conclusion that one "could be liable even though he did not know the acts were infringing." However, "*Global-Tech* requires more. It requires proof the defendants knew the acts were infringing." Thus, the Supreme Court re-affirmed that a reasonable non-infringement defense (even if ultimately unsuccessful) still may provide a defense to a claim of inducement.

The take-home message from this Supreme Court opinion is that a good-faith belief that a patent is not infringed continues to be a defense to inducement, while a good-faith belief that a patent is invalid is not. This decision indicates that there may be value in obtaining non-infringement opinion(s) of counsel at an appropriate time, such as prior to selling products that might lead to induced infringement patent lawsuits, after a lawsuit is initiated on a patent of which one was previously unaware, or at some other time that makes sense in view of the specific facts of the alleged infringement.

For more information, or if you have any questions, please contact your Katten attorney or the following members of Katten's **Patent Litigation practice**.

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