

## “Substantial portion of the components” for infringement under Section 271(f)(1) requires more than a single component

FEBRUARY 24, 2017

### *Life Technologies Corp. et al. v. Promega Corp., No. 14-1538 (Feb. 22, 2017).*

The Supreme Court recently issued important guidance on the meaning of Section 271(f)(1) of the Patent Act, which makes it an act of infringement to supply from the United States “all or a substantial portion of the components of a patented invention.” The Court clarified that, to support liability under this provision, more than a single component must be manufactured in the United States.

The case arose when Promega, the exclusive licensee of the asserted patent, sued Life Technologies, claiming that it infringed under Section 271(f)(1) by selling a genetic testing kit outside the United States. The parties agreed that the genetic testing kit included five components and that only one of the components was made in the United States. At trial, Promega presented expert evidence that the sole component made in the United States was a “main” or “major” component of the accused testing kits. A jury found the testing kits infringed. Life Technologies moved for judgment as a matter of law arguing that Section 271(f)(1)’s requirement of a “substantial portion of the components” required that more than a single component be supplied from the United States. The district court granted the motion. The Federal Circuit reversed, finding that “substantial” means “important” or “essential” and that a single substantial component could meet the requirements of Section 271(f)(1). In an opinion by Justice Sotomayor, the Supreme Court reversed 7-0.

Section 271(f)(1) makes it an act of infringement to supply from the United States “all or a substantial portion of the components of a patented invention.” This section was added to the Patent Act in response to the Supreme Court’s decision in *Deepsouth Packing Co. v. Laitram Corp.*, 406 U. S. 518 (1972), which had found no infringement where an infringing combination was manufactured and sold abroad, even though a component of the infringing combination had been manufactured in the United States.

In analyzing Section 271(f)(1), the Court considered whether the statutory language “substantial portion of the components” refers to a quantitative or qualitative measurement. “Substantial” itself provides no clear guidance as “substantial” is commonly understood to include both quantitative and qualitative measurements. Considering the

broader statutory context, the phrase “substantial portion of the components” requires a quantitative reading because a qualitative reading would make the phrase “of the components” unnecessary.

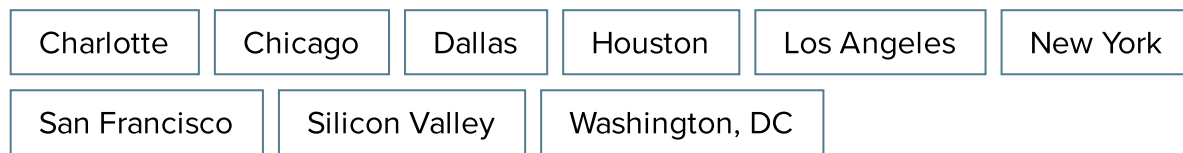
Given the statute includes a quantitative measure, the Court further held that the “substantial portion” requires more than a single component be manufactured in the United States. The statute specifies the plural “components,” which must require more than one component for a “substantial portion of the components.” Further, this reading is consistent with Section 271(f)(2) which refers to “any component” and makes export of a single component infringing if the component was “especially made or especially adapted for use in the invention.”

Justices Alito filed a concurring opinion and was joined by Justice Thomas. Justice Alito pointed out that the Court’s opinion did not address how much more than a single component was necessary for infringement.

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