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## Supreme Court Holds That Induced Patent Infringement Requires That the Inducer Knows That the Induced Conduct Infringes a Patent

*Global-Tech Appliances, Inc., v. SEB S. A.*, 563 U.S. \_\_\_\_ (2011).

In a case alleging induced infringement of a patent for a home-use deep fryer, the Supreme Court held that induced infringement under 35 U.S.C. § 271(b) requires knowledge that the induced acts constitute patent infringement. It also held that this knowledge requirement could be satisfied by a showing of willful blindness to the infringement, but not by reckless disregard of or deliberate indifference to the infringement.

In the late 1980's, SEB S.A., a French manufacturer of home appliances, invented a deep fryer designed for home use that remained cool to the touch on its exterior surfaces. SEB obtained a patent for its design in 1991 and began selling its product in the U.S. market. In 1997, Sunbeam Products, Inc., a competitor of SEB, hired Pentalpha Enterprises, Ltd., a wholly owned subsidiary of Global-Tech Appliances, Inc., to supply it with deep fryers meeting certain specifications. Pentalpha purchased an SEB fryer made for sale in a foreign market (and thus lacking U.S. patent markings) and copied all but its cosmetic features in designing the fryers requested by Sunbeam. Pentalpha retained an attorney to conduct a right-to-use study, but did not inform the attorney that its design had been copied directly from a SEB model. The attorney failed to locate SEB's patent, and Pentalpha began selling fryers to Sunbeam and other competitors of SEB, which resold them in the U.S. under their respective trademarks.

SEB brought and settled a lawsuit against Sunbeam for direct infringement of its patent, and then brought an action against Pentalpha in claiming induced infringement in violation of 35 U.S.C. § 271(b). At trial, the jury found in favor of SEB on the induced infringement theory. The Federal Circuit affirmed, holding that, while induced infringement requires a showing that the alleged infringer actually knew that its actions would cause another to infringe that patent, this knowledge requirement was satisfied by Pentalpha's deliberate disregard of a known risk that the fryer it chose to copy was patented. The Court specifically rejected the notion that the requisite intent to induce actual infringement could be shown by "deliberate indifference" to the likelihood that actual infringement would result from a defendant's behavior. The Supreme Court granted certiorari and affirmed the Federal Circuit's decision, although it disagreed with that court's interpretation of the standard for actual knowledge.

Writing for an eight justice majority, Justice Samuel Alito began by examining the text of 35 U.S.C. § 271(b). Section 271(b) states that "[w]hoever actively induces infringement of a patent shall be liable as an infringer." Justice Alito interpreted the word "actively" as requiring an inducer to take affirmative steps to bring about a known, infringing result. He acknowledged, however, that it is unclear whether this requires an inducer to know that the conduct he is encouraging infringes a patent, or merely that he is encouraging certain conduct that happens to amount to infringement.

The Court turned next to precedent, and found that its prior decision in *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476 (1964) (*Aro II*), resolved the interpretational conflict. In that case, a majority of the Court held that a contributory infringer under § 271(c) must know that the combination to which he contributes a component part is both patented and infringing. Because § 271(b) and § 271(c) share a common origin and create the same difficult interpretive choice, “[i]t would thus be strange to hold that knowledge of the relevant patent is needed under § 271(c) but not under § 271(b). Accordingly, we hold that induced infringement under §271(b) requires knowledge that the induced acts constitute patent infringement.” Op. at 10.

While the Court rejected the Federal Circuit’s assertion that evidence of deliberate indifference to a known risk of infringement is sufficient to prove actual knowledge, it affirmed the Federal Circuit’s judgment because it found the evidence “plainly sufficient to support a finding of Pentalpha’s knowledge [that it was inducing infringement] under the doctrine of willful blindness.” *Id.* The Court found that it is well established in criminal law that a defendant cannot escape culpability for violating statutes that require proof of knowing or willful action by “deliberately shielding themselves from clear evidence of critical facts that are strongly suggested by the circumstances.” *Id.* “Given the long history of willful blindness and its wide acceptance in the Federal Judiciary, [the Court] can see no reason why the doctrine should not apply in civil lawsuits for induced patent infringement under 35 U.S.C. § 271(b).” Op. at 12. The Court articulated a two-part test for willful blindness: “(1) the defendant must subjectively believe that there is a high probability that a fact exists, and (2) the defendant must take deliberate actions to avoid learning of that fact.” Op. at 13. Contrasting that test with

the recklessness standard used by the Federal Circuit, the Court observed that the Federal Circuit’s test “departs from the proper willful blindness” standard for two reasons: “First, it permits a finding of knowledge when there is merely a ‘known risk’ that the induced acts are infringing” and, “[s]econd, in demanding only deliberate indifference to that risk, the Federal Circuit’s test does not require active efforts by an inducer to avoid knowing about the infringing nature of the activities.” Op. at 14. Finally, the Court held that, even under its willful blindness standard, the evidence remained more than sufficient for a jury to have found that “Pentalpha willfully blinded itself to the infringing nature of the sales it encouraged Sunbeam to make.” Op. at 14.

Justice Kennedy was the lone dissenter. He agreed with the majority’s interpretation that § 271(b) requires knowledge that the induced acts constitute patent infringement. He disagreed with the ruling that evidence of willful blindness could meet the standard of actual knowledge required by § 271(b) and (c). Justice Kennedy would have preferred that the Court refrain from invoking the willful blindness doctrine and remand the case to the Federal Circuit, which would determine whether the record supports an inference that Pentalpha had actual knowledge of SEB’s patent. Justice Kennedy expressed particular concern that the Court “has never before held that willful blindness can substitute for a statutory requirement of knowledge” and that the Court “appears to endorse the willful blindness doctrine here for all federal criminal cases involving knowledge.” Dissent, at 3. Justice Kennedy questioned whether it was advisable to “do[] so in a civil case where [the Court] has received not briefing or argument from the criminal defense bar, which might have provided important counsel on this difficult issue.” *Id.*

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