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CLIENT ALERT

Infringement Liability Under Section 271(g) Is Not Contingent on a Single Entity Practicing a Patented Process

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The patentee asserted infringement of patents directed to methods of manufacturing a fungicide under 35 U.S.C. Section 271(g). The accused infringer was a Hong Kong based company which contracted for the manufacture of the fungicide at issue in China and imported the fungicide into the United States. The district court denied the patentee's motion for summary judgment of infringement after interpreting Section 271(g) as requiring that all steps of a claimed process be performed by, or attributable to, a single entity. After the jury found in favor of the accused infringer, the patentee appealed the court's interpretation of Section 271(g).

The Federal Circuit agreed with the patentee and held that the district court erred by imposing a single-entity requirement on the performance of a patented process under Section 271(g). The statutory language is clear that the acts that give rise to liability under this Section are the importation, offer for sale, sale, or use within this country of a product that was made by a process patented in the United States. Nothing in the statutory language suggests that liability arises from the parties which perform the acts of practicing the patented process abroad. The context of the statute and legislative history confirm this reading. Further, applying a single-entity requirement to the practice of a patented process under Section 271(g) would, contrary to the intent of Congress, impose an undue evidentiary burden on patentees. The Federal Circuit thus vacated and reversed in relevant part, and remanded for further proceedings.
A copy of the opinion can be found here

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