SUPREME COURT:
Actual Knowledge Or "Willful Blindness" To Patent Infringement Required For Inducement Liability

By Ronald S. Wynn

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Patent infringement can be "direct" or "indirect." A "direct" infringer makes, uses, offers to sell, sells, or imports the patented invention in the United States. One type of "indirect" infringement—inducement—occurs when one "actively induces infringement of a patent" by another. Companies are frequently sued for inducing patent infringement when their products are subject to infringing uses or sales by their customers. On May 31, 2011, the Supreme Court established a high bar to liability for this type of indirect, induced patent infringement: the accused inducer must either know or be "wilfully blind" to the fact that the downstream use or resale of its product infringes the patent.

In *Global Tech Appliances, Inc. v. SEB S.A.,* a Hong Kong-based manufacturer sold infringing products to retailers who imported and resold them in the United States. The Hong Kong company knew the products would be resold in the United States, but claimed that it could not be liable for actively inducing the resellers' direct infringement because it did not actually know of the patent.

Rejecting strict "actual knowledge" of the patent infringement as too limited a standard and "deliberate indifference" to it as overly broad, the Supreme Court held that (1) "induced infringement … requires knowledge that the induced acts constitute patent infringement;" and (2) "willful blindness" to the fact of infringement establishes the requisite knowledge. In *Global Tech*, the Supreme Court found that the accused inducer "subjectively believed there was a high probability that the [product] was patented, that [it] took deliberate steps to avoid learning that

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fact, and that it therefore willfully blinded itself to the infringing nature of [the U.S.] sales."

The lesson: deliberate evasion of a known probability of patent infringement provides no safe harbor from infringement liability. But a claim that the accused inducer "should have known" of the direct infringement is not enough.

Global Tech Appliances, Inc. v. SEB S.A., No. 10-6 (May 31, 2011)

For more information, please contact:

Ronald S. Wynn
415-995-5124
rwynn@hansonbridgett.com

SAN FRANCISCO
425 Market Street, 26th floor
San Francisco, CA 94105
TEL 415-777-3200
FAX 415-541-9366

NORTH BAY
Wood Island
80 E. Sir Francis Drake Blvd, Ste. 3E
Larkspur, CA 94939
TEL 415-925-8400
TEL 707-546-9000
FAX 415-925-8409

SACRAMENTO
500 Capitol Mall, Ste. 1500
Sacramento, CA 95814
TEL 916-442-3333
FAX 916-442-2348

SILICON VALLEY
950 Tower Lane, Ste. 925
Foster City, CA 94404
TEL 650-349-4440
FAX 650-349-4443