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Limelight Decision Opens the Door to Challenge Federal Circuit's Standard for Direct Infringement of a Method Claim

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The issue before the Supreme Court in *Limelight Networks, Inc. v Akamai Technologies, Inc.* was whether a defendant may be liable for inducing infringement when no one has directly infringed the patent.

The patent-in-suit claims a method of delivering electronic data using a content delivery network (CDN). The accused infringer, Limelight, operates a CDN and carries out several of the claimed steps, but its customers perform one of the required steps of the method claim.

Current Federal Circuit case law requires that to be liable for direct infringement of a method claim, performance of all steps of the claimed method must be attributable to a single party. Applying this standard, the District Court held that Limelight did not directly infringe because it did not perform all of the required method steps. The Federal Circuit panel affirmed the District Court.

However, on en banc review, the Federal Circuit reversed, holding that a defendant who performed some steps of a method claim and encouraged others to perform the rest could be liable for inducement of infringement even if no one was liable for direct infringement.

On June 2, 2014, the Supreme Court reversed the Federal Circuit, holding that Limelight cannot be liable for inducement because there was no direct infringement under current Federal Circuit case law. In doing so, the Supreme Court simply applied the long-standing principle that a defendant is not liable for inducing infringement when no one has directly infringed the patent-in-suit.

Without deciding whether the Federal Circuit's decision in *Muniauction, Inc. v. Thomson Corp*., 532 F.3d 1318 (Fed. Cir. 2008) was correct, the Supreme Court applied its ruling that direct infringement of a method claim requires that performance of all steps of the claimed method must be attributable to a single party. Because neither Limelight nor its customers performed all of the claimed steps, no one was liable for direct infringement of the method patent. Without direct infringement, the Supreme Court held that Limelight cannot be liable for inducement of infringement.

While the Supreme Court did not analyze the Federal Circuit's decision in *Muniauction*, it certainly indicated its willingness to do so in the future. The Supreme Court recognized the impact that its decision may have and the possibility that defendants can avoid infringement by assigning one step of a method claim to a third-party even if the defendant performs all the other steps. However, rather than change the long-standing law on inducement of infringement, the Supreme Court indicated that it was the Federal Circuit's *Muniauction* decision that may need to be revisited. Indeed, the Supreme Court specifically noted that the Federal Circuit will have the opportunity to reconsider *Muniauction* on remand if it so chooses.

Accordingly, we should expect to see Akamai and other patent holders challenge *Muniauction* and a possible re-evaluation of what constitutes direct infringement of a method claim. Thus, defendants may currently have a viable non-infringement argument if they do not perform all the steps of a claimed method, but that may not be the case for long.