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BEYOND BORDERS: How U.S. Patent and Copyright Laws Can Reach Transactions That Occur Entirely Outside U.S. Borders

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Historically, the patent and copyright laws had no extraterritorial effect and could not be utilized to reach conduct occurring entirely outside the United States. Over time, however, as the global marketplace has expanded, economic activity beyond our borders has had an increasingly greater impact on the economy within our borders. In response, statutory amendments and judicial precedent have gradually extended the reach of U.S. law to encompass situations where conduct outside the U.S. contributes to the infringement of intellectual property rights within the United States.

As U.S. patent and copyright law extend their reach beyond U.S. borders, foreign companies that sell products abroad are increasingly finding themselves threatened with liability for sales that occur entirely outside the U.S. Plaintiffs can sometimes reach upstream and seek damages or injunctive relief against foreign manufacturers several steps removed from the U.S. market. Accordingly, foreign manufacturers must be increasingly aware of what conduct could give rise to liability under U.S. law, if they are to minimize their potential exposure arising from commerce in other parts of the world.

Extraterritorial Application of U.S. Patent Law

There are many different scenarios in which liability for patent infringement may arise even when much of the conduct at issue occurs outside the United States. In some situations, the issue is whether direct infringement has occurred within the United States despite some of the relevant conduct occurring abroad. For example, when a foreign manufacturer sells a product to a multinational corporation, the original sales inquiry, the purchase order, the shipping destination, and the payment for the goods may all implicate different geographic locations. In such a case, the court must determine the situs of "sale" or "offer for sale" in order to determine whether a direct infringement under 35 U.S.C. § 271(a) has occurred within the United States.

This issue also arose in the context of the Federal Circuit's recent decision in the Blackberry case.[1] The Federal Circuit held that a system claim was directly infringed by a wireless e-mail system, even though a relay component was located in Canada, because the system was "used" within the U.S. The court's conclusion of "use" was based on its finding that control of the system was exercised in the United States and beneficial use of the system was obtained in the United States.[2] However, the court found that the same e-mail system was not "used" in the United States for purposes of determining whether a method claim was directly infringed, because not all steps of the claimed method were performed within the United States.[3]

Congress has addressed other situations involving foreign conduct by simply amending the patent laws to create new categories of direct infringement. In 1984, Congress added § 271(f) to extend liability for direct infringement to "supplying" or "causing to supply" components of a patented invention for assembly outside the United States. Four years later, Congress passed the Process Patent Amendments Act of 1988, in an effort to preclude foreign manufacturers from using U.S. process patents to make products abroad and then import those products into the United States. Under § 271(g), the import, sale, or use of products made by a process patented in the United States is a separate act of direct infringement unless the product is "materially changed by subsequent processes" or "it becomes a trivial and nonessential component of another product."

Each of the above situations, however, involves the expansion of what conduct constitutes direct infringement of a U.S. patent. The greatest degree of extraterritorial extension of U.S. patent law arises in the context of what might constitute an *inducement* of infringement within the United States. Liability for inducement may sometimes arise when a foreign defendant sells a product overseas, if the product is subsequently sold or used in the United States and the defendant encouraged or facilitated that subsequent sale or use. In this situation, a foreign defendant may have very minimal contact with the United States and yet find itself potentially liable under the U.S. patent laws.

Judicial precedent addressing extraterritorial inducement of infringement is somewhat sparse, sometimes conflicting, and very fact-specific. In particular, uncertainty remains as to what level of intent is required for a defendant to be found liable for inducement and as to what types of foreign conduct may support a finding that the defendant possessed the required intent to induce infringement in the United States.

Two Standards of Intent

Under 35 U.S.C. § 271(b): "Whoever actively induces infringement of a patent shall be liable as an infringer." Liability for inducing infringement will arise where there has been a direct infringement within the United States and where the defendant has "knowingly induced" that infringement and possessed the required intent to encourage the direct infringement.[4]

However, the level of intent required to prove inducement is uncertain. In 1990, the Federal Circuit articulated two different standards for the required level of intent. In *Hewlett-Packard*, the court held that "proof of actual intent to cause the acts which constitute the infringement is a necessary prerequisite to finding active inducement."[5] Only a few months later, however, the court required a more specific level of intent in *Manville*, holding that the plaintiff must show "that the alleged infringer's actions induced infringing acts and that he knew or should have known his actions would induce actual infringements."[6] Under *Manville*'s standard of specific intent, a defendant must have knowledge of the patent being asserted and have reason to know that the acts being induced fall within the scope of the patent.

On several recent occasions, the Federal Circuit has recognized this apparent conflict in its own precedent. The court has repeatedly observed that due to the split of authority applying *Hewlett-Packard* and *Manville*, there is a "lack of clarity concerning whether the required intent must be merely to induce the specific acts [of infringement] or additionally to cause an infringement."[7] Nevertheless, the court has declined these opportunities to reconcile the competing standards.

Conduct That May Support Liability For Inducement

Until recently, Federal Circuit precedent has also lacked clarity as to when liability for inducement could arise based on conduct occurring entirely outside the United States. In a 2001 decision, the court held that a foreign manufacturer could not be found liable for infringement where all of its activities occurred in China.[8] Defendant Sunex manufactured the accused products in Shanghai, sold the products to Telesis, and Telesis sold the products to Arcan in the United States. However, the court analyzed the question as one of whether Sunex could be found jointly and severally liable with Telesis and Arcan for their direct infringement. The court did not discuss liability for inducement of infringement.

A contrary result was reached in another case, decided only two months earlier in an opinion authored by the same judge.[9] In that case, defendant TriTech manufactured electronic audio chips in Singapore and sold them to OPTi, which in turn imported them into the United States. In a very brief passage, the court asserted that Tritech was liable for active inducement, but offered no explanation or basis for its decision. Given the similar fact patterns, one might have expected the liability of the foreign manufacturers to be the same, yet opposite conclusions were reached.

Last year, however, the Federal Circuit revisited this fact pattern, and by elaborating on its analysis, offered greater guidance as to when liability for inducement may arise. In *MEMC*, the accused products were silicon wafers.[10] Defendant SUMCO sold the wafers to Samsung Japan, which then shipped the products to Samsung in the United States. The district court granted summary judgment for defendants, but the Federal Circuit reversed, finding that a question of fact existed as to inducement.

In reaching its decision, the court in *MEMC* found evidence of intent to induce infringement based on SUMCO's knowledge of the patent, its knowledge of allegedly infringing activities by Samsung U.S., and the fact that it provided technical support to Samsung U.S. that enabled its purchase and use of the accused products. As part of its product support, SUMCO had made adjustments to its manufacturing process to address problems encountered by Samsung U.S.; sent replacement wafers directly to Samsung U.S.; and made onsite visits to Samsung U.S. to give technical presentations regarding its products. The court found especially persuasive testimony from Samsung U.S. that technical support was part of every supplier agreement, and that Samsung U.S. would not have purchased the wafers from SUMCO unless it provided such product support.[11]

Even so, the Federal Circuit only held that these facts gave rise to a material issue of fact as to inducement, sufficient to withstand summary judgment. Whether SUMCO was actually liable for inducement was never determined, either by the Federal Circuit or the district court, which never reached the issue on remand.

In addition to the Federal Circuit's decision in *MEMC*, several district courts have found inducement of infringement in the United States, or the lack thereof, based on the foreign sale of an accused product by a foreign manufacturer.[12] Synthesizing these cases, the following factors have been found to support a finding that a foreign manufacturer has induced infringement in the United States:

- Providing product support or technical support directly to a U.S. entity, such as a U.S. distributor or customer, in connection with the accused product.
- Conducting on-site visits to a U.S. entity, designed to assist in the marketing or support of the accused product.
- Indemnifying a foreign customer specifically against claims for infringement arising under U.S. law. Conversely, a general indemnification clause between two foreign companies has been held not to be relevant to determining inducement.
- Entering into an agreement with a foreign or U.S. entity that expressly provides that entity with U.S. distribution rights, or

that provides a right to inspect the premises of a U.S. entity.

- Advertising or marketing the accused products within the United States.
- Allowing a U.S. entity to perform warranty work under the name of the foreign manufacturer of the accused products.
- Granting trademark rights to a U.S. entity in connection with the sale or marketing of the accused products.
- Providing instructions or manuals in English. Supplying a foreign customer with instructions or specifications in English may not support a finding of inducement where this is standard in the industry, but supplying a foreign customer with English manuals to be sold with the accused products may constitute evidence of intent to facilitate sales within the U.S.
- Manufacturing products to specifications that are specifically intended to render the products compliant with requirements of the U.S. market or a U.S. customer.
- Any other contacts between the foreign manufacturer and U.S. entities, whether distributors, retailers, consumers or other end users, that facilitate or encourage sales of the accused products in the U.S.

In most cases, several of the above factors have combined to support a finding of intent to induce infringement in the United States. A single factor in isolation may not support a finding of inducement; however, a combination of these factors may provide sufficient circumstantial evidence of the required intent when viewed in the context of all of the other facts of a particular case. Foreign manufacturers can seek to limit their potential exposure to liability for inducing infringement in the United States by minimizing these types of contacts with the United States, which conduct may later be construed as facilitating or encouraging the sale of accused products in the U.S. market.

Inducing Infringement Under § 102(g)

A related question arises as to whether a foreign manufacturer that manufacturers products using a process patented in the United States can be held liable for inducing its customer's infringement under 35 U.S.C. § 271(g) in the same manner as inducing direct infringement that arises under § 271(a). Under section 271(g), a person who imports, offers for sale, sells or uses within the United States a product made by a patented process "shall be liable as an infringer." A defendant need not manufacture the product at issue, using the patented process, in order to be liable for infringement under § 271(g).[13]

Congressional intent suggests that § 271(g) was only intended to extend liability to the person selling or importing the products made by a patented process. Senator Frank Lautenberg of New Jersey summed up the purpose of the legislation thus: "While U.S. courts may not reach a foreign manufacturer that has no presence in the United States, the bill would allow a patent owner to enforce its patent in the U.S. courts against the importer or seller of the foreign manufacturer's product."[14] Relying on this congressional intent, one district court held that a foreign manufacturer did not "import" products within the meaning of § 271(g) where it only sold its products in China, despite the fact that another company later imported the products into the U.S.[15] However, the court did not address the possibility that the upstream manufacturer might be liable for inducing infringement.

In an unpublished decision, a different district court did consider whether a foreign manufacturer might be held liable for inducing infringement by another under § 271(g).[16] Initially, the court observed that the "primary target" of § 271(g) is the importer of the products made by the patented process, not the manufacturer practicing the process. After finding that the manufacturer was not itself liable under § 271(g), however, the court further held that the manufacturer had not manifested any intent to induce importation into the U.S. by its customers. While the court did not find liability for inducing infringement under § 271(g), its opinion suggests that liability for inducement under § 271(b) could be extended to infringement that arises under § 271(g).

Enjoining Future Conduct Outside the United States

While a threshold question exists as to when a foreign manufacturer can be found liable for inducing infringement by a foreign customer, a subsequent question arises as to what extent a foreign manufacturer found liable for inducement can be enjoined from making future sales to its foreign customers.

Once a defendant has been found liable for direct infringement or inducing infringement, a district court "may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable." 35 U.S.C. § 283. As with direct infringement, a district court may issue an injunction to prevent acts that induce the direct infringement of another.[17] Applying this standard, several cases have recognized that an injunction under § 283 can reach conduct that occurs entirely outside the United States. It is necessary, however, that the injunction be reasonably tailored to prevent future infringement of a U.S. patent, as § 283 does not provide remedies for past infringement.[18]

In determining what conduct should be proscribed in order to prevent future infringement, the Federal Circuit has generally limited the scope of injunctive relief to direct infringement and conduct that would amount to inducing infringement in the United States. In *Spindelfabrik*, the Federal Circuit upheld a district court's finding that a foreign defendant was in contempt for violating prior injunctions where a German manufacturer made infringing machines for a specific American customer, and where the defendant had dispatched its own personnel from Germany to the American customer's site to erect and start up those infringing machines.[19] The Federal Circuit found that the language of the injunction did not improperly extend the reach of U.S. patent law beyond the boundaries of the United States because it only applied to machines "in the United States or for use in the United States," or which were "destined for delivery to the United States."

As a practical matter, the language of the injunction in *Spindelfabrik* was enforceable against the upstream sales of the foreign manufacturer because the manufacturer knew which machines were destined for the ultimate U.S. customer, even though they were being sold through an intermediary company in Switzerland. In many instances, however, a foreign manufacturer will not know which specific units it sells to a foreign customer will subsequently be sold in the United States, in which case those sales would fall outside the scope of the injunctive relief approved by the court in *Spindelfabrik*.

In *Johns Hopkins*, the Federal Circuit held that the district court had exceeded its injunctive power by ordering the repatriation and destruction of six vials of hybridoma in Canada.[20] The six vials were created in the United States prior to the issuance of the U.S. patent, were subsequently exported to Canada, and were used in Canada to supply markets outside the United States. The facts did not suggest that the vials would be used in a manner that would infringe the U.S. patent, and the record was devoid of evidence upon which the district court could have concluded that its order would prevent infringement in the United States.

The most recent Federal Circuit decision addressing the propriety of injunctive relief directed toward foreign sales of a foreign manufacturer turned on an alleged agreement between the manufacturer and its customer to import products into the United States. In *International Rectifier*, the district court had entered an injunction that tracked the language of § 271(a), prohibiting defendant Samsung from "making, using, offering for sale or selling in or importing into the United States the components, devices or products infringing any claim of [the '699 patent]."[21] Subsequently, Samsung manufactured products in Korea and delivered the devices to IXYS in Germany. IXYS then diced the wafers into individual chips, packaged the wafers into commercial products, and sold at least some of the resulting products to its customers in the United States. Samsung had refused to ship IXYS-designed devices directly into the United States. Nevertheless, the district court found Samsung in contempt for violating the injunction, based on an alleged agreement between Samsung and IXYS for IXYS to import its wafers into the United States.

The Federal Circuit reversed the district court's finding of contempt, holding that there was no evidence of an agreement between Samsung and IXYS to "subvert" the injunction when:

- Samsung's activities occurred entirely outside the United States.
- Samsung knew of IXYS's importation of products into the United States but exercised no control over IXYS and did not participate in any of IXYS' activities after delivering its wafers to IXYS in Germany.
- There was no evidence of an agreement between Samsung and IXYS to import IXYS's wafers into the United States.

Moreover, the Federal Circuit held that the district court's "subversion by agreement" theory was "tantamount to conspiracy to infringe a patent, a theory which has no basis in law."[22] In effect, the district court had attempted to impute IXYS's actions to Samsung, but by doing so, it impermissibly extended its injunction to reach Samsung's entirely extraterritorial acts. Although the focus of the court's decision was whether Samsung had violated the precise terms of the injunction, the conduct of Samsung in avoiding contact with the U.S. was exemplary of the type of conduct that a foreign manufacturer can employ to avoid liability for inducing infringement in the United States under § 271(b).

Reading these decisions as a whole, it can be concluded that foreign sales of infringing products cannot be enjoined by a district court unless there is sufficient evidence that preventing the sale of those products will prevent subsequent direct infringement within the United States. Accordingly, when a foreign manufacturer sells infringing products to a foreign customer, and it is not known how many units or which units will be subsequently sold in the United States, it is likely that a district court would be exceeding its injunctive power to enjoin all such sales. Nevertheless, injunctive relief is an equitable power subject to the discretion of the district court, and the appropriate scope of injunctive relief will always depend upon the facts of each particular case.

Joinder of Foreign Manufacturers and Customers

To obtain adequate injunctive relief, a plaintiff may want to join the foreign manufacturer of the accused products and the foreign customers that purchase the products and import them into the United States in a single infringement action. Joining multiple entities in a single action may also be advantageous from an evidentiary perspective, given the practical and legal challenges in obtaining discovery from third parties in other countries. The foreign manufacturer may sometimes possess the most relevant information concerning the structure of the accused product or performance of an accused process. End users or retailers in the United States may possess information relevant to calculating damages. Intermediaries in the distribution chain may possess information relevant to importation or inducement.

At the same time, however, a plaintiff that brings suit against too many defendants at once may be faced with a court's seeking to stay a part of the action or otherwise simplify the litigation in order to render the case more judicially manageable. For example, when more than 60 defendants were sued in Delaware for infringing the same patents, the court decided to stay the actions brought against original equipment manufacturers, distributors, and retailers, and instead proceed only with the claims against the manufacturers of the accused components.[23] The court based its stay on the rationale that the manufacturers were most intimately involved in the design of the accused products, and were thus in the best position to contest the validity and infringement of the asserted patents.

An alternative approach would be to file distinct actions against different groups of manufacturers, together with their downstream customers. However, this approach may lead to subsequent transfers and consolidation of the actions in order to increase judicial efficiency and minimize the potential for inconsistent results, particularly where the downstream customers are overlapping. For example, in recent litigation involving a patent that allegedly pertains to the JPEG standard, the Judicial Panel on Multidistrict Litigation decided to transfer eight different actions to the Northern District of California and consolidate them for pretrial proceedings. Careful consideration should be given to these varying approaches in order to determine what strategy might be most effective in any given case.

Section 337 Investigations

When a large number of entities are involved in the foreign manufacture, distribution and importation of devices that infringe a U.S. patent, the practicalities of district court litigation may make it difficult to join all the relevant foreign entities and obtain an effective and comprehensive remedy. This may be the result of the joinder, consolidation and stay issues discussed previously; the inability to obtain personal jurisdiction over some of the foreign defendants; or difficulties in identifying all of the foreign entities involved in the manufacture, distribution and importation of the accused devices. In these circumstances, if the primary objective is to exclude infringing products from the U.S. market, a § 337 investigation before the U.S. International Trade Commission (ITC) may present a practical alternative to district court litigation.

The ITC has statutory authority to prevent "unfair methods of competition" and "unfair acts" by excluding from importation goods that infringe intellectual property rights.[24] The ITC derives its authority statutorily under the commerce power of Congress, and thus is not concerned with the location or identity of those that would use international trade to violate U.S. law. As an administrative agency, the ITC may meet its jurisdiction requirement by establishing "due process notice jurisdiction," which only requires that there be adequate notice and opportunity for a hearing under the Administrative Procedure Act.[25] The ITC has in rem jurisdiction over imported articles accused of infringement, and while foreign manufacturers are given the opportunity to participate in the proceedings, their presence is not required.[26]

Although the issuance of monetary damages is not within the power of the ITC, the ITC can remedy unfair acts by issuing either a limited exclusion order or a general exclusion order barring importation of infringing products.[27] A limited exclusion order is the basic remedy, and issues only against persons deemed by the ITC to be in violation of the statute.[28] A general exclusion order prohibits the importation of all infringing articles, regardless of whether the importer was a respondent to the ITC investigation.[29] Accordingly, an ITC investigation may sometimes present an advantageous alternative to a district court action when seeking to bar infringing products from the U.S. market that are being manufactured abroad.

Extraterritorial Reach of U.S. Copyright Law

As with the patent laws, the U.S. copyright laws generally do not have extraterritorial application. However, a claim under U.S. law may arise for acts of copyright infringement committed abroad where those acts are permitted or initiated by predicate acts of infringement within the United States (*i.e.*, an infringement in the United States leads to additional foreign infringement).[30] Conversely, activity occurring entirely outside the United States may give rise to liability under the Copyright Act if it contributes to a subsequent direct infringement occurring within the United States, *i.e.*, a violation of one or more of the exclusive rights set forth in 17 U.S.C. § 106.[31] The general theory behind this form of contributory infringement is that a foreign person injecting copied products into the U.S. market should not be able to shield himself from liability by shipping those products through an intermediary.[32]

Liability for contributory copyright infringement arises when a person "knows or has reason to know" of direct infringement and "materially contributes to … or assists the infringement."[33] Acts committed outside the United States may constitute contributory infringement where a foreign defendant supplies another foreign entity "with the instruments for committing the infringement [in the U.S.], provided the defendant knew or should have known that the other would or could reasonably be expected to commit the infringement."[34]

Accordingly, the level of knowledge required to support contributory copyright infringement appears to present a lower threshold than the level of intent necessary to support liability for inducing patent infringement. Courts have held that a contributory copyright infringer need not intend that copied goods be sold into the United States, only that the contributory infringer know or have reason to know that the copied goods will be sold in the United States.[35] This is distinct from law of inducing patent infringement, which requires that the foreign defendant intend to cause the infringement in the United States and engage in conduct that encourages or facilitates that infringement, beyond merely supplying an infringing product to someone knowing that they will subsequent sell the product in the United States.

Factually, however, cases finding contributory copyright infringement have been analogous to cases finding liability for inducing patent infringement. In *Blue Ribbon*, a Canadian company, Hagen Canada, procured infringing products from a Japanese company for its U.S. subsidiary, Hagen USA. The court stated that it was not clear from the record whether the products were sent to Hagen USA by Hagen Canada or directly from the Japanese supplier.[36] Either way, however, because Hagen Canada had procured the infringing products for Hagan USA and for its distribution in the United States, the court found Hagen Canada liable for contributory infringement. Under the circumstances, Hagen Canada "knew or should have known that Hagen USA would or could reasonably be expected to commit the infringement."[37] These facts are distinguishable, however, from a situation where goods are sold by a foreign manufacturer to another foreign entity, and it is unknown which units (or how many units) will subsequently be sold in the United States.

In another case, *GB Marketing*, the court found that it had subject matter jurisdiction over a German company that had manufactured bottled water in Germany containing a copyrighted design.[38] The German manufacturer sold the bottled water to another Germany company, which then distributed the bottles in the United States. However, the German manufacturer specifically prepared the bottles for the American market in various ways, such as the manner in which they were packed for shipment; applied for permits to sell the water in New York; and sent representatives to New York. Under these facts, the court found that a claim could be stated that the German manufacturer sold the bottles abroad "with the knowledge and intent that the water would then be exported to the United States and sold here."[39] These facts are highly analogous to the types of facts that could give rise to liability for inducing patent infringement.

Conclusion

While it is often said that U.S. patent and copyright laws have no extraterritorial effect, under certain circumstances, liability for inducing patent infringement and for contributory copyright infringement can nevertheless extend up the distribution chain to a foreign manufacturer that does not directly transact business in the United States. Injunctive relief may likewise encompass conduct that occurs entirely beyond U.S. borders. Accordingly, understanding what types of foreign conduct can result in liability under U.S. patent and copyright law is important for foreign manufacturers that sell products abroad, if they seek minimize their potential risks in U.S. litigation.

1. NTP, Inc. v. Research in Motion, Ltd., 418 Fed.3d 1282 (Fed. Cir. 2005).
2. *Id.* at 1317.
3. *Id.*
4. Minn. Mining & Mfg. Co. v. Chemque, Inc., 303 F.3d 1294, 1304-05 (Fed. Cir. 2002).
5. Hewlett-Packard Co. v. Bausch & Lomb, Inc., 909 F.2d 1464, 1469 (Fed. Cir. 1990).
6. Manville Sales Corp. v. Paramount Sys., Inc., 917 F.2d 544, 553 (Fed. Cir. 1990).
7. MEMC Electronic Materials v. Mitsubishi Materials Silicon Corp., 420 F.3d 1369, 1378 n. 4 (Fed. Cir. 2005); MercExchange, LLC v. eBay, Inc., 401 F.3d 1323, 1333 (Fed. Cir. 2005), *vacated and remanded on other grounds*, 78 U.S.P.Q.2d 1577 (U.S. May 15, 2006); Insituform Techs., Inc. v. CAT Contracting, Inc., 385 F.3d 1360, 1378 (Fed. Cir. 2004).

8. Shockley v. Arcan, Inc., 248 F.3d 1349 (Fed. Cir. 2001).
9. Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, 246 F.3d 1336 (Fed. Cir. 2001).
10. MEMC Electronic Materials v. Mitsubishi Materials Silicon Corp., 420 F.3d 1369 (Fed. Cir. 2005).
11. *Id.* at 1379.
12. *See, e.g.*, Van Der Lely N.V. v. Maschio S.n.c., 222 U.S.P.Q. 399 (S.D. Ohio 1984); Hauni Kwerke Koerber v. Molins Ltd., 183 U.S.P.Q. 168 (E.D. Va. 1974).
13. Trustees of Columbia University in the City of New York v. Roche Diagnostics GMBH, 272 F.Supp.2d 90, 108-109 (D. Mass. 2002) (finding that an importer was liable under §271(g) for importation of products produced by a patented process, even though the importer was not the manufacturer; court did not address the issue of inducement with respect to the manufacturer).
14. Process Patent Amendments Act of 1987: Hearing on S. 568 Before the Subcomm. on Patents, Copyrights and Trademarks of the Senate Comm. on the Judiciary, 100th Cong., 1st Sess. 21 (1987).
15. Pfizer Inc. v. Aceto Corp., 853 F. Supp. 104, 106 (S.D.N.Y. 1994).
16. Tec Air, Inc. v. Nippondenso Mfg. U.S., Inc., 1997 WL 49300 at *5 (N.D. Ill. 1997).
17. Joy Technologies, Inc. v. Flakt, Inc., 6 F.3d 770 (Fed. Cir. 1993).
18. John Hopkins University v. CellPro, Inc., 152 F.3d 1342, 1366 (Fed. Cir. 1998).
19. Spindelfabrik Suessen-Schurr v. Schubert & Salzer Maschinenfabrik Aktiengesellschaft, 903 F.2d 1568 (Fed. Cir. 1990).
20. Johns Hopkins University v. CellPro, Inc., 152 F.3d 1342 (Fed. Cir. 1998).
21. International Rectifier Corp. v. Samsung Electronics Co., Ltd., 361 F.3d 1355 (Fed. Cir. 2004).
22. *Id.* at 1361.
23. Commissariat A L'Energie Atomique v. Tottori Sanyo Electronic Co., Ltd., 2004 WL 1554382 (D. Del., May 13, 2004).
24. 19 U.S.C.A. §1337(a)(1)(A).
25. Donald K. Duvall et al., Unfair Competition and the ITC § 2:19 (Philip J. McCabe & John W. Bateman eds., Thomson-West 2005 ed.).
26. Certain Foam Masking Tape, U.S.I.T.C. Inv. No. 337-TA-528, 2005 WL 1597282 (June 21, 2005); Certain S Treating Apparatus and Components Thereof, Inv. No. 337-TA-97, 215 U.S.P.Q. 229, 231 (1981).
27. 19 U.S.C. §1337(d)(2).
28. 19 C.F.R. §12.39.
29. Sealed Air Corp. v. U.S. Int'l Trade Comm'n, 645 F.2d 96 , 985-86 (C.C.P.A. 1981).
30. *Armstrong* v. Virgin Records, Ltd., 91 F.Supp.2d 628, 634 (S.D.N.Y. 2000); Fun-Damental Too, Ltd. v. Gemmy Indus. Corp., 1996 WL 724734, at *4 (S.D.N.Y. Dec. 7, 1996).
31. *Armstrong*, 91 F.Supp.2d at 634-35; Blue Ribbon Pet Products, Inc. v. Rolf C. Hagen (USA) Corp., 66 F.Supp.2d 454, 462 (E.D.N.Y. 1999).
32. GB Marketing USA Inc. v. Gerolsteiner Brunnen GmbH & Co., 782 F.Supp. 763, 773 (W.D.N.Y.1991).
33. A&M Records, Inc. v. Napster, 239 F.3d 1004, 1019 (9th Cir. 2001); Metro-Goldwyn-Meyer Studios, Inc. v. Grokster, Ltd., 243 F.Supp.2d 1073, 1089 (C.D.Cal. 2003); Perfect 10, Inc. v. Cybernet Ventures, Inc., 213 F.Supp.2d 1146, 1169 (C.D. Cal. 2002).
34. *Blue Ribbon*, 66 F.Supp.2d at 462.
35. Metzke v. May Dept. Stores Co., 878 F.Supp. 756 (W.D. Pa. 1995) (U.S. retailer potentially liable for contributory infringement where it provided samples of copyrighted goods to a Taiwanese company that copied the goods and sold them to other U.S. retailers, since it knew or had reason to know that the Taiwanese company would sell the copied goods to such other retailers).
36. *Blue Ribbon*, 66 F.Supp.2d at 458.
37. *Id.* at 463.
38. *GB Marketing*, supra, 782 F.Supp. 763.
39. *Id.* at 773. See also Stewart v. Adidas A.G., 1997 WL 218431 (S.D.N.Y. 1997).

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