

Intent Standard for Induced Patent Infringement: *Global-Tech Appliances, Inc. v. SEB S.A.*

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Summary

While § 271(a) of the Patent Act (35 U.S.C. § 271(a)) creates liability for someone who directly infringes a patent (by the unauthorized use of a patented invention), § 271(b) of the act provides indirect infringement liability for someone who "actively induces" another party to engage in infringing activities. "Inducement" is a theory of indirect patent infringement, in which a party causes, encourages, influences, or aids and abets another's direct infringement of a patent. In *Global-Tech Appliances, Inc. v. SEB S.A.,* the question was the legal standard for the mental state necessary for a defendant to be liable for actively inducing infringement under § 271(b). The U.S. Court of Appeals for the Federal Circuit had ruled that a plaintiff may hold a defendant liable for induced patent infringement by showing that the defendant had a "deliberate indifference of a known risk" that the induced acts may violate an existing patent.

On May 31, 2011, the Supreme Court rejected the Federal Circuit's "deliberate indifference" standard. By a vote of 8-1, the Court ruled that induced infringement under § 271(b) requires actual knowledge that the induced acts constitute patent infringement. However, in a somewhat surprising step, the Court declared that this statutory knowledge requirement could be satisfied by proof of the accused inducer's "willful blindness" (that is, the defendant subjectively believes there is a high probability that a patent exists and takes deliberate actions to avoid learning of that fact). This is the first time that the Supreme Court has applied "willful blindness," a criminal law doctrine, to a civil patent infringement case. It is also the first time that the Court has held that proof of willful blindness can substitute for actual knowledge, thus establishing a standard not only for patent infringement cases brought under § 271(b), but also potentially for all federal criminal cases involving knowledge.

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Introduction

While § 271(a) of the Patent Act creates strict liability for someone who directly infringes a patent, § 271(b) of the Patent Act provides indirect infringement liability for "[w]hoever actively induces infringement of a patent."[1] This succinct and seemingly straightforward statutory text was the subject of an interpretive dispute between the parties in *Global-Tech Appliances, Inc. v. SEB S.A.,* a 2011 Supreme Court case. Although the statutory text does not specify a scienter requirement for a person to be found liable for actively inducing patent infringement, the Supreme Court in this case inferred that "at least some intent is required" because of the presence of the adverb "actively" before "induces," which "suggests that the inducement must involve the taking of affirmative steps to bring about the desired result."[2] However, § 271(b) is ambiguous in that two different interpretations are possible regarding the language "induces infringement": (1) the defendant induces another party to engage in conduct that happens to amount to infringement, or (2) the defendant persuades another party to engage in conduct that the inducer knows is patent infringement. The question in *Global-Tech* was whether a plaintiff must show that the defendant knew that the induced acts constituted patent infringement in order to hold him liable under § 271(b).

On May 31, 2011, the Supreme Court ruled by a vote of 8-1 that induced infringement under § 271(b) requires actual knowledge that the induced acts constitute patent infringement.[3] In addition, the Court held that this knowledge standard could be satisfied by proof that the defendant took deliberate actions to "willfully blind" himself to the high probability of the infringing nature of the induced activities.[4] Although the "willful blindness" doctrine is widely used by lower federal courts in criminal cases, this is the first time that the Supreme Court has applied it to a civil patent infringement case. It is also the first time that the Court has held that proof of willful blindness can satisfy a statutory requirement of knowing or willful conduct, thus establishing a standard not only for patent infringement cases brought under § 271(b), but also for all federal criminal cases involving knowledge.[5]

This report provides a legal analysis of *Global-Tech Appliances, Inc. v. SEB S.A.* and discusses its potential impact on the law.

Background

The Patent Act grants patent holders the exclusive right to exclude others from making, using, offering for sale, or selling their patented invention throughout the United States, or importing the invention into the United States.[6] Whoever performs any one of these five acts during the term of the invention's patent, without the patent holder's authorization, is liable for infringement.[7] A

[1] 35 U.S.C. § 271(b).

[2] Global-Tech Appliances, Inc. v. SEB S.A., No. 10-6, slip op. at 4, 563 U.S. ___ (2011).

[3] *Id.* at 10.

[4] *Id.* at 10-12.

[5] *Id.* at 3 (Kennedy, J., dissenting).

[6] 35 U.S.C. §§ 154(a)(1), 271(a).

[7] 35 U.S.C. § 271(a).

patent holder may file a civil action against an alleged infringer in order to enjoin him from further infringing acts.[8] The patent statute also provides for the award of damages "adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer."[9]

While § 271(a) of the Patent Act creates liability for someone who directly infringes a patent, § 271(b) of the act "extends liability to one who actively induces infringement by another."[10] This statutory provision "codified long-standing precedent deriving from tort law that those who aid and abet direct patent infringement shall be liable for indirect infringement."[11] Although direct patent infringement is a strict liability offense, in that the direct infringer's knowledge or intent is irrelevant—the unauthorized use of a patented invention is sufficient for liability—indirect infringement requires some element of knowledge.[12] Thus, the elements of a § 271(b) inducement claim includes the following: (1) evidence of actual infringement of a patent by the direct infringer,[13] (2) evidence of the defendant's "active steps ... taken to encourage direct infringement" by third parties,[14] and (3) proof of the defendant's mental state. With respect to this third element, however, the federal courts have struggled to clearly define what mental state is necessary to support a finding of induced infringement. Two decisions from different panels of the U.S. Court of Appeals for the Federal Circuit[15] caused this confusion.[16] In *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, a panel of the Federal Circuit held that a defendant could be liable if the plaintiff could prove that the defendant actually intended to cause the acts that ultimately turned out to be patent infringement.[17] A different panel of the Federal Circuit held in *Manville Sales Corp. v. Paramount Systems, Inc.* that "[i]t must be established that the defendant possessed specific intent to encourage another's infringement and not merely that the defendant had knowledge of the acts alleged to constitute inducement. The plaintiff has the burden of showing that the alleged infringer's actions induced infringing acts and that he knew or should have known his actions would induce actual infringements."[18]

An en banc Federal Circuit attempted to resolve this conflict of authority in its 2006 decision, *DSU Medical Corp. v. JMS Co., Ltd.,* [19] which held that to be held liable under § 271(b),"the inducer must have an affirmative intent to cause direct infringement."[20] The en banc court explained that,

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[8] 35 U.S.C. § 283.

[9] 35 U.S.C. § 284.

[10] Mark A. Lemley, *Inducing Patent Infringement,* 39 U.C.D.L. REV. 225, 226 (2005).

[11] Brief for Law Professors as Amici Curiae in Support of Respondent at 1, On Writ of Certiorari to the United States Court of Appeals for Federal Circuit, Global-Tech Appliances, Inc. v. SEB S.A., No. 10-06.

[12] Lemley, *supra* note 10, at 235-36.

[13] Aro Mfg. Co. v. Convertible Top Replacement Co., 365 U.S. 336, 341 (1961) ("[I]t is settled that if there is no *direct* infringement of a patent there can be no *contributory* infringement.") (emphasis in original).

[14] MGM Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 936 (2005) (internal quotations and citations omitted).

[15] The U.S. Court of Appeals for the Federal Circuit is a specialized tribunal that has exclusive jurisdiction to hear appeals from all district court judgments in civil actions arising under federal patent law. 28 U.S.C. §1295.

[16] Lemley, *supra* note 10, at 238, 240.

[17] 909 F.2d 1464, 1469 (Fed. Cir. 1990).

[18] 917 F.2d 544, 554 (Fed. Cir. 1990).

[19] 471 F.3d 1293 (Fed. Cir. 2006) (en banc in part).

[20] *DSU Medical Corp.*, 471 F.3d at 1306.

> The plaintiff has the burden of showing that the alleged infringer's actions induced infringing acts and that he knew or should have known his actions would induce actual infringements. The requirement that the alleged infringer knew or should have known his actions would induce actual infringement necessarily includes the requirement that he or she knew of the patent.[21]

However, prior to its decision in *Global-Tech Appliances, Inc. v. SEB S.A.,* the U.S. Supreme Court had never before addressed the scope of the knowledge requirement (or even determined whether there is a requisite intent) for inducement liability under § 271(b) of the Patent Act.

Legal Analysis of *Global-Tech, Inc. v. SEB S.A.*

Factual Background

SEB S.A. is a French company that manufactures home-cooking appliances and sells its products through an indirect subsidiary, T-Fal Corp. In 1991, SEB S.A. obtained a U.S. patent, No. 4,995,312, for its design of an innovative "cool-touch" deep-fat fryer for home kitchen use that incorporated a plastic outer shell surrounding a metal frying pot. After obtaining the patent, the company sold it in the United States under its T-Fal brand and enjoyed commercial success with the product.[22] In 1997, the U.S. company Sunbeam Products (a competitor of SEB) requested that Pentalpha Enterprises (a Hong Kong corporation and wholly owned subsidiary of Global-Tech Appliances, Inc.) develop and supply it with deep-fat fryers that Sunbeam planned to sell in the United States. In developing its fryer, Pentalpha purchased an SEB deep fryer in Hong Kong and copied its "cool touch" design. Because the SEB fryer that Pentalpha bought had been made for sale in Hong Kong, it did not bear any U.S. patent markings. Pentalpha also hired a U.S. patent attorney to conduct a "right-to-use" study regarding its deep fryer; Pentalpha did not, however, inform the attorney that it had copied everything but the cosmetic features of an SEB deep fryer. The attorney failed to locate SEB's patent in the course of his investigation and issued an opinion letter stating that Pentalpha's deep fryer did not infringe any U.S. patents he had found and analyzed. Pentalpha then sold the deep fryers to Sunbeam, which resold them in the U.S. market under its trademarks, "Oster" and "Sunbeam." Because Sunbeam had obtained the deep fryers from a manufacturer that had lower production costs than SEB, Sunbeam was able to offer the appliance to U.S. customers at a lower price than SEB.[23] In March 1998, SEB sued Sunbeam, alleging that its sales of the fryer infringed SEB's patent. A month later, Sunbeam notified Pentalpha of the lawsuit. SEB reached a settlement with Sunbeam in which Sunbeam agreed to pay SEB $2 million.[24]

Even after being informed of the patent infringement lawsuit against Sunbeam, Pentalpha continued to sell the deep fryers to other resellers, including Fingerhut Corp. and Montgomery Ward & Co. SEB then filed a lawsuit in the U.S. District Court for the Southern District of New York against Pentalpha for direct infringement of its patent as well as for actively inducing

[21] *Id.* at 1304 (internal quotations and citations omitted).

[22] Global-Tech Appliances, Inc. v. SEB S.A., No. 10-6, slip op. at 1, 563 U.S. ___ (2011).

[23] *Id.* at 2.

[24] SEB S.A. v. Montgomery Ward & Co., 594 F.3d 1360, 1366 (Fed. Cir. 2010).

Sunbeam, Fingerhut, and Montgomery Ward to sell or to offer to sell Pentalpha's deep fryers in violation of SEB's patent rights.[25]

District Court's Opinion

On April 21, 2006, the jury found Pentalpha guilty on both infringement claims because it had willfully infringed SEB's patent and induced others to infringe the patent.[26] The jury awarded SEB $4.65 million as a reasonable royalty. Pentalpha then filed a variety of post-trial motions, including one in which it asked the district court to reduce the damages award by $2 million to account for Sunbeam's settlement with SEB. The court agreed to this reduction, but also approved SEB's request for enhanced damages and an award of attorneys' fees due to the jury's finding that Pentalpha's infringement had been willful.[27] Pentalpha also filed a motion seeking a new trial or judgment as a matter of law because Pentalpha believed that SEB did not adequately prove inducement under 35 U.S.C. § 271(b). Pentalpha argued that because it did not actually know of SEB's patent until it had received notice of the lawsuit against Sunbeam, the jury erred in finding Pentalpha liable for actively inducing infringement during the time it was selling its deep fryers to Sunbeam. The district court rejected Pentalpha's argument and upheld the jury's finding of inducement liability under § 271(b).[28] Pentalpha appealed the decision to the U.S. Court of Appeals for the Federal Circuit.

Federal Circuit's Opinion

On appeal, a panel of the Federal Circuit affirmed the district court's judgment on February 5, 2010. The appellate court first explained that its decision in *DSU Medical Corp. v. JMS Co., Ltd.* had established the intent necessary to support a finding of induced infringement under § 271(b): "the plaintiff must show that the alleged infringer knew or should have known that his actions would induce actual infringements."[29] The court observed, however, that the en banc Federal Circuit's opinion in *DSU Medical Corp.* had not "set out the metes and bounds of the knowledge-of-the-patent requirement," nor did it "address the scope of the knowledge requirement for intent."[30] The court stated that "a claim for inducement is viable even where the patentee has not produced direct evidence that the accused infringer actually knew of the patent-in-suit."[31] Elaborating upon this point, the court ruled that constructive knowledge of the patent could be shown by proof of the defendant's "deliberate indifference of a known risk" that an infringement of a patent may occur.[32]

The Federal Circuit acknowledged that there was no direct evidence in the record to show that Pentalpha actually knew of SEB's patent before being informed of the Sunbeam lawsuit.[33]

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[25] *Global-Tech Appliances*, No. 10-6, slip op. at 2-3.

[26] *SEB S.A.,* 594 F.3d at 1367-68.

[27] *Id.* at 1368.

[28] *Global-Tech Appliances*, No. 10-6, slip op. at 3.

[29] *SEB S.A.,* 594 F.3d at 1376, *citing DSU Medical, Corp.,* 471 F.3d at 1304.

[30] *Id.*

[31] *Id.* at 1377.

[32] *Id.*.

[33] *Id.*

However, applying its newly articulated intent standard for §271(b) to the facts of the case, the court found in the record "adequate evidence to support a conclusion that Pentalpha deliberately disregarded a known risk that SEB had a protective patent."[34] Such evidence included, among other things, Pentalpha's failure to inform the patent lawyer it had hired to conduct a patent search that it had copied SEB's fryer design. According to the Federal Circuit, the deliberate indifference to an overt risk that a patent exists "is not different from actual knowledge, but is a form of actual knowledge."[35] Pentalpha and Global-Tech (its parent company) petitioned the U.S. Supreme Court for writ of certiorari on June 23, 2010. The Supreme Court accepted the petition on October 12, 2010.[36]

Supreme Court's Opinion

On May 31, 2011, in an 8-1 decision, the Supreme Court affirmed the Federal Circuit's ruling that Pentalpha was liable for inducing infringement of SEB's patent. However, the Court rejected the Federal Circuit's "deliberate indifference" standard for proving intent under § 271(b) in the absence of proof of actual knowledge of the existence of a patent; instead, the Court adopted a higher standard, borrowing the concept of "willful blindness" from criminal law.

Justice Alito, author of the majority opinion, first explained that the text of § 271(b) is inconclusive with respect to the question presented in the case: whether a party who "actively induces infringement of a patent" under 35 U.S.C. § 271(b) must know that the induced acts constitute patent infringement.[37] As a threshold matter, the Court noted that "[a]lthough the text of §271(b) makes no mention of intent, we infer that at least some intent is required" for liability to attach.[38] Such an inference was based on dictionary definitions of "induce" and "actively" that imply an intent to bring about a particular result, the Court noted.[39] The Court then observed that there are two possible interpretations of the statutory phrase "induces infringement":

1. [T]his provision [of §271(b)] may require merely that the inducer lead another to engage in conduct that happens to amount to infringement, *i.e.,* the making, using, offering to sell, selling, or importing of a patented invention.
2. [It] may also be read to mean that the inducer must persuade another to engage in conduct that the infringer knows is infringement.[40]

To resolve this ambiguity in the statutory text, the Court relied on an examination of the legislative history of the Patent Act of 1952 as well as case law, specifically its 1964 opinion, *Aro Mfg. Co. v. Convertible Top Replacement Co. ("Aro II").*[41] Justice Alito determined that the *Aro II* decision "resolves the question in this case."[42] *Aro II* concerned the requisite state of mind under

[34] *Id.*

[35] *Id.*

[36] Global-Tech Appliances, Inc. v. SEB S.A., 131 S. Ct. 458 (2010).

[37] *Global-Tech Appliances*, No. 10-6, slip op. at 4.

[38] *Id.*

[39] *Id.* ("The term "induce" means "[t]o lead on; to influence; to prevail on; to move by persuasion or influence." Webster's New International Dictionary 1269 (2d ed. 1945). The addition of the adverb "actively" suggests that the inducement must involve the taking of affirmative steps to bring about the desired result.") (citation omitted).

[40] *Id.* at 4-5.

[41] 377 U.S. 476 (1964) ("Aro II").

[42] *Global-Tech Appliances*, No. 10-6, slip op. at 7.

§ 271(c), which was enacted at the same time as § 271(b) and shares a "common origin" in contributory infringement case law. Section 271(c) provides that "[w]hoever offers to sell or sells ... a component of a patented [invention] ..., constituting a material part of the invention, *knowing the same to be especially made or especially adapted for use in an infringement* of such patent ... shall be liable as a contributory infringer."[43] Justice Alito noted that §271(c) contains the same ambiguity as the language in § 271(b), in that the italicized phrase above may be read in either of two ways: (1) requiring a violator to know that the component is "especially adapted for use" in a product that happens to infringe a patent, or (2) requiring, in addition, knowledge of the existence of the patent that is infringed.[44] He explained that "a badly fractured" *Aro II* Court voted 5-4 in favor of the second interpretation, that knowledge of the patent was required.[45] Justice Alito also observed that Congress had not changed §271(c)'s intent requirement in the decades since *Aro II* and he specifically mentioned the "special force" of the doctrine of *stare decisis* for matters of statutory interpretation.[46] Given that the language of the two provisions [§ 271(b) and § 271(c)] "creates the same difficult interpretative choice," the majority opinion stated that "[i]t would thus be strange to hold that knowledge of the relevant patent is needed under § 271(c) but not under § 271(b)."[47] Therefore, the Court held that induced infringement under § 271(b) requires knowledge that the induced acts constitute patent infringement.[48]

Next, the Court ruled that the Federal Circuit was erroneous in holding that a "deliberate indifference to a known risk that a patent exists" would satisfy this knowledge requirement.[49] The Court explained that the Federal Circuit's standard contained two flaws:

> First, it permits a finding of knowledge when there is merely a "known risk" that the induced acts are infringing. Second, 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.[50]

Instead of the Federal Circuit's "deliberate indifference" standard, the Supreme Court decided that the more appropriate standard for § 271(b) inducement cases that lack direct evidence of the accused inducer's actual knowledge of a patent is "willful blindness." Justice Alito noted that the doctrine of willful blindness is used widely within the federal judiciary in criminal law cases involving criminal statutes that require proof that a defendant acted knowingly or willfully, in order to hold defendants accountable so that they "cannot escape the reach of these statutes by deliberately shielding themselves from clear evidence of critical facts that are strongly suggested by the circumstances."[51] He also explained that "persons who know enough to blind themselves to direct proof of critical facts *in effect* have actual knowledge of those facts."[52] To supports its claim that willful blindness can substitute for a statutory requirement of knowledge, the majority

[43] 35 U.S.C. § 271(c) (emphasis added).

[44] *Global-Tech Appliances*, No. 10-6, slip op. at 8.

[45] *Id.* at 8-9, *citing Aro II,* 377 U.S. at 488, and n.8; *id.* at 514 (White, J., concurring); *id.* at 524-27 (Black, J., dissenting).

[46] *Id.* at 9.

[47] *Id.* at 10.

[48] *Id.*

[49] *Id.* at 10.

[50] *Id.* at 14.

[51] *Id.* at 10.

[52] *Id.* at 11 (emphasis added).

opinion relied on opinions from the federal courts of appeals that applied the willful blindness doctrine in criminal matters.[53] The Court stated that "we can see no reason why the doctrine should not apply in civil lawsuits for induced patent infringement under 35 U.S.C. § 271(b)."[54]

The Court described a two-part test for the willful blindness doctrine:

1. The defendant must subjectively believe that there is a high probability that a fact exists.
2. The defendant must take deliberate actions to avoid learning of that fact.[55]

The Court believed that these two requirements of the willful blindness doctrine provide "an appropriately limited scope that surpasses recklessness and negligence."[56] The differences between these three standards, according to the Court, are as follows:

- "[A] willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts."
- "[A] reckless defendant is one who merely knows of a substantial and unjustified risk of such wrongdoing."
- "[A] negligent defendant is one who should have known of a similar risk but, in fact, did not."[57]

Finally, the Court affirmed the Federal Circuit's finding of inducement liability for Pentalpha because it determined that the evidence in the case led to that same conclusion under the Court's new "willful blindness" test: "Taken together, this evidence was more than sufficient for a jury to find that Pentalpha subjectively believed there was a high probability that SEB's fryer was patented, that Pentalpha took deliberate steps to avoid knowing that fact, and that it therefore willfully blinded itself to the infringing nature of Sunbeam's sales."[58]

Dissenting Opinion

In lone dissent, Justice Kennedy agreed with the majority opinion's first holding that in order to hold a defendant liable for inducing infringement under § 271(b), the defendant must know that the induced acts constitute patent infringement. However, he disagreed with the Court's second significant holding, that "willful blindness will suffice" for the statutory requirement of knowledge.[59] He criticized the majority opinion for failing to cite any Supreme Court precedent for the specific proposition that willful blindness can substitute for a statutory requirement of

[53] *Global-Tech Appliances*, No. 10-6, slip op. at 12 ("[E]very Court of Appeals – with the possible exception of the District of Columbia Circuit ... – has fully embraced willful blindness, applying the doctrine to a wide range of criminal statutes.").

[54] *Id.*

[55] *Id.* at 13 (citing various opinions of the Courts of Appeals that have articulated the doctrine).

[56] *Id.* at 14.

[57] *Id.* (citations omitted).

[58] *Id.* at 16.

[59] *Id.* at 1 (Kennedy, J., dissenting).

knowledge, relying instead on precedent from the courts of appeals.[60] He insisted that "[w]illful blindness is not knowledge" and opined that "judges should not broaden a legislative proscription by analogy."[61] He faulted the Court's willful blindness test for its potential to cause the following problem:

> One can believe that there is a "high probability" that acts might infringe a patent but nonetheless conclude they do not infringe. The alleged inducer who believes a device is noninfringing cannot be said to know otherwise.[62]

Finally, Justice Kennedy criticized the Court for "endors[ing] the willful blindness doctrine here for all federal criminal cases involving knowledge ... in a civil case where it has received no briefing or argument from the criminal defense bar, which might have provided important counsel on this difficult issue."[63]

Potential Impact of *Global-Tech*

The Supreme Court in *Global-Tech* held that § 271(b) requires specific intent to induce acts that constitute patent infringement. However, the alleged inducer's actual knowledge of the patent is not necessarily required, as the knowledge requirement may be satisfied by the "willful blindness" doctrine. This standard is stricter than the Federal Circuit's "deliberate indifference" standard for establishing inducement of infringement that would have allowed a finding of knowledge when there is only a "known risk" that the induced acts infringe a patent. Thus, the Court has raised the bar for proving that a defendant is liable for actively inducing infringement of a patent under § 271(b). In addition, as Justice Kennedy noted in his dissent, the Court's opinion not only impacts patent law, but it also appears to apply to federal cases that involve criminal statutes with knowledge requirements.[64]

One observer praised the Court's decision by saying that the Court's "willful blindness" rule "is truly narrow, limited to cases like this one with particularly bad facts showing that the defendant almost certainly knew they were infringing on the plaintiff's patent."[65] Another commentator believed that the ruling "will eliminate a lot of the ambiguity in the Federal Circuit's 'deliberate indifference' standard."[66]

Several questions remain following *Global-Tech.* The Court did not decide whether a defendant's "willful blindness" may extend to the *induced acts* that constitute infringement (as opposed to being willfully blind to the existence of the patent), as the question was not at issue in the case because "Pentalpha was indisputably aware that its customers were selling its products" in the

[60] *Id.* at 3.

[61] *Id.*

[62] *Id.* at 2 (internal citations omitted).

[63] *Id.* at 3.

[64] *Id.* at 3 (Kennedy, J., dissenting); *see also* Ronald Mann, *Commentary: Bad Facts Swing Pendulum to Rare Federal Circuit Affirmance,* SCOTUSBLOG.COM, June 1, 2011.

[65] Tony Dutra, *High Court Says Willful Blindness is Evidence of Knowledge in Induced Patent Infringement,* BNA'S PATENT, TRADEMARK & COPYRIGHT JOURNAL, June 3, 2011 (quoting Mark A. Lemley of the Stanford Law School).

[66] *Id.* (quoting Megan S. Woodworth of the law firm Dickstein Shapiro).

United States.[67] Another unresolved matter is whether "knowledge of the patent" means knowledge of a specific patent, or knowledge of the high probability that a patent exists.[68] These questions remain left to be resolved by future litigation or by Congress.

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[67] *Global-Tech Appliances*, No. 10-6, slip op. at 12.

[68] Tony Dutra, *High Court Says Willful Blindness is Evidence of Knowledge in Induced Patent Infringement,* BNA'S PATENT, TRADEMARK & COPYRIGHT JOURNAL, June 3, 2011.