



## Alerts

### U.S. Supreme Court Raises Knowledge Bar For Inducing Patent Infringement

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*Intellectual Property Update*

On May 31, the U.S. Supreme Court, in *Global-Tech Appliances, Inc. v. SEB S. A.*, 2011 WL 2119109, held that "willful blindness," rather than mere "deliberate indifference to a known risk that a patent exists," is the minimum showing required to establish knowledge of a patent for induced patent infringement under 35 U.S.C. § 271(b).

The Court, in an 8-1 decision, observed that the language of Section 271(b) was ambiguous as to whether knowledge of infringement or only knowledge of the induced acts, which happened to infringe a patent, was required to establish inducement. The Court noted that 35 U.S.C. § 271(c), which addresses contributory infringement, suffers from the same ambiguity. Both induced infringement and contributory infringement emanated from the same case law prior to their codification in the 1952 Patent Act. Thus, the Court concluded that the ambiguity should be resolved consistently across both subsections. The Court already had determined that Section 271(c) required knowledge of infringement in *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476, 488 (1964), even though the *Global-Tech* Court characterized that decision as "badly fractured." Thus, such knowledge is also required under 35 U.S.C. § 271 (b).

The facts in *Global-Tech* required a further refinement as to what constituted "knowledge" for this purpose. SEB had obtained a U.S. patent for its cool-touch fryer, which became a commercial success. Global-Tech's Hong Kong subsidiary, Pentalpha, developed a competing fryer for Sunbeam to sell in the U.S. Pentalpha purchased an SEB fryer (containing no U.S. patent markings) in Hong Kong and copied all but the cosmetic features. Pentalpha later retained an attorney to perform a right-to-use analysis, but did not disclose that Pentalpha had copied its design from SEB's fryer. SEB sued Pentalpha for inducing infringement by Sunbeam and others.

The jury found that Pentalpha had induced infringement. The district court denied Pentalpha's post-trial motion for judgment as a matter of law based on a lack of actual knowledge of SEB's patent. The U.S. Court of Appeals for the Federal Circuit affirmed, holding that Pentalpha's deliberate disregard of a known risk that SEB had a protective patent was sufficient knowledge under Section 271(b).

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The Supreme Court affirmed but held that the Federal Circuit's knowledge standard was too low and was more akin to a recklessness, or even negligence, standard. The Court looked to the criminal law concept of "willful blindness" to articulate the minimum knowledge required in this circumstance. Willful blindness requires a subjective belief of a high probability that a fact exists, and deliberate actions to avoid learning of the fact. Although the Court announced a new standard, it did not remand the case because the jury could have easily found that Pentalpha willfully blinded itself to the infringing nature of the sales it encouraged Sunbeam to make.

Although adoption of the Supreme Court's standard is only likely to change the outcome in a small fraction of patent cases, *Global-Tech* may still prove important. The Court's holding that willful blindness can satisfy a statutory knowledge requirement may have its greatest impact far from the patent arena, for example, in criminal cases.