

AKAMAI TECHNOLOGIES, INC. v. LIMELIGHT NETWORKS, INC., Appeal Nos. 2009-1372, -1380, -1416, -1417 (Fed. Cir. May 13, 2015). Before Prost, Linn and Moore. Appealed from D. Mass. (Judge Zobel).

Background:

Akamai holds a patent having method claims related to streaming internet content. While Limelight practiced at least some steps of Akamai's patent, the required step of "tagging" is, in Limelight's case, not performed by Limelight itself. Instead, tagging would be performed by Limelight's customers.

In 2014, the Supreme Court reversed the Federal Circuit's holding that Limelight infringed Akamai's patent under 35 U.S.C. §271(b). The case was remanded to the Federal Circuit for a determination as to whether the district court properly concluded that Limelight did not directly infringe Akamai's patent under 35 U.S.C. §271(a).

Issue/Holding:

Did the district court err in holding that Limelight did not directly infringe Akamai's patent under 35 U.S.C. §271(a)? No, affirmed.

Discussion:

The Federal Circuit confirmed that Limelight did not carry out all steps of Akamai's patent. The Federal Circuit described the "single entity" standard and explained that 35 U.S.C. §271(a) necessarily requires that a single actor must perform or use each and every step or element of a claimed method. In this case, the Federal Circuit found that Limelight's actions of merely "encouraging" or "instructing" others to perform an act, which they conceded may have occurred in this case, does not equate to performing the act themselves.

The Federal Circuit held that 35 U.S.C. §271(a) does not incorporate joint tortfeasor liability, but only vicarious liability as embodied in the single entity rule. Thus, even for a finding of indirect infringement, the Federal Circuit concluded that some single party must be directly liable of the entire act of direct infringement. For indirect infringement, this would require one party at least having "direction and control" over another, with the parties together practicing all steps of the method.

The Federal Circuit explained that joint liability cannot exist under 35 U.S.C. §271(a) because of the statutory scheme of §271 as a whole and the errors that would result in importing such liability into §271(a). The Federal Circuit opined that sections §271(b) and (c) were crafted to expressly define the only ways in which individuals that do not complete an infringing act can be held liable, and allowing for §271(a) to include another would be an improper interpretation. Further, the Federal Circuit opined that Akamai's theory that Limelight should be liable for "causing and intending an act or result" under §271(a) would render §271(b) redundant.

The Federal Circuit also found that the general standards of vicarious liability apply to §271(a) infringement and broadening the scope of liability would contravene precedent.

Judge Moore issued a strongly worded dissent, in part based upon the terminology of §271(a) and particularly the term "whoever," which she felt covers multiple parties that act in concert to collectively perform a claimed process. She thus disagreed with the utilization of the single entity rule and argued that Limelight infringed Akamai's patent under §271(a).