AKAMAI TECHNOLOGIES, INC. v. LIMELIGHT NETWORKS, INC., Appeal Nos. 2009-1372, 2009-1380, 2009-1416, 2009-1417 (Fed. Cir. August 13, 2015). En banc (minus judges Taranto, Chen and Stoll), per curiam. Appealed from D. Mass. (Judge Zobel).

Background:

In 2006, Akamai sued Limelight for alleged infringement of several patents including claims directed to a method for delivering content over the Internet. During trial, the parties agreed that Limelight did not perform "tagging" and "serving" steps in the claims, which were instead performed by Limelight's customers. The district judge instructed the jury that Limelight is responsible for its customers' performance of the tagging and serving method steps if Limelight directed or controlled its customers' activities. The jury found infringement of the method claims. The district court then granted Limelight's motion for reconsideration of judgment of noninfringement as a matter of law based on *Muniauction* and held that as a matter of law there could be no liability.

Akamai appealed and the Federal Circuit held that a defendant could be held liable for inducing patent infringement under 35 U.S.C. §271(b) even though no one has committed direct infringement under 35 U.S.C. §271(a). Limelight appealed and the Supreme Court held that induced infringement under 35 U.S.C. §271(b) requires a single direct infringer. Thus, Limelight could not be liable for indirect infringement absent the existence of a direct infringer. The Supreme Court remanded the case to the Federal Circuit.

Issue/Holding:

Did the district court err in granting judgment of noninfringement as a matter of law? Yes, reversed.

Discussion:

The Federal Circuit sets forth an additional category in which all the method claim steps can be attributed to a single entity even though all acts are not performed by the alleged direct infringer. Under the Federal Circuit's prior precedent, a party could be liable for direct infringement if (1) it performs all the steps itself, (2) it acts through an agent (applying traditional agency principles) or (3) it contracts with another to perform one or more steps of a claimed method.

The Federal Circuit added another category that is encompassed within the scope of "control or direction" by the party. The Federal Circuit held that a party can also be liable for direct infringement when "an alleged infringer conditions participation in an activity or receipt of a benefit upon performance of a step or steps of a patented method and establishes the manner or timing of that performance." In those instances, the third party's actions are attributed to the alleged infringer such that the alleged infringer becomes the single actor chargeable with direct infringement. Whether a single actor directed or controlled the acts of one or more third parties is a question of fact, reviewable on appeal for substantial evidence, when tried to a jury. In addition, the Federal Circuit held that participants in a joint enterprise can be charged with the acts of the other for purposes of direct infringement.

Thus, the Federal Circuit held that Limelight directly infringed Akamai's method claims, reversed the district court's grant of judgment of noninfringement as a matter of law and also vacated all earlier precedent that limited 35 U.S.C. §271(a) to principal-agent relationships, contractual arrangements, and joint enterprise.