SUPREMA, INC. v. ITC, Appeal No. 2012-1170 (Fed. Cir. August 10, 2015). En banc rehearing (Reyna).

Background:

A patent owner filed a complaint with the International Trade Commission (ITC) alleging that Suprema and Mentalix infringed several of its patents directed to methods for capturing and processing a fingerprint image. Suprema manufactured scanners abroad and sold the scanners (together with a software development kit) to Mentalix. Mentalix then imported the scanners into the United States, and later combined the scanners with software using Suprema's software development kit. Mentalix used and sold the scanners bundled with software within the United States.

The ITC held that Mentalix's use of the scanners, when bundled with the software, directly infringed the patents at issue. It therefore held that Mentalix directly infringed the patents, and Suprema induced infringement through willful blindness and active encouragement and facilitation of infringement.

A divided Federal Circuit panel vacated the ITC's holding that Mentalix directly infringed the patents, and thus that Suprema induced infringement. The panel noted that Section 337 of the Tariff Act protects against importation of "articles that infringe" a patent, and thus held that the infringement must be measured at the time of importation. It concluded that the ITC lacked authority to grant relief based on induced infringement and vacated all infringement findings. The ITC and the patent holder petitioned the Federal Circuit for an *en banc* hearing.

Issue/Holding:

Did the Federal Circuit panel err in holding that Section 337 of the Tariff Act does not extend to induced infringement? Yes, vacated and remanded.

Discussion:

Section 337 of the Tariff Act defines as unlawful the importation into the United States of "articles that infringe" a valid and enforceable United States patent. The court *en banc* determined that goods used by the importer after importation to directly infringe at the inducement of the seller qualified as "articles that infringe" under Section 337.

In reaching this conclusion, the panel first determined that Congress has not "directly spoken" to whether the statute extends to induced infringement. Congress did not limit the word "infringe" to any particular mode of infringement (direct or indirect). Additionally, the court noted that the phrase "articles that infringe" does not match the language used in the Patent Act (describing actions that infringe), and thus introduces further ambiguity. Thus, the court afforded the ITC *Chevron* deference in interpreting the statute.

The Federal Circuit next determined that the ITC's interpretation of the statute was reasonable. It concluded that when inducement is accomplished by supplying an article, the supplied article is an "article that infringes" if the other requirements of inducement are met. It noted that liability for inducement is established at the time of the inducing activity, and further concluded that an alternative interpretation would be contrary to public policy and the statute's legislative history. The court *en banc* therefore vacated the original panel's judgment.