LIMELIGHT NETWORKS, INC. v. AKAMAI TECHNOLOGIES, INC., Appeal No. 12-786 (U.S. June 2, 2014). Delivered by Alito. Appealed from Fed. Cir. (*en banc*).

Background:

Akamai is a licensee of a patent directed to a method of delivering electronic data. Limelight carries out several of the steps of the claimed method, but its customers (and not Limelight itself) perform one step of the claimed method.

Akamai sued Limelight for inducing infringement under 35 U.S.C. §271(b). Akamai did not argue that Limelight was directly infringing the claims under 35 U.S.C. §271(a), and both parties agreed that direct infringement was not present in this case.

An *en banc* Federal Circuit panel held Limelight liable for induced infringement, holding that a defendant who performed some steps of a claimed method and encouraged others to perform the remaining steps could be liable for induced infringement under 35 U.S.C. §271(b) even if a single entity has not committed direct infringement under 35 U.S.C. §271(a). Limelight petitioned for certiorari.

Issue/Holding:

Did the Federal Circuit err in holding that an entity can be liable for induced infringement under 35 U.S.C. §271(b) even if no one has committed direct infringement under 35 U.S.C. §271(a)? Yes, reversed.

Discussion:

The Supreme Court, in a unanimous decision, held that a defendant cannot be liable for inducing infringement under 35 U.S.C. §271(b) when no one has committed direct infringement under 35 U.S.C. §271(a) or another statutory provision. The Court indicated that because the performance of all of the claimed method steps cannot be attributable to any one entity, there can be no direct infringement based upon the Federal Circuit's holding in *Muniauction*. The Court opined that the Federal Circuit's holding that induced infringement can be found independent of actionable direct infringement would require courts to create two parallel bodies of law, one for direct infringement and one for indirect infringement. Further, the Court noted that if a defendant can be held liable for induced infringement by inducing conduct that does not invade the patent holder's rights, courts would be unable to fairly assess when a patent holder's right can be invaded.

The Court did not address or consider the Federal Circuit's holding in *Muniauction* relating to direct infringement, indicating that the question at issue is related to §271(b), and presupposes that no direct infringement occurred under §271(a). Thus, the Court proceeded by presuming that the Federal Circuit's interpretation of direct infringement under §271(a) is correct.

The Court acknowledged that its holding could hypothetically allow a would-be infringer to evade liability by dividing performance of a claimed method with another whom the defendant does not direct or control. However, the Court explained that this issue is a result of the direct infringement statute (35 U.S.C. §271(a)) and the Federal Circuit's interpretation thereof, and is not a result of the instant holding.