

MANKES v. VIVID SEATS LTD., Appeal Nos. 2015-1500, 2015-1501  
(Fed. Cir. April 22, 2016). Before Taranto, Schall, and Chen. Appealed from E.D.N.C. (Judge Flanagan).

## Background:

Plaintiff owns patents directed to methods for managing a reservation system that divides inventory between a local server and a remote Internet server. Plaintiff sued defendants alleging that their operation of Internet-based reservation systems, in conjunction with the operation of local reservation systems by movie theaters and other entertainment venues, infringes the claims of plaintiff's patents.

When plaintiff filed his complaints in 2013, the law relating to divided infringement was in the midst of a multiyear process of active judicial reconsideration (i.e., the *Akamai-Limelight* line of cases), including by the Federal Circuit sitting *en banc* (*Akamai II*-2012) and by the Supreme Court (*Limelight*-2014). The Supreme Court reversed *Akamai II*, and held that divided infringement liability of the sort at issue in the instant action requires some person to be liable for direct infringement under §271(a), and remanded for possible reconsideration of direct-infringement standards by the Federal Circuit.

In early 2015, the district court in the instant action, applying the law on direct-infringement liability as it then stood, concluded that plaintiff's allegations were insufficient to establish direct infringement under §271(a) (it was undisputed that no one person performs all of the steps of the asserted method claims), and on that basis the court granted judgments on the pleadings for defendants. After plaintiff initiated an appeal, the narrow legal standards applied by the district court were first reinforced (*Akamai III*), but then revised to ultimately broaden the circumstances in which others' acts may be attributed to an accused infringer to support direct infringement liability for divided infringement (*Akamai IV*).

## Issue/Holding:

Should the district court's judgments be vacated and the cases remanded for further proceedings in light of the broadened divided-infringement standard articulated in *Akamai IV*?  
Yes, vacated and remanded.

## Discussion:

The Federal Circuit determined that the district court reached its conclusion based on legal standards that are now too narrow in light of the intervening decision in *Akamai IV*, which sufficiently broadened the standard governing direct-infringement liability for divided infringement. The Federal Circuit held that the district court's rulings and the arguments of defendants to the district court were squarely based on the earlier, narrower standard and thus vacated the judgments on the pleadings against plaintiff and remanded the cases for further proceedings in light of *Akamai IV*.