

MEDGRAPH, INC. v. MEDTRONIC, INC., Appeal No. 2015-2019 (Fed. Cir. December 13, 2016). Before Taranto, Plager and Lourie. Appealed from W.D.N.Y. (Judge Larimer).

## Background:

Plaintiff owns patents directed to methods for improving patient diagnosis and treatment by uploading patient information to a computer for remote access by medical professionals. Plaintiff sued Defendant alleging that Defendant's CareLink® Therapy Management System, which allows patients to upload diabetes-related information to a central computer server for sharing with a healthcare provider, directly infringed the claims.

The district court issued a decision granting summary judgment of no infringement because under the law on direct infringement liability as it then stood (i.e., under *Akamai IV*) there had not been any showing that Defendant itself directly infringed the method claims or that it acted as a ‘mastermind’ by controlling or directing anyone else’s direct infringement. The district court then entered final judgment of noninfringement.

Shortly after the district court’s entry of final judgment, the Federal Circuit issued *Akamai V*, an *en banc* decision where the circumstances in which others’ acts may be attributed to an accused infringer in cases of divided infringement were broadened.

Defendant appealed.

## Issue/Holding:

Should the district court’s decision be vacated and remanded for proceedings in accordance with *Akamai V*? No, affirmed.

## Discussion:

The Federal Circuit indicated that remand is ordinarily an appropriate action when the governing legal standards change during an appeal, but not here. In this case, Plaintiff had not pointed to any evidence that would permit attribution of patient- and doctor-performed steps to Defendant. While *Akamai V* broadened the circumstances under which attribution may be proper, the standard under *Akamai V* still required a showing that all steps of the claim are performed by or attributable to a single entity. The Federal Circuit found that Plaintiff did not identify any basis on which it could meet that standard.

Instead, under the standard articulated in *Akamai V*, the Federal Circuit determined that the evidence indisputably demonstrated that Defendant did not condition the use of, or receipt of a benefit from, the CareLink System on the performance of all of the method steps of Plaintiff’s patents. The Federal Circuit also determined that the district court correctly concluded that Defendant was not liable under a theory of indirect infringement—because indirect infringement is predicated on direct infringement. Thus, the Federal Circuit affirmed the district court’s grant of summary judgment of noninfringement.