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The Supreme Court Will Review The Federal Circuit's Decision That A Good Faith Belief That A Patent Is Invalid Is A Defense To Induced Patent Infringement

By **Richard J. Oparil**

In *Cisco Systems, Inc. v. Commil USA, LLC*, the U.S. Supreme Court has agreed to review the Federal Circuit's decision that an alleged infringer's good faith belief that patents were invalid is a defense to a claim that it induced infringement.

Commil won a \$74 million jury verdict finding that Cisco infringed its wireless patents. In the District Court, Cisco unsuccessfully sought to defend against the infringement claim by arguing that Cisco's good faith belief that the wireless patents at issue were invalid could serve as a defense to the claim that the company had induced infringement. The Federal Circuit **reversed**. A majority of the panel held that the District Court had erred by excluding Cisco's evidence that it possessed a good-faith belief that *Commil's* patent was invalid.

The majority wrote that "It is true, as the district court noted, that we appear to have not previously determined whether a good-faith belief of invalidity may negate the requisite intent for induced infringement. We now hold that it may." Judge Newman dissented, writing that "A good-faith belief of patent invalidity may be raised as a defense to willfulness of the infringement, but it is not a defense to the fact of infringement. Patent invalidity, if proved, eliminates an invalid patent and thus is a total defense to infringement. However, a "good-faith belief" in invalidity does not avoid liability for infringement when the patent is valid. No rule eliminates infringement of a valid

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patent, whether the infringement is direct or indirect." Cisco's petition for rehearing of the divided panel decision by the entire Court was denied.

Cisco filed a petition for certiorari with the U.S. Supreme Court. The Court invited the government to present its view on whether certiorari should be granted. The Solicitor General filed a brief urging the Court to take the case and reverse the Federal Circuit's decision. He argued that the Federal Circuit "erred in holding that a person who knowingly induces another to engage in infringing conduct may avoid liability under Section 271(b) by demonstrating that it had a good-faith belief that the infringed patent was invalid. This Court's review is warranted to prevent defendants from avoiding inducement liability on a ground that is inconsistent with the text, structure, and purposes of the relevant Patent Act provisions."

The Court granted certiorari and will hear the case this Term. A ruling is expected by June 2015.

Michelle Lee Has Been Nominated to be PTO Acting Director

President Obama has nominated Michelle K. Lee to be the new Acting Director of the United States Patent and Trademark Office (USPTO). A hearing on her nomination by the Senate Judiciary Committee is scheduled for December 10th. Lee is currently serving as the Action Director of the USPTO. Previously, Lee served as the first Director of the PTO's Silicon Valley Office. Prior to joining the USPTO, Lee served as Deputy General Counsel of Google and was the company's first Head of Patents and Patent Strategy. She has B.S. and M.S. degrees in electrical engineering and computer science from M.I.T., as well as a J.D. from Stanford Law School.

Lee is a strong proponent of patent reform legislation, which died in Congress earlier this year, to limit what she has termed **abusive patent litigation**.

Also on December 10th, the Senate Judiciary Committee will consider the nomination of Daniel H. Marti to be the President's Intellectual Property Enforcement Coordinator. The so-called "IP Czar" position coordinates U.S. law-enforcement strategy around copyright, patents

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and trademarks. The coordinator's duties include harmonizing the enforcement activities of several federal agencies under the President's **Joint Strategic Plan on Intellectual Property Enforcement**. Marti He received a B.A. from Georgetown University and a J.D. from Emory University School of Law.

Rep. Issa will Chair The House IP Subcommittee

Rep. Darrell Issa will be the new chair of the House Judiciary Subcommittee on Court's, Intellectual Property and the Internet. Issa, a California Republican, previously chaired the Committee on Oversight and Government Reform. Issa has patent experience - he founded an automobile antitheft device company and is the named inventor on 37 patents.

Patent reform legislation in the new Congress would be considered by the IP Subcommittee. Issa said that his "priorities include advancing a strong bipartisan bill to address abusive patent practices" as well as oversight of the PTO. Alleged abuses in the PTO's telework program has been the subject of investigation by two House committees.