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FEDERAL CIRCUIT OKAYS ITC'S POWER TO HEAR INDUCED INFRINGEMENT CASES

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The Federal Circuit has held that the U.S. International Trade Commission (ITC) has the power to issue an exclusion order to block importation of products that indirectly infringe a patent based upon an inducement theory. The decision by the full Court is available [here](#).

In the case, Suprema, Inc. made hardware components abroad and imported them into the U.S. Once in the U.S., another company, Mentalix Incorporated, loaded software, which allegedly infringed Cross Match Technologies, Inc.'s fingerprint scanning method patent onto the imported hardware components. The imported hardware does not directly infringe the patent, but the ITC found that Suprema was liable for inducing infringement under 35 U.S.C. § 271(b) because the software that was loaded onto Suprema's hardware did directly infringe Cross Match's patent, and blocked imports of Suprema's product into this country. Inducing infringement requires an additional step before any infringement liability could attach.

Suprema appealed to the U.S. Court of Appeals for the Federal Circuit. A three-judge panel reversed the ITC's exclusion. It ruled that the ITC only had the authority to block imports of products that are infringe a patent at the time they enter the country.

The entire Federal Circuit granted rehearing and disagreed with the panel. The majority opinion said the ITC's interpretation of its authority is entitled to deference and a reasonable interpretation by the agency will not be overturned on appeal. Judge Reyna, writing for the Court, ruled the ITC's interpretation that it could block products that would indirectly infringe after they entered the United States, was reasonable and not inconsistent with the ITC's enabling statute.

The decision, if it stands, could significantly expand the method of use patent cases that the ITC can hear. Four judges dissented, writing that: "The language of the statute is unambiguous - the

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commission lacks the power ... to enter an exclusion order on the basis of infringement of a method claim when the underlying direct infringement occurs post-importation." The U.S. Supreme Court could be asked to review the decision.

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