
*Finnegan's monthly update on developments affecting licensing and other IP transactions*

## October 2015

### Infringing Acts Are Attributable to a Single Entity Who Directs or Controls Third Parties or Forms a Joint Enterprise

*by John C. Paul, D. Brian Kacedon, and Daniel F. Klodowski*

The U.S. Court of Appeals for the Federal Circuit recently held that a single entity may be liable for patent infringement if it directs or controls the performance of others who perform a patented method, or is part of a joint enterprise that performs the method. According to the Court, one way an entity directs or controls the performance of another is by conditioning participation in an activity or the receipt of a benefit upon performance of a step or steps of a patented method and establishing the manner or timing of that performance.

### ITC Can Stop Imports of Articles That Infringe Only After Importation When Foreign Sellers Induce That Infringement

*by John C. Paul, D. Brian Kacedon, and Kevin D. Rodkey*

The International Trade Commission has the power to stop importation of articles that infringe a valid U.S. patent. In a recent en banc decision, the Court of Appeals for the Federal Circuit upheld the ITC's statutory interpretation that it can stop imports of articles that do not infringe until after importation where a foreign seller induces the post-importation infringement. This decision confirms that the ITC may stop products that do not infringe at the time of importation. It provides potent relief to patent owners, allowing them to exclude products that do not infringe before they enter the U.S., rather than needing to wait to seek relief until after the products enter the U.S. and the infringement begins.

### Patent Licensing Company May Not Be Called a "Patent Troll" at Trial

*by John C. Paul, D. Brian Kacedon, and Kelly Lu*

A North Dakota court recently prohibited the parties from referring to the patent owner during trial by using derogatory, disparaging, or pejorative references, such as "patent troll" or "pirate." The Court, however, permitted the parties to use neutral and factual terminology that accurately described the patent owner.

### Physicians' Direction or Control Over Patients' Drug Administration Results in Finding of Induced Infringement Against Generic Drug Manufacturers

*by John C. Paul, D. Brian Kacedon, and Justin E. Loffredo*

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Relying on the recent U.S. Supreme Court decision in Akamai, and the subsequent en banc Federal Circuit ruling, an Indiana court recently concluded that the entire performance of a patented method covering drug administration is attributable solely to a single entity, the physician or other health care provider of the patient. In particular, although patients on their own need to obtain one of three claimed components of the patented dosing regimen, the court found that physicians and other health care providers direct the manner and timing of ingesting that component and that patient compliance with those instructions is necessary to receive the full benefit of treatment. Thus, there would be no defense of divided infringement because through this attribution, physicians would directly infringe the patent claims, and the generic drug manufacturer defendants would induce such infringement because their drug labeling instructs physicians to follow the patented regimen.

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