Divided over patent infringement

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A person can be liable for patent infringement when he or she makes a product that includes all the features found in the patent's claim or claims. Similarly, a person is infringing a patent when he or she carries out all the steps found in a patent claim for a process. But what if a person only performs half the steps found in a process claim, and induces another party to do the rest? Who, if anyone, is to blame when there are many parties involved in infringing on a patented process? Traditionally, United States courts have required that a single party carry out all steps before there can be liability for patent infringement. But there may soon be new answers to these questions.

If you have streamed video online, or even visited a popular website, it's likely that a Content Delivery Network (CDN) was used to help provide a smooth streaming experience. CDNs are inherently distributed systems: they involve many replicated nodes at diverse locations, and typically involve multiple parties such as a content provider and CDN operator.

Distributed systems like a CDN pose special challenges for prospective patentees. A desirable patent claim is one that can be infringed by a single party, but, as described above, such a claim can be difficult to craft when considering a distributed system. Often, a claim like this has many steps (typically required so that the claim is novel and unobvious in view of the prior art) to be patenable. Having more steps in a claim increases the likelihood that multiple parties are covered by activities that fall within the claim.

Akamai Technologies faced such a problem. Akamai obtained a US patent directed to a CDN system, which claimed a method that involved placing content on replicated servers, and modifying the content provider's web page to direct browsers to the replicated servers. Limelight Networks, which operates a competing CDN, also placed content on replicated servers. However, in Limelight's system, it was up to the content provider to modify the web page.

Akamai accused Limelight of inducing infringement of its patent. Limelight argued that there was no infringement, direct or induced, as no single party performed all the steps claimed in the patent.

Nevertheless, a slim majority of the Court of Appeals for the Federal Circuit broke from precedent and found that there had been induced infringement. The Court reasoned that requiring a single party to perform all steps of a claimed method would allow wrongdoers to escape liability if they can successfully divide the infringing activity among multiple arms-length parties.

This considerably broadens the induced infringement doctrine, as it means that now there can still be inducement even if multiple parties are involved, so long as they collectively perform all of the claimed steps.

The United States Supreme Court has now taken this issue up for consideration and a decision is expected in the coming months. Limelight, and many other companies, argue that the looser standard espoused by the Federal Circuit would create a great deal of uncertainty, and open up parties to liability in unforeseen ways. This will be a case to watch.