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News & Insights

Patent Attorney Randy McCarthy for IP Watchdog - Readers React: What to Expect After the Supreme Court's Hikma Ruling

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IP Watchdog

https://news.bloombergtax.com/litigation/high-courts-skinny-label-ruling-boosts-patent-case-defenses

Randy McCarthy, Hall Estill

"Basically, this unanimous opinion by the Supreme Court implements a significant clarification in how 'induced infringement' is applied under U.S. patent law and may now be harder to prove across all cases.

This decision by the Supreme Court significantly redefines and tightens the requirements for induced infringement, providing a far more bright-line test and, from a practical standpoint, has made it significantly harder to prove in future cases.

Because the Court articulated a general rule, the impact will extend well beyond pharmaceuticals and skinny labeling contexts.

Several high stakes ongoing litigation cases should be impacted by this ruling immediately, including medical device cases involving dual use surgical systems, software and SaaS cases where user manuals or UI flows allegedly encourage infringing configurations, and consumer electronics cases involving configurable wireless or health tracking features.

In each of these areas, the plaintiffs have generally relied on infringement theories involving capabilities, implied operability, general training materials, knowledge by the defendants of how the consumers will likely use the products, and so on. These are the very types of arguments for inducement that the Court has now rejected.

The decision also highlights an important distinction between method and apparatus claims in a patent. A method claim covers steps that are performed; an apparatus claim covers what the system is from a structural or configuration standpoint. Since inducement is inherently tied to use, method claims remain the more natural vehicle for inducement theories.

Under the new standard, induced infringement of an apparatus claim now requires encouragement of configuration, not just knowledge of capability. Knowing that the customer may likely use the product in an infringing way is insufficient under the new standard."

Attorneys

- Randall K. McCarthy

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