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Federal Circuit Applies Single Entity Rule in Joint Infringement Analysis

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The court stated that "direct infringement liability of a method claim under 35 U.S.C. § 271(a) exists when all of the steps of the claim are performed by or attributed to a single entity," such as in a principalagent relationship, in a contractual arrangement, or in a joint enterprise. Encouraging or instructing others to perform an act does not result in direct infringement. The court found that Limelight and its customers did not possess any of the identified relationships, thus Limelight was not liable for direct infringement.

In analyzing the facts, the court determined that Limelight's providing of written manuals to customers explaining how to operate Limelight's product did not create an agentprincipal relationship. The customers direct and control their use of Limelight's CDN network and do not act as agents of Limelight. Also, the court rejected Akamai's argument that Limelight's standard form contract with content providers contracts out claim steps to be performed by the content provider. The court explained that the "customers decide what content, if any they choose to have delivered by Limelight's CDN" and that the contract "does not obligate Limelight's customers to perform any of the method steps." (emphasis added). The court concluded that because the customers act for their own benefit, Limelight was not liable for the customers' action.

Judge Moore filed a dissenting opinion concluding that the majority's application of the single entity rule leaves "a gaping loophole in infringement liability." She explained, that "[u]nder the majority's reading of the statute, the patentee has no redress for the harm if two people act together to perform the patented method but does have redress if that identical method is performed by a single entity."

Akamai Techs., Inc. v. Limelight Networks, Inc., 20091372, 20091380, 20091416, 20091417 (Fed. Cir. May 13, 2015) (J. Linn).

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