

B.3 Infringement

3.7 DIRECT INFRINGEMENT: ACTS OF MULTIPLE PARTIES MUST BE COMBINED TO MEET ALL METHOD CLAIM LIMITATIONS

[This instruction should only be given where the patentee alleges direct infringement by the combined acts of multiple persons or companies.]

Direct infringement occurs where all steps of a claimed method are performed by or are attributable to a single party. Where more than one party is involved in practicing the steps, you must determine whether the acts of one are attributable to the other such that a single party is responsible for the infringement. There are two situations where there may be direct infringement if no single party performs all of the steps of a claimed process but more than one party performs every step of the process: (1) the parties have formed a joint enterprise or (2) one party directs or controls the other party's performance of the claim steps.

[Patent holder] alleges that [alleged infringer A] and [alleged infringer B, etc.] collectively infringe claim(s) [] of the [] patent.

For infringement to be proved, [patent holder] must prove by a preponderance of the evidence (1) that all the steps of the claimed process were performed in the United States and (2) that the acts of [alleged infringer B] are attributable to [alleged infringer A], either because [alleged infringer A] and [alleged infringer B] have formed a joint enterprise or because [alleged infringer A] directs or controls the acts of [alleged infringer B].

To prove that [alleged infringer A] and [alleged infringer B] have formed a joint enterprise, [Patent holder] must prove four elements:

- (1) there was an agreement, either express or implied, between [alleged infringer A] and [alleged infringer B];
- (2) they shared a common purpose;
- (3) each had a financial interest in that purpose; and
- (4) each had an equal right of control in the enterprise.

To prove that [alleged infringer A] directed or controlled the acts of [alleged infringer B], [Patent holder] must prove either that (1) [alleged infringer B] is the agent of [alleged infringer A] or is contractually obligated to [alleged infringer A] to carry out the claimed steps, or (2) [alleged infringer B] performed the claim step(s) in order to receive a benefit from [alleged infringer A] and that [alleged infringer A] established how or when the claim step(s) were performed.

Authorities

35 U.S.C. § 271(a); *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, 797 F.3d 1020, 1022-24 (Fed. Cir. 2015) (en banc).