

B.3 Infringement

3.3 INDIRECT INFRINGEMENT—CONTRIBUTORY INFRINGEMENT

[Patent holder] argues that [alleged infringer] is liable for contributory infringement by contributing to the direct infringement of the [] patent by [insert name or other description of direct infringer]. As with direct infringement, you must determine contributory infringement on a claim-by-claim basis.

[Alleged infringer] is liable for contributory infringement of a claim if [patent holder] proves by a preponderance of the evidence:

- (1) [alleged infringer] sells, offers to sell, or imports within the United States a component of a product, material, or apparatus for use in a process, during the time the [] patent is in force;
- (2) the component, material, or apparatus is not a staple article or commodity of commerce suitable for substantial noninfringing use;
- (3) the component, material, or apparatus constitutes a material part of the invention;
- (4) [alleged infringer] is aware of the [] patent and knows that the component, material, or apparatus is especially made or adapted for use as an infringement of the claim; and
- (5) [insert name or other description of alleged direct infringer] uses the component, material, or apparatus to directly infringe a claim.

Authorities

35 U.S.C. § 271(c) (“not a staple article”); *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U.S. 476 (1964) (knowledge of plaintiff’s patent and that the part supplied is significant); *Ricoh Co. v. Quanta Computer Inc.*, 550 F.3d 1325, 1327 (Fed. Cir. 2008), *cert denied*, 129 S. Ct. 2864 (2009); *Alloc, Inc. v. ITC*, 342 F.3d 1361, 1374 (Fed. Cir. 2003) (affirming determination of no contributory infringement); *Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 244 F.3d 1365 (Fed. Cir. 2001) (reversing district court’s finding of no contributory infringement and inducement); *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 909 F.2d 1464, 1469 (Fed. Cir. 1990) (differentiating contributory infringement from inducement); *Preemption Devices, Inc. v. Minn. Mining & Mfg. Co.*, 803 F.2d 1170, 1174 (Fed. Cir. 1986) (direct infringement findings supported contributory infringement findings).