

The Unexplored Intersection of Divided Infringement and Medical Method Patents

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The Federal Circuit and Supreme Court have recently turned their attention to the question of divided infringement of method patents, deciding whether and when a defendant may be held liable for patent infringement under 35 U.S.C. § 271(b) where no single entity has performed all the steps of a given method claim. Just this past Term, in *Limelight Networks v. Akamai Technologies, Inc.*, the Supreme Court unanimously reversed the Federal Circuit's en banc ruling permitting liability for induced infringement of a method claim under § 271(b) in such circumstances, appearing to reinstate the single entity rule. Yet both courts have almost exclusively confronted the issue in the context of method patents relating to the Internet or software, failing to consider the potential ramifications of their decisions for method patents in the medical field. This Article aims to fill the gap in their analysis, exploring the doctrinal and policy considerations unique to this area that weigh both in favor of and against the current legal rule. In doing so, the Article draws not only on insights from patent law to demonstrate the ways in which the recent § 271 precedent could affect precedent in other areas of patent law, but also on FDA regulation of laboratory-developed tests and on observations about the recent organizational evolution of the health care industry in response to the incentives of the Affordable Care Act. Ultimately, the Article considers the implications for key actors going forward, concluding that applying some form of the divided infringement rule to medical method patents could have negative effects not only on innovation in the field but also on access to healthcare going forward.

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