

Indirect Infringement in Cloud Computation Era: Dilemma and Solution

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In June 2014, the U.S. Supreme Court made the final decision in *Akamai v. Limelight*¹, pointing out that a method claim has not been directly infringed unless all the steps are performed by or under the control of one entity. Under this standard, there had been no direct infringement of Akamai's claimed method, because the performance of all the steps was not attributable to any one company. With no direct infringement, there could be no inducement of infringement either. In this article, the issue of indirect infringement of patent will be explored within the legal framework in China from this perspective. The writer believes that the Tort Liability Law may be applied to the issue, but with stringent conditions observed for its application, by prudently considering balance of interests and duly considering the quality of patent drafting with reference to the successful U.S. experience and the specific local situation in China without doing harm to the entire relief system based on the Patent Law and the relevant judicial interpretations. Particularly, the patent infringement statutory requirements and the all elements rule should be kept intact, and acts that are non-infringing or deemed to be non-infringing, should not be covered.

I. Introduction

The English word "infringement" consists of two parts: "in" meaning "trespass or enter" and "fringe" meaning "boundary or borderline", so the word means "entering the borderline". Patent infringement first involves determining the scope of protection as defined by the technical features of a claim, that is, to identify the borderline; it is then determined whether an allegedly infringing solution has entered the borderline. If all the technical features of a patent claim are found present in an allegedly infringing solution, said allegedly infringing solution falls within the scope of protection

of the patent. Otherwise, it does not, let alone infringing the patent. This is known as the all elements rule in foreign countries. The same provision is set forth in Article 7 of the Supreme People's Court's Interpretation of Several Issues Relating to Application of Law to Adjudication of Cases of Dispute over Patent Infringement issued in 2009 in China.

There are several standards for classifying patent infringements. For example, according to the number of defendants, there are infringements by a single defendant and those by several jointly. In the United States of America, there are direct infringements and indirect infringements: in case of the former, a defendant's act satisfies the all elements rule, and thus directly infringes a patent; and the latter means that a defendant alone does not commit the whole infringement, that is, his or its act constitutes only a part of an infringement, and does not satisfy the all elements rule, but his or its act together with others' acts do.

For a product patent or a method or process patent for making a product, a party will be ultimately present in the final manufacturing stage completely presenting a patent, and constitutes a direct infringement. In the field of Internet, however, particularly in the era of distributed and cloud computation technology, exploiting a patent for a communication method or information processing method generally involves participation of several parties, but none of them presents the entire invention; hence no party's act constitutes a direct infringement. It seems, however, that the acts of all the parties infringe a patent. Reasonably, such a method or process patent, having made its technical contribution, is entitled to proper relief, otherwise any circumventive acts would be labeled as "legitimate". Nonetheless, the Chinese patent law and regulations do not provide for joint infringement and indirect infringement. This being the case, finding infringement is quite likely to destroy the present patent relief system, or

even completely reverse or override the all elements rule.

II. Akamai v. Limelight

1. Case brief

Conventionally, all contents of a webpage, including, among other things, a base HTML file and various embedded objects, such as pictures, audio and video, are stored in a local server of a content provider (namely a website). The local server responds to a user's request and communicates contents of the webpage. In event of too many visits, the website responds very slowly. To solve the problem, the asserted patent still stores the base HTML file of a webpage in the server of the content provider, but stores part of the embedded objects in a ghost server of a CDN provider, who has many ghost servers distributed in different regions. A CDN provider can choose a suitable ghost server according to the location of the user and current network traffic conditions to make responses, thus greatly reducing a content provider's processing burden and enabling users to quickly access to all the contents of an expected webpage.

The plaintiff Akamai and defendant Limelight are two competing CDN providers, and both provide services to content providers. In June 2006, Akamai accused Limelight

of infringing its patent. Step 2 of claim 34 of the patent allowed a content provider to tag some embedded objects, and a CDN provider would copy the tagged objects to its ghost server. A comparison of the technical features of claim 34 of the patent with Limelight's act easily showed that step 2 was not performed by Limelight, but by its clients (namely content providers). Accordingly, Limelight's act did not meet the all elements rule. But as the whole process of file transfer showed, the steps performed by Limelight and its clients met the all elements rule as illustrated below:

2. First-instance court's opinion

The first-instance court concluded that the tagging step of the involved patent was performed by Limelight's clients, not by Limelight. The CAFC once highlighted in *BMC Resources v. Paymentech*² that an infringement found should involve a defendant's direct or control over another party, and mere arm's-length cooperation was not infringing. For this reason, Akamai was required to prove that Limelight had directed or controlled its clients to perform said tagging step, which could not be proved with the evidence available. The CAFC also stressed in *Muniauction v. Thomson*³ that "direct or control" must be done to such an extent that each step may be attributed to the defendant, namely the defendant was the controlling party or mastermind. That a defendant only con-

34. A content delivery method, comprising:

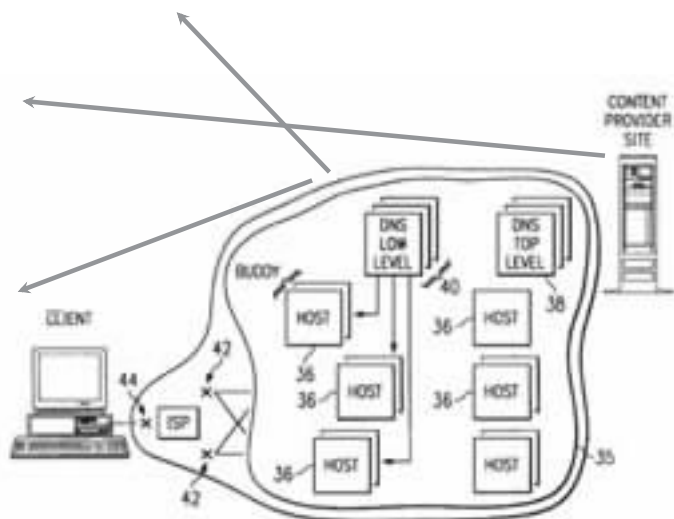
distributing a set of page objects across a network of content servers managed by a domain other than a content provider domain, wherein the network of content servers are organized into a set of regions;

for a given page normally served from the content provider domain, tagging at least some of the embedded objects of the page so that requests for the objects resolve to the domain instead of the content provider domain;

in response to a client request for an embedded object of the page;

resolving the client request as a function of a location of the client machine making the request and current Internet traffic conditions to identify a given region; and

returning to the client an IP address of a given one of the content servers within the given region that is likely to host the embedded object and that is not overloaded.



trolled access to its system and instructed users on its use was not sufficient to incur liability for infringement. The first-instance court concluded that the relationship between Limelight and its clients or users did not substantially differ from that in *Muniauction v. Thomson*, and finally found Limelight not infringing.

3. CAFC's opinion in its second trial

In 2010, three CAFC judges, Rader, Linn and Prost, heard the case in the second trial, and further specified, based on *BMC Resources v. Paymentech* and *Muniauction v. Thomson*, that “there can only be joint infringement when there is an agency relationship between the parties who perform the method steps or when one party is contractually obligated to the other to perform the steps”. They decided that Limelight and its clients were not in an agency relationship, and the clients did not perform the tagging step to meet the contractual obligation for Limelight. It was determined, accordingly, that there was no sufficient evidence to show that performance by Limelight's clients of the tagging step should be attributable to Limelight, so they affirmed the first-instance decision.

4. CAFC's *en banc* opinion

In 2012, the CAFC heard, *en banc*, the *Akamai v. Limelight* and *McKesson v. Epic*⁴ together, and reversed the former CAFC conclusion of decision, with a very tenuous advantage of 6 to 5. The majority view was that under the circumstance that all steps of the process claim were performed by multiple parties, any party, which induced or encouraged the other's infringement, should be liable for induced infringement even though no party itself committed direct infringement. The majority view was that (1) Limelight knows Akamai's patent, (2) only one step of the patent method is not performed by Limelight, (3) but Limelight induces its client to perform this step and (4) the client indeed performs this step.

5. Supreme Court's Opinion

In June 2014, the U.S. Supreme Court made its decision unanimously, reversing the CAFC's view held in its retrial. The Supreme Court took the view in its decision that a method claim has not been directly infringed unless all the steps are performed by or under the control of one entity. Under this standard, there had been no direct infringement of Akamai's claimed method, because the performance of all the steps was not attributable to any one company. With no direct infringement, there could be no inducement of infringement either.

The Supreme Court pointed out that allowing an inducement claim to proceed even when no one had engaged in direct infringement would be unworkable and would require two separate lines of case law (for direct infringement and inducement). The Supreme Court also analogized induced infringement to contributory infringement, which similarly requires a direct infringer to perform all of the steps.

6. Summary

As the structure of the 35 U. S. Code shows, §271 (a) provides for direct infringement, and §271 (b) and (c) respectively for induced infringement and contributory infringement (two forms of indirect infringements). §271 (b) is expressed in very general terms, seemingly without too many limitations, namely “whoever actively induces infringement of a patent shall be liable as an infringer.”; §271 (c) limits contributory infringement to providing articles especially made or adapted for infringement, and takes “knowing” as a subjective element. Obviously, compared with §271 (b), §271 (c) applies within a narrow scope and more stringently.

As *Akamai v. Limelight* showed, the U.S. Supreme Court concluded that induced infringement and contributory infringement should both take direct infringement as the precondition. The direct infringement rules are made by the CAFC, namely, satisfying the single party rule or its revision: a defendant alone exploits all technical features of the claims; or while a defendant exploits only part of the technical features, it or he sufficiently controls or directs other parties' exploiting the remaining features, so that the defendant should be held liable therefor. For several parties' exploitation, only when direct infringement is found, is it possible to hold an indirect infringer liable for induced infringement or contributory infringement.

III. Ways to address indirect infringement issue within current legal framework in China

Article 11 of the Chinese Patent Law, defining five patent infringements and constituent elements thereof, is substantially consistent with 35 U. S. Code §271 (a) in relation to direct infringement. But the patent law system in China does not differentiate direct and indirect infringements, let alone providing detailed rules for finding indirect infringement, such as induced infringement and contributory infringement.

1. Analysis of application of General Principles of the Civil Law

Absence of the relevant provisions in the patent law system does not mean that the competent authorities have never considered the issue. When the Patent Law was under amendment for the second time in 2000, the State Intellectual Property Office (SIPO) incorporated provisions on prohibiting indirect infringement in the Proposed Amendment submitted to the State Council, and later deleted them in the Draft Amendment to the Patent Law submitted to the Standing Committee of the National People's Congress as the SIPO considered that the TRIPS Agreement did not provide for indirect infringement of patent, and it was undue to provide protection exceeding the requirements of the TRIPS Agreement. Likewise, the provision on prohibiting indirect infringement was not incorporated in the Draft of the Third Amendment to the Patent Law submitted. In this regard, the SIPO explained: "adding provisions on prohibiting indirect infringement to the Patent Law would substantially extend the patent protection to products that are related to a patented technology, but the products *per se* are not granted the patent right. Therefore, the issue of indirect infringement of patent falls within the sensitive grey area between the interests of a patentee and those of the general public. Any slightly improper formulation and application of the relevant provisions would be harmful to the public right to freely use existing technologies. Besides, corresponding relieves against indirect infringement are available in the provisions relating to joint infringement in the General Principles of the Civil Law; hence, now it is not time yet to set forth provisions regarding indirect infringement in the Patent Law."

Article 106, paragraph two, of the General Principles of the Civil Law provides for the civil liabilities for infringement with fault, and paragraph three provides that "one, faultless, but civilly liable under the law provisions, shall be held civilly liable". The Patent Law obviously belongs to the law mentioned in paragraph three, which provides for faultless patent infringements, and on infringements with fault, it is possible to impose civil liabilities under paragraph two.

Article 130 of the General Principles of the Civil Law provides that where two or more parties' joint infringement causes damage or injury to another party, they should be held jointly and severally liable. Article 148, paragraph one, of the Supreme People's Court's Opinions Relating to the General Principles of the Civil Law further provides that one abetting and aiding another party to infringe is a co-infringer,

and should be held jointly and severally liable.

From this, it seems possible to conclude that in the absence of relief under the Patent Law, it is still possible to give relief in case of indirect infringement under the General Principles of the Civil Law. For this writer, however, it is somewhat too far-fetched for the General Principles of the Civil Law to regulate indirect infringement because when the General Principles of the Civil Law and the associated Supreme People's Court's opinions entered into force in 1987, the Patent Law just came out, and the issue of indirect infringement was yet to emerge. It was quite unlikely to expect a general law to regulate indirect infringement of patent. For this reason, finding indirect infringement under the General Principles of the Civil Law would be rather awkward like "using an old bottle to hold new-brewed wine", which is suspected of exceeding the original aim of the General Principles of the Civil Law. However, there was no better way than applying the General Principles of the Civil Law to addressing the issue before 2010.

2. Analysis of application of Tort Liability Law

The Tort Liability Law entered into force in 2010. Article 2, paragraph one, thereof generally provides that anyone infringing a civil right should be liable for the infringement under this Law, specifying the patent right as one of the civil rights. Articles 6 and 7 more accurately express Article 106, paragraphs two and three, of the General Principles of the Civil Law. Article 5 of the Proposed Draft Interpretation of the Tort Liability Law provides that an infringer not possibly protected under "the law provision" mentioned in Article 6, paragraph two, and Article 7 of the Tort Liability Law may request to hold the infringer liable under Article 2 of the Tort Liability Law. In this way, the indirect infringement of patent can be regulated by the Tort Liability Law. When it is difficult to find a solution in the Patent Law, it is justifiable to seek solution in the Tort Liability Law.

The Tort Liability Law provides as follows:

Article 8 Where two or more persons jointly commit infringement and cause injury to another party, they shall be jointly and severally liable therefor.

Article 9 Anyone abetting and aiding another person to infringe shall be jointly and severally liable therefor.

For this writer, while it seems logically well-knit to regulate indirect infringement under the Tort Liability Law, there in fact possibly lacks good support in law theory because patent infringement obviously differs from tort in general terms, the former is not a specific concept of the latter, and

sometimes the two are even possibly to be in a parallel relationship. The English word “patent infringement” means “entering the borderline” and what is infringed is invisible and intangible. It is exactly for this reason that the Patent Law provides that a right holder should define the borderline of his or its right known to the general public in the form of claims. Any one who does not enter the defined borderline does not constitute infringement. The English word for something like infringement in general terms is “tort”, meaning “distortion or injury”, which is directed to something tangible. Given that it is sometimes impossible for a right holder to define what acts constitute injury to his or its right, it is necessary to grant proper relief in event of joint tort. These differences make the systems of infringement and tort very different in line of thinking in constructing them. For example, under the Tort Liability Law, the fault doctrine is followed in case of a general tort, and the faultless or fault presumption doctrine is adopted in case of a special tort while in the Patent Law, in case of infringement, faultless doctrine is observed. Therefore, in the common law system, the general tort theory does not naturally apply to patent infringement. Likewise, in China, we should not apply the general tort provision to indirect infringement of patent simply because the same lexical Chinese expression appears in both patent infringement and general torts.

3. Judicial practice

While the Patent Law does not set forth provisions on indirect infringement, some courts do not recoil in their adjudication. They are active in making exploration in judicial practice. For example, in a case involving infringement of a patent for magnetic-mirror electric arc boiler or furnace⁵, the defendant did not directly infringe the patent, but made and marketed the key part of the patented product; in a case involving infringement of a patent for a novel weeding composition⁶, the defendant made the key component specially used for preparing the patented product of composition; in *Alfalaval v. Hengli Corporation*⁷, a case involving infringement of a patent, the defendant provided the mould specially used for making the infringing product, to name just a few.

The relevant provisions of the Beijing Higher People's Court in Articles 73-80, namely in the special section on indirect infringement of the patent infringement, of the Patent Infringement Adjudication Opinions (Tentative) as of 2001 represents a constructive effort to create a system in relation to indirect infringement, which is of positive significance to punishing acts of specially providing special infringing parts,

equipment and materials.

Contrary opinions argue that it is inappropriate to set forth such provisions in a local court's regulatory document in the absence of authorisation by law, and it is suspected of making a law outside the law. The Beijing Higher People's Court finally accepted the view when the Tort Liability Law as of 2010 entered into force, and eventually abandoned the term “indirect infringement” in the Patent Infringement Adjudication Guidelines it issued in 2013, and revised the relevant Articles 105-109 according to the Tort Liability Law.

Article 26 of the Supreme People's Court's Interpretation of Several Issues Relating to Application of Law to Adjudication of Cases of Dispute over Patent Infringement (II) as of 2014 issued for comments provides for determination of contributory and induced infringements. While some experts voiced their opposition to some of the details, there is no opposite view presented on regulating indirect infringement under the Tort Liability Law.

4. Summary

To sum up, while the concepts of direct infringement and indirect infringement of patent are absent in the legal system in China, the two forms of infringements are clearly governed or regulated by different laws: direct infringement by the Patent Law, while it is only possible to grant relief in case of indirect infringement within the framework of Tort Liability Law. For example, Chapter 5 of the Beijing Higher People's Court's Patent Infringement Adjudication Guidelines is divided into two sections: one entitled “Patent Infringement”, providing a detailed description of all infringements mentioned in the Patent Law; and the other entitled “Joint Infringement” to specify the relevant Articles of the Tort Liability Law. The provisions of the above Supreme People's Court's Judicial Interpretation issued for comments are also based on the Tort Liability Law.

IV. Analysis and recommendations

1. Is indirect infringement of patent determined more loosely in China than in the U.S.A.?

In *Akamai v. Limelight*, the U.S. Supreme Court reiterated: “liability for induced infringement must be predicated on direct infringement. With no direct infringement, there could be no inducement of infringement either”. But induced infringement is not a large basket to hold everything in. In *Akamai v. Limelight*, Akamai argued that if the scope of liability for induced infringement is restricted, a would-be infringer

may evade liability by dividing performance of a method patent's steps with another whom the defendant neither directs nor controls. The U.S. Supreme Court acknowledged this concern, but held that this does not justify fundamentally expanding or extending the interpretation of induced infringement. The basic framework of 35 U.S. Code § 271 should not be radically altered just for purposes of establishing induced infringement.

As the arrangement and provisions of the Articles show, there is a looser space of joint infringement in China than in the United States. For example, Article 8 of the Tort Liability Law and Article 105 of the Patent Infringement Adjudication Guidelines provide that jointly performed acts constitute a joint infringement. Article 9 of the Tort Liability Law and Article 106 of the Patent Infringement Adjudication Guidelines do not limit the function of aiding and abetting and the subjective purpose of one who aids and abets. While the acts prohibited under Article 109 of the Patent Infringement Adjudication Guidelines help one in his infringement, they do not reach such an extent as to be the standard of inducing or contributory infringement in the United States.

It is believed in the traditional civil law theory that joint infringement refers to acts several parties perform to infringe another party's legitimate rights based on joint fault and for which they should be held jointly and severally liable, characterized by the presence of several infringers, joint subjective faults, joint actions, and consistent results⁸. From this perspective, the reference of "indirect infringement" *per se* is problematic as it is mainly a single infringer's act, without considering acts of several infringers as a whole. For this writer, we must highlight that the acts of more than one party are not separable, that is, one defendant and his or its act should not be referred to as indirect infringement. By contrast, common intention links several acts of all defendants, so it should be regulated by Article 6 when treating indirect infringement of patent by applying Articles 8 and 9 of Tort Liability Law.

The United States of America is a developed country, and patents there get high level protection, so indirect infringement is stipulated in its patent act in excess of the minimum requirement of the TRIPS Agreement; it is also a case law country, where judges may make law. Despite these, the U.S. Supreme Court is still cautious in dealing with indirect infringement issues. For example, in *Akamai v. Limelight*, the U.S. Supreme Court said no to CAFC's efforts and attempt to expand the scope of induced infringement. China is not

obliged to accord a protection exceeding the international standard under the TRIPS Agreement, and our civil law tradition also defines a narrow space for judicial adjudication in China. For this reason, this writer argues that it is worthwhile for us to draw on the U.S. cautious attitude towards the issue of indirect infringement; we should not disregard the public interests and the stability of the current legal system for the sake of one-sided protection of patentees' interests. Particularly, when patent jungles are densely spread and the balance of interests is fuzzily defined, we should stick to the idea of caring for the common people benefit. After all, under the fundamental theory of the patent law, a patentee enjoys an exclusive right only in the technical features as a whole presented by all the elements of the claims of his or its patent. That's all.

This writer would like to recommend that joint infringement is determined with the premise of direct infringement, and patents of different types be treated in different ways. For a product patent or a product manufacturing method patent, only when a party completely performs a direct infringement is it possible to determine whether the inducer or the contributor should be held jointly and severally liable therefor. For any other types of claims, even if several performers have common intention or fault, it is inappropriate to find joint infringement if it is impossible to put all the infringement liabilities on any one of them in a direct infringement.

The "direct or control" theory of the United States is of realistic significance in China. For example, when several performers are closely related to one another as mother and daughter companies (say the legal representative or CEO are husband and wife or relatives), we should first determine the presence of common intention and acts of several defendants, and then make determination according to the specific circumstances of a case. In case of direct infringement by a performer, he or it should be alone liable for the direct infringement, and those aiding or abetting in the infringement are liable for compensating the part of injury that is not fully compensated. In the absence of direct infringement by a performer, it should then be determined whether those who aid or abet should be liable for the infringement to determine direct infringement. By doing so, so long as the intention of those who aid or abet reaches the extent of "direct or control", they would not escape punishment anyway. If their intention does not reach the extent of "direct or control", it shows that the several defendants are arms-length cooperation, and are not to be held jointly liable for the infringement.

Anyway, while it is possible to grant relief in case of indirect infringement under the Tort Liability Law, the Tort Liability Law should apply under strict condition without breaking up the relatively integrated protection system created by the Patent Law and the relevant judicial interpretations thereof. Particularly, the elements of infringement and the all elements rule created in Article 11 of the Patent Law cannot be rendered meaningless and acts that do not constitute infringement and acts that are not deemed to be infringing under Article 69 of the Patent Law cannot be covered.

2. Right holders are obliged to draft patent applications in a good way

Both the General Principles of the Civil Law and Tort Liability Law provide that when an infringer has fault, the other party is held less liable. This is also reasonable in the field of patent. A judge should treat a patent normally, instead of viewing it as something sacred, otherwise it would cause obvious discrepancy between low-quality patent and high-level protection.

Claims that require participation of several parties for an infringement to be found are known as system-level claims in the United States. A good attorney is particularly cautious of system-level claims when drafting patents, and will prefer component-level claims, that is, claims for one party to exploit the whole technical features. This writer has, for years, prosecuted patent applications filed by some world known IT enterprises, such as Qualcomm and Philips, and found that their applications generally consist of several groups of claims, respectively seeking protection for the transmitter, the receiver, the terminal and the base station, and they usually do not mix components or steps of different entities in one claim, and rarely draft system-level claims. Even if there are system-level claims, they are used as supplements to component-level claims. In the field of communication technology, claims should be drafted from the angle of one side, and their technical features are described in way of signal flow directions (input or output), and avoid as much as possible involving any other subject matter.

We know that the Patent Law protects product claims and process or method claims differently, according the former stronger “absolute protection” and the latter weaker “relative protection”. For this reason, the patent drafter should first consider drafting product claims. Even if it is impossible to draft a product claim, he should fully consider how to enforce his patent when drafting a process claim. Specifically, returning to *Akamai v. Limelight*, now that the

tagging step was not performed by the right holder itself, one should, of course, not put it in the claims to be parallel with the steps it performed itself. Or the secondary alternative was to draft a so-called user-environment claim for it. By doing so, it was still possible to find infringement in China⁹. However, Akamai’s patent was drafted in the worst way, so fell into the dilemma of indirect infringement when enforcing the patent, and the drafter of the claim was to be blamed.

Let’s look at *Shanghai Zhizhen v. Apple*, a highly influential case of dispute over infringement of the patent, Siri, for the small i robot, its claim 1 going as follows:

“A chatting robot system, at least comprising:

A user; and

A chatting robot, wherein said chatting robot has an AI server with artificial intelligence and information service function and the corresponding database thereof, said chatting robot also has a communication module, said user carries on dialogues with the chatting robot through an instant communication platform or a messaging platform, ...”

The “user” is clearly drafted as a feature parallel with the “chatting robot” in the claim, which is a serious drafting error, showing that the drafter was not the least aware of enforcement. The judge was totally at loss how to decide: if he had disregarded the “user” in line with the surplus designation doctrine, he was afraid that he would have made a ridiculous judgment; if the “user” was treated as a typing error for “user terminal”, as it required to “carry on dialogues with the chatting robot through an instant communication platform or a messaging platform”, the claim would have been erroneously construed; and if it had been construed as the element of the claim as it were, the judge would be found so indifferent as not to treat the user as a human being, but this was the only way out according to the legal thinking. An Apple cellphone did not comprise users, so it did not satisfy the all elements rule, and naturally did not constitute a separate infringement. If users were involved in the litigation, one had to accuse Apple of joint infringement. However, a user usually uses the Siri chatting system to kill time, not for any business purposes as mentioned in Article 11 of the Patent Law. Therefore, indirect infringement is not constituted or found, and accordingly there was no indirect infringement to talk about.

For this writer, a patent attorney should not draft just for the sake of drafting. Besides having the basic skills for drafting patent applications, he should also be familiar with the law provisions and judicial practice in patent protection, with

the knowledge of the current and anticipated business implementations of a patent, and is always watchful for system-level claims to avoid entangling himself. If a judge, when hearing a case, sees that an indirect infringement is caused by a serious drafting error, he should not take sides with the patentee. Only when there is indeed no better way to draft a claim, is it necessary to consider resorting to joint infringement.

V. Conclusion

Historically, we have learned profound lessons from the surplus designation doctrine and overall equivalent doctrine, and we have no reason to easily loosen the liability-imposition requirement for the sake of indirect infringement of patents. If the National People's Congress and the Standing Committee thereof had found indirect infringement unusually rampant and the current law provisions insufficient to crack down on it, they would have had all reasons to revise the Patent Law, as is the case with the Trademark Law and Copyright Law, to clearly set forth provisions on indirect infringement to address the matter once and for all. Before this is done, we must be strict with the conditions for applying the Tort Liability Law to regulate indirect infringement of patents according to the joint infringement doctrine, with careful consideration taken of the balance of interests, and proper con-

sideration of the quality of drafted patents without destroying the direct infringement system created under the Patent Law and the relevant judicial interpretations. ■

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¹ http://www.supremecourt.gov/opinions/13pdf/12-786_664d.pdf.

² <http://www.cafc.uscourts.gov/images/stories/opinions-orders/06-1503.pdf>.

³ <http://www.cafc.uscourts.gov/images/stories/opinions-orders/07-1485.pdf>.

⁴ <http://www.cafc.uscourts.gov/images/stories/opinions-orders/10-1291.pdf>.

⁵ The Shanxi Province Higher People's Court's Civil Judgment No. Jin-jingzhongzi 152/1993.

⁶ The Jiangsu Province Higher People's Court's Civil Judgment No. Suminsanzhongzi 014/2005.

⁷ The Shanghai No. 2 Intermediate People's Court's Civil Judgment No. Huerzhongminwu(zhi)chuzi 156/2005.

⁸ Wang Liming, *Infringement Law Study* (Vol. one), the Remin University of China Press, 2004, P.685.

⁹ The Supreme People's Court's Civil Judgment No.Xingtizi 21/2013, and Articles 22 and 23 of the Beijing Higher People's Court's Patent Infringement Adjudication Guidelines.