ARE Patent Litigation Alert: Federal Circuit Takes On Divided Infringement Issue

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On April 20, 2011, the U.S. Court of Appeals for the Federal Circuit granted a petition for rehearing en banc in *Akamai Technologies., Inc. v. Limelight Networks, Inc*., No. 2009-1372, -1380 , -1416, -1417, 2011 U.S. App. LEXIS 8167, at *2 (Fed. Cir. Apr. 20, 2011) to address the question:

> If separate entities each perform separate steps of a method claim, under what circumstances would that claim be directly infringed and to what extent would each of the parties be liable?

Akamai is one of several recent cases by the Federal Circuit requiring that all joint infringers be under the "direction or control" of a single entity in order to find direct infringement of a method claim.

The correctness of a "single infringer" rule and the requirement of "direction or control" recently was questioned by a divided panel decision in *McKesson Technologies Inc. v. Epic Systems Corp*, No. 2010-1291, 2011 U.S. App. LEXIS 7531, at *13-15 (Fed. Cir. Apr. 12, 2011).

For more information on how these recent developments may affect your organization, please contact one of our attorneys.

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