

Motiva alleged that HTC directly, indirectly, and willfully infringed of a number of Motiva's patents directed to video game and virtual reality systems. HTC moved to dismiss two of Motiva's claims, arguing that Motiva failed to adequately plead its claims for indirect and willful infringement. Specifically, HTC argued that that Motiva failed to allege sufficient factual support regarding HTC's knowledge of Motiva's patents, HTC's intent, noninfringing uses of HTC's products, and willful infringement.

There are two types of indirect patent infringement: induced and contributory. First, a claim of induced infringement requires active steps taken by the defendant to encourage infringement by another. It also requires the plaintiff to show that the defendant both (1) knew about the asserted patents and (2) knew that the acts induced by the defendant would infringe the asserted patents. Second, a claim of contributory infringement requires the plaintiff to show that the defendant sold or offered to sell a product used in practicing a patent, and that the product has no substantial non-infringing uses, or in other words, no real uses other than to infringe the patent. Contributory infringement also has a knowledge requirement, as the defendant must know that the product it sells will contribute to that infringement.

Motiva argued that HTC's actions, or lack thereof, satisfied the knowledge requirement of both kinds of indirect infringement, alleging that HTC "has a policy or practice of not reviewing the patents of others (including instructing its employees to not review the patents of others)." Such a policy, Motiva argued, constituted willful blindness to the existence of Motiva's patents. In *Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 768 (2011), the Supreme Court approved of the doctrine of willful blindness to supply the knowledge requirement for indirect infringement, providing a framework of requirements: "(1) The defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact." Judge Gilstrap of the Eastern District of Texas agreed with Motiva, finding that a policy of not reviewing patents and instructing employees to not review patents are deliberate actions to avoid learning of infringement.

Further, for similar reasons, Judge Gilstrap agreed with Motiva that its allegations of willful blindness were sufficient to satisfy the actual knowledge requirement for willful infringement, discussing that the Supreme Court's decision in *Global Tech* equated actual knowledge with

willful blindness, and that its rationale should apply to willful infringement. Further, the Supreme Court's discussion in *Halo* of subjective willfulness ("knowing or having reason to know of facts"), suggested to Judge Gilstrap that willful blindness should apply in the willful infringement context. *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1933 (2016).

While this decision certainly bolsters the ability of patent infringement plaintiffs to survive motions to dismiss, it also would effectively require all companies that work in a space to search for patents that they may potentially infringe prior to putting a product on the market. Otherwise, they risk being accused of willful blindness. However, this search may then create circumstances inferring that the company has knowledge of all patents in the space, which may then lead to a determination of willful infringement. Further, it would create a financial burden on companies to dig through thousands of patents. While the expansion of the willful blindness doctrine will help plaintiffs recover for the infringement of their patents, defendants will be caught by willful blindness on one hand, and actual knowledge on the other.