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Axinn IP Update: No "Single-Entity" Requirement for Section 271(g) Liability

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December 30, 2019
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Axinn Update

On December 18, 2019, the Federal Circuit in *Syngenta Crop Protection, LLC v. Willowood, LLC*, Nos. 18-1614, 18-2044, 2019 WL 6884529 (Fed. Cir. Dec. 18, 2019), held that an accused infringer can be liable for importing, offering to sell, selling, or using a product made by a patented process even if no single entity performed, or directed performance of, all steps of that process.

In 2015, Syngenta sued Willowood for patent infringement, including infringement of U.S. Patent No. 5,847,138 ("the '138 Patent") under 35 U.S.C. § 271(g). In relevant part, Section 271(g) states: "Whoever without authority imports into the United States or offers to sell, sells, or uses with the United States *a product which is made by a process patented* in the United States shall be liable as an infringer …." 35 U.S.C. § 271(g) (emphasis added).

Because it was undisputed that Willowood imported products made by the claimed processes, Syngenta moved for summary judgment of infringement of the '138 Patent. *Syngenta Crop Protection, LLC v. Willowood LLC*, No. 15-0274, 2017 WL 1133378, at *4-*5 (M.D.N.C. Mar. 24, 2017). In opposition, Willowood argued that Section 271(g) "requires that a single entity perform the patented process," and that the evidence failed to show that any single entity had done so. *Id.* at *5.

The lower court denied Syngenta's motion, reasoning that the single-entity requirement of Section 271(a), which requires that "all steps of a claimed method are performed by or attributable to a single entity," also applies to Section 271(g) actions. *Id*. (quoting *Akamai Techs., Inc., v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022 (Fed. Cir. 2015) (en banc) (per curiam)). Because a material dispute existed as to whether Willowood's Chinese supplier performed or directed all steps of the claimed processes, the court held that Syngenta was not entitled to summary judgment. *Id.*

On appeal, the Federal Circuit panel unanimously held that the lower court erred, and that Section 271(g) "does *not* require a single entity to perform all of the steps of a patented process" for infringement liability to arise. *Syngenta Crop Protection, LLC v. Willowood, LLC*, Nos. 18-1614, 18-2044, 2019 WL 6884529, at *13 (Fed. Cir. Dec. 18, 2019) (emphasis added). The panel explained that because Section 271(g) concerns only "*products* resulting from the patented process," "it is immaterial whether that process is practiced by more than a single entity." *Id.* at *10, *12 (emphasis in original).

Syngenta thus teaches that, for Section 271(g) infringement claims: (1) an accused infringer cannot shield itself from liability simply by showing that no single entity performed or directed all of the process steps; (2) a patentee need not prove who performed or directed any given step; and (3) an accused infringer that avoids liability under Section 271(a) – which *does* have a single-entity requirement – can still be liable for infringement under Section 271(g).

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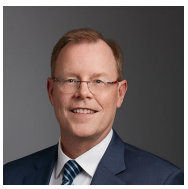

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