

Piercing the Corporate Veil: Personal Liability for Patent Infringement

By: William S. Nabors, Esq.

Can the owner of a business be personally liable for patent infringement? The answer is yes, but only under certain circumstances. Typically, when a company is sued for patent infringement, the company is identified as the infringing entity. There are instances, however, when the principals or employees of a company can be sued for patent infringement and can be subject to personal liability.

One of the advantages of incorporation is that the corporate structure generally limits the personal liability of a company's principals and shareholders. When a corporation is found liable for a civil wrong, such as patent infringement, an award of damages usually comes from the corporate assets and not the assets of the principals or shareholders. A patent owner can reach a company's principals, however, when there is sufficient evidence to prove that the corporate structure is a sham created in an attempt to shield wrongful activities of the principals. This legal maneuver is called "piercing the corporate veil."

In a case of direct patent infringement, meaning that the company being sued is the one infringing the patent, a patent owner must pierce the corporate veil to reach the principals. In a recent case, *Wordtech Systems, Inc. v. Integrated Networks Solutions, Inc.*, Wordtech sued Integrated Networks Solutions (INS) and two principals of INS for patent infringement for selling compact disc writers that copy video files from computer memory onto multiple compact discs. The case went to trial, and a jury found INS and the two principals of INS liable for patent infringement, with damages over \$750,000. The principals of INS appealed the judgment of their personal liability.

In the appeal, the Federal Circuit Court of Appeals reversed the judgment and remanded the case for a new trial. The Federal Circuit found that the jury was not sufficiently instructed about the law regarding piercing the corporate veil to find personal liability for patent infringement. Because of the seriousness of assigning personal liability for patent infringement, the Federal Circuit held that failing to properly instruct the jury was clear error affecting the fairness of the trial. The court may pierce the corporate veil for reasons of equity when there is sufficient evidence to show that disregarding the corporate structure will prevent fraud or injustice.

In contrast, a person charged with inducing patent infringement or contributing to the patent infringement of another cannot hide behind a corporate structure. The principals and employees of a company can be personally liable for inducement of infringement by knowingly and intentionally inducing another to infringe a patent. Similarly, the principals and employees of a company can be personally liable for contributory infringement by knowingly selling components for a patented invention that have no non-infringing uses. A patent owner does not have to pierce the corporate veil to charge a company principal or employee of inducement of infringement or contributory infringement. The patent owner, however, will have to prove that there was infringement, and that the person charged participated in the wrong-doing.

Copyright 2010 Hahn Loeser and Parks, LLP

William S. Nabors is experienced in the preparation and prosecution of patents and the registration of trademarks before the U.S. Patent and Trademark Office, in addition to the World Intellectual Property Organization under the Patent Cooperation Treaty. Bill counsels clients regarding rights and responsibilities arising under patent laws and trademark and copyright laws. He is practiced in manufacturing processes and equipment, materials (including steel and iron), steelmaking and ironmaking processes, tools, consumer products, medical products, and other mechanical arts.