

## Publication

---

05/27/2021

### The Divide Over the Divided Infringement Defense

Intellectual Property partner Mike Turner authored the *IPLaw 360* article "The Divide Over the Divided Infringement Defense." The article discusses how over the past several years, the Federal Circuit has issued a series of precedential opinions that have steadily increased the stability of patent law's so-called divided infringement defense. The defense now poses a significant and often insurmountable challenge to patentees asserting claims requiring action by multiple parties. Judge Linn continued the trend earlier this month with his majority opinion in *McKesson Techs. Inc. v. Epic Sys. Corp.*, — F.3d —, 2011 U.S. Dist. LEXIS 7531 (Fed.Cir. 2011); however, McKesson's dissent and concurring opinions showed that the law may not be so settled. This article was originally cast as a prediction that McKesson would be reheard en banc, but the Federal Circuit decided not to wait that long. Just two weeks after Judge Bryson's McKesson concurrence suggested the issue of divided infringement should be considered by the full Court in "an appropriate case," the Federal Circuit determined that case to be *Akamai Techs, Inc. v. Limelight Nets., Inc.*, 629 F.3d 1311 (Fed.Cir. 2010).

---

#### CLIENT SERVICES

Intellectual Property  
Patents

---

#### RELATED PEOPLE

Mike R. Turner