



Year in Review: Other Key Cases from the Federal Circuit and Supreme Court

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February 2017





Supreme Court Cases



Life Technologies Corp. v. Promega Corp. (S.Ct. Feb. 22, 2017)



- Claimed toolkit for genetic testing
- Parties agree patent claims five components:
 1. a mixture of primers that mark the part of the DNA strand to be copied
 2. nucleotides for forming replicated strands of DNA
 3. an enzyme known as *Taq* polymerase
 4. a buffer solution for the amplification; and
 5. control DNA
- Life Technologies licenses only *Taq* polymerase in U.S. (licenses others in UK)
- Sends *Taq* polymerase to UK to combine with other four components



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35 U.S.C. § 271(f)(1):

Whoever without authority supplies or causes to be supplied in or from the United States all or a **substantial portion** of the components of a patented invention, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, shall be liable as an infringer.



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- What does “a substantial portion” mean in § 271(f)(1)?
 - Can it be quantitative or qualitative (or both)?
- Supreme Court determines it is quantitative
 - Context of the statute – “portion” and “components”
- Single component ≠ “substantial”
 - Compare to § 271(f)(2)
 - No express guidance beyond
 - *Concurrence* – not suggest that “any number greater than one is sufficient”

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First appeared as part of the conference materials for the
12th Annual Advanced Patent Law Institute session

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