

Divided Infringement by Brad Barger from **Workman Nydegger**

Patents provide companies and inventors with an important asset that can be used to attract investors, protect research investment, stop knock-off products, or otherwise assist in transforming an idea into a successful business. When a [patent attorney](#) is preparing a patent application for a new invention, special care must be taken to draft claims that provide both broad protection of the invention and enforceable claims against an infringing party, should litigation ever arise. Part of carefully drafting claims involves properly selecting the claim types that will be pursued. Common claim types include apparatus claims, method claims, system claims, and computer-readable medium claims. Each claim type is associated with unique law that influences how the claim is interpreted and when the claim is infringed.

One particular difficulty that can arise when enforcing software patents is identifying the actual infringing party. Until recently, competitors could launch copy-cat products that only infringed a portion of a patent claim but that required the end-user to perform the remaining portions of the claim. In these situations, an end-user was often provided with the equivalent functionality of the patented product, but because no single user performed all of the steps of a claim it was not possible to establish infringement.

In *Centillion Data Systems LLC v. Qwest Communications International Inc.* (Fed. Cir. 2010), the Federal Circuit established a standard under which a party could be found to infringe a system claim - even though the limitations of the claim were performed by different actors. Recently, in [Akamai Technologies, Inc. v. Limelight Networks, Inc.](#) (Fed. Cir. 2015), the Federal Circuit also extends this standard to method claims, so that in some cases infringement of method claims can be found even when the different acts are performed by different parties. While this interpretation of the law is a welcome development for patent owners, there are differences between how system claims and method claims are interpreted with respect to divided infringement. To provide a client with the highest level of protection, it is important to understand the nuance and difference between the use of method claims and system claims.

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