

*INDEPENDENT INK, INC. v. ILLINOIS TOOL WORKS, INC.*

396 F.3d 1342 (Fed Cir. 2005), *rev'd*, 126 S. Ct. 1281 (2006)

The Court of Appeals for the Federal Circuit held that, in considering a patent tying arrangement conditioning the use of a patented product on the purchase of an unpatented product, the possession of a patent creates a rebuttable presumption of sufficient market power over the tying product to constitute a restraint of trade under Section 1 of the Sherman Act.

Trident, Inc., a wholly-owned subsidiary of Illinois Tool Works, Inc., holds a patent on printhead technology that is used by printer manufacturers in bar code printers. Trident also manufactures ink, which is not covered by any patents, for use with the printheads. In its standard licensing agreement, Trident requires printer manufacturers who use Trident's printhead technology to "manufacture, use and sell . . . ink jet printing devices supplied by Trident" to do so only "when used in combination with ink and ink supply systems supplied by Trident."

Independent Ink, a competing manufacturer of ink usable in Trident's printheads, filed suit alleging that the tying arrangement violated Section 1 and Section 2 of the Sherman Act. The district court held that a plaintiff must affirmatively prove market power in order for patent tying to constitute a violation of antitrust laws. Finding that Independent Ink submitted no affirmative evidence defining the relevant market or proving Trident's power in that market, the district court granted summary judgment in favor of Trident on both of its claims.

Independent Ink appealed. The Federal Circuit reversed the grant of summary judgment on the Sherman Act Section 1 claim. The court cited two Supreme Court cases, *International Salt Co. v. United States*, 332 U.S. 392 (1947), and *United States v. Loew's, Inc.*, 371 U.S. 38 (1962), for the proposition that, where the tying product is patented or copyrighted, market power may be presumed. Indicating that "it is the duty of a court of appeals to follow the precedents of the Supreme Court until the Court itself chooses to expressly overrule them," the court remanded the case and ordered the district court to presume market power in the patented tying product and provide the defendants an opportunity to supplement the summary judgment record with evidence rebutting the presumption.

However, the court upheld the summary judgment motion on the Section 2 claim. The court held that, in Section 2 monopolization or attempted monopolization claims, the plaintiff still bears the burden of proving mar-

ket power, and that there is no presumption that market power over the tying product confers market power over the tied product.

The Supreme Court granted certiorari. In March 2006, in a unanimous opinion, the Court reversed the Federal Circuit, holding that the fact that a tying product is patented does not support a presumption of market power.