Insights: Publications

Chapter 8: *Helsinn Healthcare v. Teva Pharmaceuticals* and the Evolving On Sale Bar to Patentability

Chemistry and Patent Law: U.S. Supreme Court Decisions 2000−2020

November 12, 2020

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United States patent law has long included an unusual provision not present inmost foreign jurisdictions. The "on sale bar" to patentability historically provided that the commercialization of an invention, even if done in secret, triggered a one year deadline for fling a patent application. Once that deadline passed, the inventor was unable to seek patent protection for the invention. Th 2011 America Invents Act (AIA), which applies to patents fled on or after March 16, 2013, modified the language of the on sale bar statute, resulting in uncertainty as to whether a secret sale or secret offer for sale triggered the on sale bar. In *Helsinn Healthcare v. Teva Pharmaceuticals*, the Supreme Court squarely put that issue to rest, confirming that the meaning of "on sale" remained unchanged under the AIA. Notably, however, the opinion did not address other important changes created by the AIA that significantly altered the scope of the on sale bar.

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