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The Sound of Silence: Claiming Negative Limitations

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The specification shall contain a written description of the invention. To meet the written description requirement, the applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention. But how can a patent specification show possession of a feature that is absent, in other words, a “negative limitation?” Does the specification need to explicitly describe the feature and/or an absence of the feature? Is the silence of the claimed feature sufficient to show support? That is one of the questions addressed in *Novartis Pharmaceuticals Corp. v. Accord Healthcare, Inc.*, 21 F.4th 1362 (Fed. Cir. 2022).

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