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Supreme Court to Review “On-Sale Bar” Case

Gregory Sephton, Anna Schoenfelder (Kramer Levin) · Tuesday, June 26th, 2018

As a follow-up to our previous post *“The Federal Circuit Has Its Final Say On the “On-Sale” Bar Under the AIA,”* the Supreme Court has granted certiorari in the *Helsinn v. Teva* case, which concerns whether the America Invents Act (“AIA”) changed the longstanding “on-sale bar” rule. This means that at least four of the nine Supreme Court justices agreed to address this case.

Specifically, Helsinn argued that its license agreement with a third party should not have triggered the on-sale bar because the details of its later-patented invention were not disclosed to the public as a result of that sale, whereas the Federal Circuit held that the phrase “on sale” in the AIA was not limited to public sale such that a sale in which the nature of the invention remained confidential could trigger the on-sale bar. The outcome of the Supreme Court’s review has implications for the validity of many existing patents and no doubt numerous pending patent applications.

Several amici submitted briefs in support of the petition for certiorari, including the Intellectual Property Owners Association and Biotechnology Innovation Organization, arguing that the Federal Circuit opinion creates uncertainty with respect to the scope of the on-sale bar by failing to directly address the effect of the AIA’s amendments.

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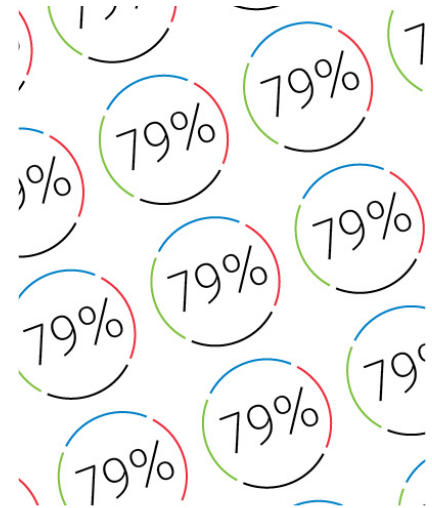
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