

# Patent Exhaustion Can Be Avoided By Lawful Post-Sale Contractual Restrictions

The *en banc* Federal Circuit by a vote of 10-2 held that patent exhaustion can be avoided by otherwise lawful post-sale contractual restrictions and that foreign sales of a patented item are not presumed to exhaust patent owner's rights in the United States, according to a report posted by **Dentons**.

The case is *Lexmark Int'l, Inc. v. Impression Products, Inc.*, No. 14-1617, -1619 (Fed. Cir. Feb. 12, 2016) (*en banc*).

"The dissent would have found post-sale restrictions invalid and that foreign sales exhaust patent owner's rights in the United States absent an express reservation. The Federal Circuit's 99-page majority decision may not be the last word on these issues if the Supreme Court is asked to grant *certiorari* later this year," wrote **Joel N. Bock, Joshua D. Curry** and **Heather Khassian**.

**Read the article.**