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.