

Lingering in *Lexmark's* Wake, Uncertainty About Limits of Patent Exhaustion

According to 10 judges of the Federal Circuit, a patent owner's right to sue for infringement in the United States is not exhausted by sales of products abroad or by sales subject to valid post-sale contractual restrictions on use, write **David Tellekson, Stefan Szpajda** and **Phillip K. Decker** of **Fenwick & West LLP**.

The case is *Lexmark Int'l, Inc. v. Impression Prods, Inc.*, Nos. 2014-1617, slip op. (Fed. Cir. Feb. 12, 2016).

In a 10-2 en banc decision, the Circuit court held that U.S. patent rights need not be expressly reserved in foreign sales transactions to preserve the right to sue for infringement if the goods enter the United States downstream of the point of sale.

"Although the Federal Circuit's decision purports to maintain the status quo regarding patent exhaustion, *Lexmark* has immediate implications for patentees, licensees, and downstream consumers alike," the authors write.

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