

Eugenio Hoss

Deceptive Conducts before the Patent Office

Challenges for Patent Law and Competition Law



Nomos

MIPLC

Munich
**Intellectual
Property**
Law Center

Augsburg
München
Washington DC



MAX-PLANCK-GESELLSCHAFT

UNIA
Universität
Augsburg
University

TUM
TECHNISCHE
UNIVERSITÄT
MÜNCHEN

**THE GEORGE
WASHINGTON
UNIVERSITY**
WASHINGTON, DC

MIPLC Studies

Edited by

Prof. Dr. Christoph Ann, LL.M. (Duke Univ.)
TUM School of Management

Prof. Robert Brauneis
The George Washington University Law School

Prof. Dr. Josef Drexl, LL.M. (Berkeley)
Max Planck Institute for Innovation and Competition

Prof. Dr. Michael Kort
University of Augsburg

Prof. Dr. Thomas M.J. Möllers
University of Augsburg

Prof. Dr. Dres. h.c. Joseph Straus
Max Planck Institute for Innovation and Competition

Volume 37

Eugenio Hoss

Deceptive Conducts before the Patent Office

Challenges for Patent Law and Competition Law



Nomos

MIPLC

Munich
**Intellectual
Property**
Law Center

Augsburg
München
Washington DC

This publication was supported by the Max Planck Society.



MAX-PLANCK-GESELLSCHAFT

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

a.t.: München, LMU, Diss., 2018

ISBN 978-3-8487-6134-0 (Print)
978-3-7489-0257-7 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-6134-0 (Print)
978-3-7489-0257-7 (ePDF)

Library of Congress Cataloging-in-Publication Data

Hoss, Eugenio
Deceptive Conducts before the Patent Office
Challenges for Patent Law and Competition Law
Eugenio Hoss
335 pp.
Includes bibliographic references.

ISBN 978-3-8487-6134-0 (Print)
978-3-7489-0257-7 (ePDF)

DOI: <https://doi.org/10.5771/9783748902577>

Published by Nomos Verlagsgesellschaft, Baden-Baden, Germany 2019.
Printed and bound in Germany.



This publication is licensed under the Creative Commons Attribution 4.0 International License (CC BY). Permission for distributing, remixing, enhancing and building upon the work for any purposes, as long as the author of the work is named.

1st Edition 2019

© 2019 The Author.

No responsibility for loss caused to any individual or organization acting on or refraining from action as a result of the material in this publication can be accepted by Nomos or the author.

Table of Contents

List of Abbreviations	13
Table of Cases	15
Chapter I: Introduction	25
1. The Underlying Problem	25
2. Deceptive Behaviour in Patent Procedures and Available Remedies under Patent Law	26
3. The Patenting Procedure under the Spotlight of Competition Law. Yet another Angle for the IP v Competition Law Debate	28
4. Scope and Structure of this Work	29
PART I: GENERAL RULES ON THE PATENTING PROCEDURE	31
Chapter II: The Procedure before the Patent Office	33
1. General Framework	33
2. Synopsis of the Patent Procedure in the USPTO and the EPO	36
A. Examination Process: an Ex Parte Procedure	37
B. Filing of a Patent Application. Description, Claims and Priority	38
I. Description	38
II. Claims	39
III. Other Formal Requirements. Inventors and Priority	40
C. The Application Process	40
I. Formal and Substantive Examination, Publication and Office Actions	40
II. Amendments	42
III. Divisional Applications and Unity of Invention	43
IV. Grant, Publication and National Validation	44
V. Third Party Observations	45
D. Post Grant Procedures	45
I. Post-Grant Amendments, Ex Parte Reexamination and Supplemental Examination	46

Table of Contents

II. Third Party Intervention after Grant. Oppositions, Post-Grant Reviews and Inter-Partes Reviews	46
III. SPCs and Term Extensions	48
a. SPCs in the EU	48
b. Patent Term Extensions in the US	49
IV. Patent Linkage and the Orange Book	51
E. Alternative Procedures. PCT, Patent Prosecution High- way and the Use of Results from other Patent Offices	52
F. The Role of Patent Agents	53
 Chapter III: The Responsibilities of the Patent Applicants before the Patent Office	55
1. The Duties of the Patent Applicant under US Law	55
A. The Origin of the Inequitable Conduct Doctrine. A Stroll down Memory Lane	58
B. The Development of the Inequitable Conduct Doctrine and the Duty of Candour	61
C. Standards for Finding Inequitable Conduct	65
I. Intent	65
II. Materiality	66
III. Burden of Proof and the ‘Sliding Scale’	69
D. Types of Conducts that can be Held Inequitable	69
I. Failure to Disclose the Prior Public Use of an Invention	70
II. Failure to Cite Known Relevant Prior Art	72
III. Submission of False Information	74
IV. Other conducts	75
E. Disciplinary and Criminal Sanctions	77
2. The Duties of the Patent Applicant in Europe	78
A. Extent of Patent Applicants’ Duties. Is there a Duty of Disclosure under the EPC?	79
I. Rule 42(1)(b) EPC as a Duty of Disclosure?	80
II. The Duty of Disclosure in the Travaux Préparatoires	82
III. Rule 141 EPC and the Limited Duty of Disclosure	83
IV. The impact of AstraZeneca	86
B. Legal Consequences of a Deceitful Conduct before the Patent Office	86
I. Germany	88
II. United Kingdom	91
III. Disciplinary and Criminal Sanctions	93

3. Ruminations on the US Experience. What can European Courts and Legislators Learn from it?	95
A. Extent of Patent Applicants' Duties	97
I. Defining the Scope of the Obligation	99
II. Practical Value	101
III. Interest of Applicants Themselves to have All Prior Art Considered	103
IV. Duty of Advocacy	103
B. Legal Consequences of a Deceitful Conduct before the Patent Office	104
I. Evaluation of the inequitable conduct doctrine in the US	104
II. Would it be advisable for European courts to implement a similar doctrine?	107
PART II: THE IMPROPER ACQUISITION OF PATENTS AS A COMPETITION LAW PROBLEM	117
Chapter IV: Competition and Competition Law Tools	119
1. Goals of Competition Law	119
2. Legal Framework in the EU and in the US	122
A. Essential Pillars of the Competition Legal Framework	123
B. § 2 Sherman Act and Article 102 TFEU. Scope and Objectives	124
I. The First Element: Market Power	127
a. Market Definition	127
i. Product and Geographical Markets. The Hypothetical Monopolist Test	128
ii. Demand and Supply Substitution	130
iii. Product and Technology Markets	131
iv. Competition without markets. From Innovation Markets to Competition in Innovation	135
b. Market Power	139
i. Indirect Methods of Establishing Market Power. Market Shares, Entry Barriers and other Indicia	141
ii. Is Market Definition Always Necessary? Direct Methods of Establishing Market Power	143
II. The Second Element: the Abusive or Anticompetitive Behaviour	144

Table of Contents

a. Types of Anticompetitive Conducts: Exclusionary and Exploitative Behaviours	147
b. The Importance of Timing: Dominance as a Pre-requisite under EU Law. Differences with US' Monopolisation and Attempt to Monopolise	149
c. Causation: The Relationship between Market Power, Anticompetitive Conduct and Anticompetitive Effects	150
d. The Role of Intent	153
C. The Particular Case of § 5 FTC Act	154
Chapter V: Applying Competition Rules to Patent Proceedings: The Experience in the US and in the EU	157
1. The Interaction between Intellectual Property Rights and Competition Law	157
A. Tension and Complementarity	157
I. Social and Economic Functions of the Patent System	159
II. Patents and Market Power	161
III. Reciprocal Goals but Conflicting Means	164
B. When is Competition Enforcement Warranted in the Intellectual Property Arena?	165
I. The Scenario in the US	165
a. Evolution of the Interrelation between Antitrust and Intellectual Property	165
b. Antitrust Immunity and the <i>Noerr</i> Doctrine	168
c. The Patent Misuse Doctrine	174
II. The European Approach	178
a. Existence v Exercise Dichotomy	179
b. The Specific Subject-Matter Standard	180
c. Current Stage of the Debate	181
d. Is there a Petitioning Immunity Doctrine in Europe?	183
2. How can Deceptive Conducts before the Patent Office Affect Competition? The Experience and Challenges under US and EU law	185
A. US Case Law. Fraud to the Patent Office and Misuse of Orange Book Listings	187
I. Walker Process and its Progeny	187
a. The <i>Walker Process</i> decision	187
b. The <i>Walker Process</i> Legacy	191

c. The <i>Handgards</i> or ‘Bad Faith Litigation’ Antitrust Claim	195
II. Orange Book Cases	197
B. EU Competition Law. Improper Acquisition of Intellectual Property Rights. Impact on Member States’ Competition Practice	200
I. The AstraZeneca Case	201
a. Market Definition and its Dominance	202
b. The First Abuse	206
c. The Second Abuse	212
II. AstraZeneca’s Aftermath: Cases in EU Member States	216
3. Closing Remarks and Open Questions	220
Chapter VI: Searching for a Workable Theory of Harm	223
1. Introduction	223
2. The Sham or Vexatious Litigation Doctrine	225
A. The Development of Sham as an Antitrust Doctrine in the US and in the EU	225
I. Sanctions under Other Areas of Law	225
II. Sham as an Antitrust Injury in US Case Law	228
III. Vexatious Litigation in the EU	231
B. The Theory of Harm Underlying the Sham Doctrine	237
I. Antitrust Injury	237
II. The Two-Pronged Test in the US and in the EU	242
a. Objective Baselessness or ‘Legal Inviability’	242
b. Intent or ‘Economic Inviability’	244
III. Individual vs Patterns of Anticompetitive Litigation	248
IV. Litigation as part of a Broader Pattern of Conduct	250
C. Wrapping-up: A Simple Genus-Species Relationship?	251
3. Deceptive Conduct before the Patent Office as a Case of Inducing Government Action through Improper Means	252
A. Deceptively Inducing Government Action as a Competition Law Concern	255
I. The General Question under US Law	255
II. The General Question under EU Law	258
III. Can a Deceptive Conduct before the Patent Office be analysed as an Illegitimate Inducement of Government Action?	260
B. Elements for Competition Assessment	264
I. Materiality and Causal Connection	264

Table of Contents

II. Conceptualisation of the Misconduct	266
III. Ministerial Acts and Discretion of the Patent Office	270
IV. Effects on Competition	272
a. Exclusionary Effects of Improperly Granted Patents	272
b. Scope of and Entitlement to the Patent	277
c. Consumer Harm and Objective Justifications	278
V. Market Power	282
a. The Case under § 2 Sherman Act. Monopolisation and Attempt to Monopolise	282
b. The Case under art 102 TFEU. Market Dominance as a Pre-requisite	284
C. Ownership or Enforcement of an Improperly Obtained Patent as an Antitrust Concern	287
I. The Case under US Law and Walker Process' Enforcement Requirement	287
II. The Case under EU Law	290
a. A case for Article 102(a) TFEU or duty to license?	291
b. 'Single and Continuous' Abuses	295
c. Ownership or Enforcement as Separate Exclusionary Abuses?	296
PART III: CONCLUSIONS	299
Chapter VII: Summary and Conclusions	301
1. The Role of Patent Applicants in the US and in Europe. Duties and Remedies under Patent Law	302
A. The Scenario under US Law. A Strict Duty of Candour and the Inequitable Conduct Doctrine	302
B. The Scenario under EU Law	303
C. Would it be Desirable for Europe to Implement an Increased Duty of Candour or an Inequitable Conduct Doctrine?	304
I. Extent of Patent Applicant's Duties	305
II. Legal Consequences of the Deceitful Conduct	306
2. The Patent Applicant's Conduct as a Competition Law Concern	308
A. The Experience so far in the US and in the EU	308
I. The Scenario in the US: Walker Process and its Progeny	308

Table of Contents

II. The Scenario in the EU: AstraZeneca	310
B. Sham or Vexatious Litigation Distinguished	311
C. Deceptive Conduct before the Patent Office as a Case of Inducing Government Action through Improper Means	313
I. The General Framework in the US and in the EU	313
II. Elements for Competition Assessment	314
a. Causal Link	314
b. Conceptualisation of the Misconduct	315
c. Discretion of the Patent Office	315
d. Anticompetitive Effects	316
e. Market Power	316
III. Ownership or Enforcement of Fraudulently Obtained Patents	317
Bibliography	319

List of Abbreviations

AGCM	Autorità Garante della Concorrenza e del Mercato (Italian Competition Agency)
AIA	Leahy-Smith America Invents Act
ANDA	Abbreviated New Drug Application
ATC	WHO's Anatomical Therapeutic Chemical Classification System
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGH	Bundesgerichtshof (German Federal Supreme Court)
CFR	US Code of Federal Regulations
CJEU	Court of Justice of the European Union
Commission	European Commission
DoJ	United States Department of Justice
DPMA	Deutsches Patent- und Markenamt (German Patent and Trademark Office)
EEA Agreement	Agreement on the European Economic Area
EEC Treaty	Treaty establishing the European Economic Community
EPC	European Patent Convention
EPI	Institute of Professional Representatives before the European Patent Office
EPO	European Patent Office
EPÜ	Europäisches Patentübereinkommen (European Patent Convention)
EU	European Union
FDA	United States Food and Drug Administration
FRAND	Fair, Reasonable, and Non-Discriminatory
FTC	United States Federal Trade Commission
FTC Act	Federal Trade Commission Act
GC	General Court of the European Union
H2 blockers	Histamine Receptor Antagonists
IDS	Information Disclosure Statement
IP	Intellectual Property
IPR	Intellectual Property Right
ITC	United States International Trade Commission
MPEP	Manual of Patent Examining Procedure of the United States Patent and Trademark Office
NCA	National Competition Authority
NDA	New Drug Application
NHS	UK National Health Service
OFT	UK Office of Fair Trading

List of Abbreviations

OLG	Oberlandesgericht (German Higher Regional Court)
PatAnwO	Patentanwaltsordnung (German Patent Attorneys' Regulation)
PatG	Deutsches Patentgesetz (German Patent Act)
PCT	Patent Cooperation Treaty
PPI	Proton Pump Inhibitors
R&D	Research and Development
SPC	Supplementary Protection Certificate
SSO	Standard Setting Organisation
StGB	Strafgesetzbuch (German Criminal Code)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
UK	United Kingdom
UKIPO	United Kingdom Intellectual Property Office
UPC	Unified Patent Court
US, USA	United States of America
USC	United States Code
USPTO	United States Patent and Trademark Office
UWG	Gesetz gegen den unlauteren Wettbewerb (German Act Against Un-fair Competition)
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
ZPO	Zivilprozessordnung (German Civil Procedural Rules)

Table of Cases

Argentina

Monsanto Co s/ Apel Resol Comisión Nacional de Defensa de la Competencia (case 13676/07) (decision of the Federal Court of Appeals of 30 Semptember 2008)

Australia

Prestige Group (Australia) v Dart Industries, [1992] FSR 143 (Federal Court of Australia)

Brazil

Eli Lilly do Brasil Ltda (Case 08012.011508/2007-91) (decision of the Conselho Administrativo de Defesa Económica of 20 August 2014)

European Patent Organisation

Administrative Agreement/MEDTRONIC (Joined Cases G 5/88, G 7/88 and G 8/88) (decision of the EPO Enlarged Board of Appeal of 16 November 1990)

Rokicki (T 0952/00) (decision of the EPO Boards of Appeal of 27 November 2002)

Samsung Electronics (T 2321/08) (decision of the EPO Technical Board of Appeal of 11 May 2009)

Samsung Electronics (T 1123/09) (decision of the EPO Technical Board of Appeal of 17 December 2009)

European Union

Aalborg Portland A/S v Commission (Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P) [2004] ECR I-123

AKZO Chemie BV v Commission (C-62/86) [1991] ECR I-3359

Table of Cases

- AstraZeneca (C-223/01) [2003] ECR I-11809
- AstraZeneca (Case COMP/A.37.507/F3) (Commission Decision 2006/857/CE [2006] OJ L332/24)
- AstraZeneca v Commission (T-321/05) [2010] ECR II-2805
- AstraZeneca v Commission (C-457/10 P) (CJEU, 6 December 2012, ECLI:EU:C:2012:770)
- BBI/Boosey & Hawkes: Interim Measures (Case IV/32.279) (Commission Decision 87/500/EEC [1987] OJ L286/36)
- Boehringer Ingelheim (Case COMP/39.246)
- British Airways v Commission (C-95/04 P) [2007] ECR I-2331
- Bronner, Oscar v Mediaprint Zeitungs- und Zeitschriftenverlag (C-7/97) [1998] ECR I-7791
- Bundesanstalt für den Güterfernverkehr v Gebrüder Reiff GmbH & Co KG (C-185/91) [1993] ECR I-5801
- Centrafarm BV v Sterling Drug Inc (15/74) [1974] ECR 1147
- Compagnie Maritime Belge Transports v Commission (Joined Cases C-395/96 P and C-396/96 P) [2000] ECR I-1365
- Conorzio Industrie Fiammiferi (CIF) v AGCM (C-198/01) [2003] ECR I-8055
- Consten, Établissements SàRL and Grundig-Verkaufs-GmbH v Commission (Joined Cases 56 and 58/64) [1966] ECR 299
- Decca Navigator System (Case IV/30.979 and 31.394) (Commission Decision 89/113/EEC [1989] OJ L43/27)
- Deutsche Grammophon GmbH v Metro-SB-Großmärkte GmbH (78/70) [1971] ECR 487
- Europemballage Corporation and Continental Can Company Inc v Commission (6/72) [1973] ECR 215
- Farmitalia (C-392/97) [1999] ECR I-5553
- French-West African Shipowners' Committees (Case IV/32.450) (Commission Decision 92/262/EEC [1992] OJ L134/1)
- GB-INNO-BM SA v Association des Détaillants en Tabac (ATAB) (13/77) [1977] ECR 2115
- GlaxoSmithKline v Commission (Joined Cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P) [2009] ECR I-9291
- Hässle AB v Ratiopharm GmbH (C-127/00) [2003] ECR I-14781
- Hilti AG v Commission (T-30/89) [1991] ECR II-1439
- Hoffmann-La Roche & Co AG v Commission (85/76) [1979] ECR 461
- Huawei Technologies Co. Ltd v ZTE Corp., ZTE Deutschland GmbH (Case C-170/13) (CJEU, 16 July 2015, ECLI:EU:C:2015:477)
- IMS Health GmbH & Co OHG v NDC Health GmbH & Co KG (C-418/01) [2004] ECR I-5039
- Industrie des Poudres Sphériques (IPS) SA v Commission (T-5/97) [2000] ECR II-3755

- Intel (Case COMP/C-3/37.990) (Commission Decision of 13 May 2009 [2009] OJ C227/13)
- ITT Promedia NV v Commission (T-111/96) [1998] ECR II 2937
- Johnston v Chief Constable of the Royal Ulster Constabulary (C-222/84) [1986] ECR I-1651
- Keurkoop BV v Nancy Kean Gifts BV (144/81) [1982] ECR 2853
- Konkurrensverket v TeliaSonera Sverige AB (C-52/09) [2011] ECR I-527
- Metro SB-Großmärkte GmbH & Co KG v Commission (75/84) [1986] ECR 3021
- Microsoft Corp v Commission (T-201/04) [2007] ECR II-3601
- Motorola - Enforcement of GPRS standard essential patents (Case AT.39985) (Commission Decision C(2014) 2892 [2014] OJ C344/6)
- Nederlandsche Banden-Industrie-Michelin v Commission (322/81) [1983] ECR 3461
- Parke, Davis & Co v Probel (24/67) [1968] ECR 55
- Post Danmark A/S v Konkurrencerådet (C-209/10) (CJEU, 27 March 2012)
- Protégé International Ltd v Commission (T-119/09) [2012] OJ C319/6
- Radio Telefís Eireann (RTE) and Independent Television Publications Ltd (ITP) v Commission (Joined Cases C-241/91 P and C-242/91 P) [1995] ECR I-743 (*Magill*)
- Rambus (Case COMP/38.636) (Commission Decision 2010/C 30/09 [2010] OJ C30/17)
- Samsung - Enforcement of UMTS standard essential patents (Case AT.39939) (Commission Decision C(2014) 2891 [2014] OJ C350/8)
- Servier v. Commission (T-691/14) (GC, 12 December 2018, ECLI:EU:T:2018:922)
- Sot Lélouk kai Sia EE v GlaxoSmithKline (Joined Cases C-468/06 to C-478/06) [2008] ECR I-7139
- Synetairismos Farmakopoiou Aitolias & Akarnanias (Syfait) v GlaxoSmithKline plc (C-53/03) [2005] ECR I-4609
- Tetra Pak Rausing SA v Commission (T-51/89) [1990] ECR II-309 (*Tetra Pak I*)
- Tetra Pak International SA v Commission (C-333/94 P) [1996] ECR I-5951 (*Tetra Pak II*)
- Thetford Corp v Fiamma SpA (35/87) [1988] ECR 3585
- United Brands Co v Commission (27/76) [1978] ECR 207
- Van Eycke, Pascal v ASPA NV (267/86) [1988] ECR 4769
- Volvo AB v Erik Veng (UK) Ltd (C-238/87) [1988] ECR 6211

France

- Dolle v Emsens PIBD [1991] 491 III 2 (CA Paris, 11 October 1990)

Table of Cases

Germany

Dermatex BGH [1977] GRUR 494
Kunststoffrohrteil BGH [2002] GRUR 511
Luftabscheider für Milchsammelanlage BGH [2006] GRUR 923
Rechtsmittel BGH [1954] GRUR 107
Zierfalten BGH [1965] GRUR 231
OLG Düsseldorf, decision of 14 June 2007, case I-2 U 135/05
OLG Düsseldorf, decision of 26 June 2008, case I-2 U 130/06
OLG Düsseldorf, decision of 6 June 2013, case I-2 U 60/11

Italy

Pfizer Italia srl (decision of the Tribunale Amministrativo Regionale per il Lazio 7467/2012 of 3 September 2012)
Pfizer Italia srl (decision of the Consiglio di Stato (Italy) 693/2014 of 12 February 2014)
RATIOPHARM/PFIZER (A431) (Provvedimento n. 23194, Autorità Garante della Concorrenza e del Mercato, 11 January 2012, Bollettino n 2/2012)

Netherlands

Dijkstra v Saier C05/200HR (decision of the Supreme Court of the Netherlands of 22 December 2006)

Spain

Pfizer Health AB (Case S/0441/12) (decision of the Comisión Nacional de los Mercados y la Competencia of 13 February 2014)

United Kingdom

Actavis UK Ltd v Eli Lilly & Co [2014] EWHC 1511 (Pat)
Bristol-Myers Squibb Co v Baker Norton Pharmaceuticals Inc [1998] EWHC Patents 300

Chevron Research Company's Extension, Re [1975] FSR 1 (Chancery Division)
Chocousse Union Des Fabricants Suisses De Chocolat v Cadbury Ltd [1997] EWHC 360 (Pat)
Clevite Corporation's Patent, Re [1966] RPC 199
Crawford Adjusters v Sagicor General Insurance (Cayman) Ltd [2013] UKPC 17
Dering v Earl of Winchelsea (1787) 1 Cox 318
General Tire & Rubber Co Ltd v Firestone Tyre & Rubber Co Ltd [1975] RPC 203 (Court of Appeal)
Hoechst Marion Roussel Ltd v Kirin-Amgen Inc [2002] EWHC 471 (Pat)
Hormel Foods Corp v Antilles Landscape Investments NV [2005] EWHC 13 (Ch)
Kirin-Amgen Inc v Hoechst Marion Roussel Ltd [2004] UKHL 46
Laboratoires Servier, Les v Apotex Inc [2008] EWCA Civ 445
Reckitt Benckiser Healthcare (UK) Ltd (CE/8931/08) (OFT Decision of 12 April 2011 CA98/02/2011)
Rohm and Haas Co v Collag Ltd [2001] EWCA Civ 1589
Royal Bank of Scotland, The Plc v Highland Financial Partners LP [2013] EWCA Civ 328
Valensi v British Radio Corp [1973] RPC 337 (Court of Appeal)

United States

Abbott Laboratories v Sandoz Inc 544 F 3d 1341 (Fed Cir 2008)
Akzo, NV v EI DuPont de Nemours 810 F 2d 1148 (Fed Cir 1987)
Allied Tube & Conduit Corp v Indian Head Inc 486 US 492 (1988)
American Hoist & Derrick Co v Sowa & Sons Inc 725 F 2d 1350 (Fed Cir 1984)
American Tobacco Co v United States 328 US 781 (1946)
Argus Chemical Corp v Fibre Glass-Evercoat Co Inc 759 F 2d 10 (Fed Cir 1985)
American Cyanamid Company v FTC 363 F 2d 757 (6th Cir 1966)
Armstrong Surgical Center Inc v Armstrong County Memorial Hospital 185 F 3d 154 (3rd Cir 1999)
Aspen Skiing Co v Aspen Highlands Skiing Corp 472 US 585 (1985)
Atari Games Corp v Nintendo of America Inc 897 F 2d 1572 (Fed Cir 1990)
Aventis Pharma SA v Amphastar Pharmaceuticals Inc 525 F 3d 1334 (Fed Cir 2008)
BE&K Construction Co v National Labor Relations Board 536 US 516 (2002)
Bement v National Harrow Co 186 US 70 (1902)
Blonder-Tongue Laboratories Inc v University of Illinois Foundation 402 US 313 (1971)
BRASSELER, USA I, LP v Stryker Sales Corp 267 F 3d 1370 (Fed Cir 2001)
Braun, B Medical Inc v Abbott Laboratories 124 F 3d 1419, 1427 (Fed Cir 1997)

Table of Cases

- Broadcast Music Inc (BMI) v Columbia Broadcasting System (CBS) 441 US 1 (1979)
- Brooke Group Ltd v Brown & Williamson Tobacco Corp 509 US 209 (1993)
- Brown Shoe Co v United States 370 US 294 (1962)
- Brulotte v Thys Co 379 US 29 (1964)
- Brunswick Corp v Riegel Textile Corp 752 F 2d 261 (7th Cir 1984)
- Burlington Industries Inc v Dayco Corp 849 F 2d 1418 (Fed Cir 1988)
- Buspirone Patent Litigation, Re 185 F Supp. 2d 363 (SD New York 2002)
- California Eastern Laboratories Inc v Gould 896 F 2d 400 (9th Cir 1990)
- California Motor Transport Co v Trucking Unlimited 404 US 508 (1972)
- California Retail Liquor Dealers Assn v Midcal Aluminum Inc 445 US 97 (1980)
- Chemisorb Ltd v Ethyl Corp 168 F 3d 119 (3rd Cir 1999)
- City of Columbia v Omni Outdoor Advertising Inc 499 US 365 (1991)
- Consolidated Aluminum Corp v Foseco Int'l Ltd 910 F 2d 804 (Fed Cir 1990)
- Continental TV Inc v GTE Sylvania Inc 433 US 36 (1977)
- Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions, Re 538 F 2d 180 (8th Cir 1976)
- CR Bard Inc v M3 Systems Inc 157 F 3d 1340 (Fed Cir 1998)
- Critikon Inc v Becton Dickinson Vascular Access Inc 120 F 3d 1253 (Fed Cir 1997)
- CVD Inc v Raytheon Co 769 F 2d 842 (1st Cir 1985)
- Cygnus Therapeutic Systems v Alza Corp 92 F 3d 1153 (Fed Cir 1996)
- Dayco Products Inc v Total Containment Inc 329 F 3d 1358 (Fed Cir 2003)
- Delano Farms Co v The California Table Grape Commission 655 F 3d 1337 (Fed Cir 2011)
- Dell Computer Corporation (FTC Docket C-3658) 121 FTC 616 (1996)
- Dick, AB Co v Burroughs Corp 798 F 2d 1392 (Fed Cir 1986)
- Digital Control Inc v Charles Machine Works 437 F 3d 1309 (Fed Cir 2006)
- Dippin' Dots Inc v Mosey 476 F 3d 1337 (Fed Cir 2007)
- Driscoll v Cebalo 731 F 2d 878 (Fed Cir 1984)
- Eastern Railroad Presidents Conference v Noerr Motor Freight Inc 365 US 127 (1961)
- Eastman Kodak Co v Image Technical Services Inc 504 US 451 (1992)
- Ethyl Gasoline Corp v United States 309 US 436 (1940)
- Festo Corp v Shoketsu Kinzoku Kogyo Kabushiki Co Ltd 535 US 722 (2002)
- FMC Corp v Hennessy Industries Inc 836 F 2d 521 (Fed Cir 1987)
- Food Machinery & Chemical Corp v Walker Process Equipment Inc 335 F 2d 315 (7th Cir 1964)
- Frank's Casing Crew & Rental Tools Inc v PMR Technologies Inc 292 F 3d 1363 (Fed Cir 2002)
- Frazier v Roessel Cine Photo Tech Inc 417 F 3d 1230 (Fed Cir 2005)

FTC v Actavis Inc 133 S Ct 2223 (2013)
FTC v Superior Court Trial Lawyers Association (SCTLA) 493 US 411 (1990)
Gambro Lundia AB v Baxter Healthcare Corp 110 F 3d 1573 (Fed Cir 1997)
Grip-Pak Inc v Illinois Tool Works Inc 694 F 2d 466 (7th Cir 1982)
Handgards Inc v Ethicon Inc 601 F 2d 986 (9th Cir 1979) (*Handgards I*)
Handgards Inc v Ethicon Inc 743 F 2d 1282 (9th Cir 1984) (*Handgards II*)
Hazel-Atlas Glass Co v Hartford-Empire Co 322 US 238 (1944)
Hotchkiss v Greenwood 52 US 248 (1950)
Hydranautics v FilmTec Corp 70 F 3d 533 (9th Cir 1995)
Hydril Co LP v Grant Prideco LP 474 F 3d 1344 (Fed Cir 2007)
Illinois Tool Works Inc v Independent Ink Inc 547 US 28 (2006)
Independent Service Organizations Antitrust Litigation, Re 203 F 3d 1322 (Fed Cir 2000)
Innogenetics, NV v Abbott Laboratories 512 F 3d 1363 (Fed Cir 2008)
Intel Corporation (FTC Docket 9341) (Statement of Chairman Leibowitz and Commissioner Rosch of 16 December 2009)
International Salt Co Inc v United States 332 US 392 (1947)
Jaskiewicz v Mossinghoff 822 F 2d 1053 (Fed Cir 1987)
Jefferson Parish Hospital District No 2 v Hyde 466 US 2 (1984)
Keystone Driller Co v General Excavator Co 290 US 240 (1933)
Kimble v Marvel Entm't, LLC 135 S Ct 2401 (2015)
Kingsdown Medical Consultants, Ltd v Hollister Inc 863 F 2d 867 (Fed Cir 1988)
Kingsland v Dorsey 338 US 318 (1949)
Kobe Inc v Dempsey Pump Co 198 F 2d 416 (10th Cir 1952)
Kottle v Northwest Kidney Centers 146 F 3d 1056 (9th Cir 1998)
Landmarks Holding Corp v Bermant 664 F 2d 891 (2nd Cir 1981)
Lighting World Inc v Birchwood Lighting Inc 382 F 3d 1354 (Fed Cir 2004)
Litton Systems Inc v American Telephone & Telegraph Co 700 F 2d 785 (2nd Cir 1983)
Loctite Corp v Ultraseal Ltd 781 F 2d 861 (Fed Cir 1985)
Madey v Duke University 307 F 3d 1351 (Fed Cir 2002)
Mallinckrodt Inc v Medipart Inc 976 F 2d 700 (Fed Cir 1992)
Manville Sales Corp v Paramount Systems Inc 917 F 2d 544 (Fed Cir 1990)
Mercoird Corp v Mid-Continent Investment Co 320 US 661 (1944)
Microsoft Corp v i4i Ltd Partnership 131 S Ct 2238 (2011)
Molins PLC v Textron Inc 48 F 3d 1172 (Fed Cir 1995)
Monolith Portland Midwest Co v Kaiser Aluminium & Chemical Corp 407 F 2d 288 (9th Cir 1969)
Monsanto Co v Rohm & Haas Co 456 F 2d 592 (3rd Cir 1972)

Table of Cases

Morton Salt Co v G S Suppiger Co 314 US 488 (1942)
Motion Picture Patents Co v Universal Film Manufacturing Co 243 US 502 (1917)
Mueller Brass Co v Reading Industries Inc 352 F Supp. 1357 (ED Pa 1972)
Nilssen v Osram Sylvania Inc 504 F 3d 1223 (Fed Cir 2007)
Nobelpharma AB v Implant Innovations Inc 141 F 3d 1059 (Fed Cir 1998)
Norton v Curtiss 433 F 2d 779 (CCPA 1970)
Norton Co v Carborundum Co 530 F 2d 435 (1st Cir 1976)
Organon Inc v Mylan Pharmaceuticals Inc 293 F Supp 2d 453 (D NJ 2003)
Otter Tail Power Co v United States 410 US 366 (1973)
Parker v Brown 317 US 341 (1943)
Penn Yan Boats Inc v Sea Lark Boats 359 F Supp. 948 (SD Fla 1972)
Phillips v AWH Corp 415 F 3d 1303 (Fed Cir 2005) (en banc)
Plastic Container Corp v Continental Plastics of Oklahoma Inc 607 F 2d 885 (10th Cir 1979)
Precision Instrument Manufacturing Co v Automotive Maintenance Machinery Co 143 F 2d 332 (7th Cir 1944)
Precision Instrument Manufacturing Co v Automotive Maintenance Machinery Co 324 US 806 (1945).
Premier Electrical Construction Co v National Electrical Contractors Assn Inc 814 F 2d 358 (7th Cir 1987)
Primetime 24 Joint Venture v National Broadcasting Co Inc 219 F 3d 92 (2nd Cir 2000)
Princo Corp v International Trade Commission 616 F 3d 1318 (Fed Cir 2010) (en banc)
Professional Real Estate Investors Inc v Columbia Pictures Industries Inc 508 US 49 (1993)
Purdue Pharma LP v Endo Pharmaceuticals Inc 410 F 3d 690 (Fed. Cir. 2005)
Rambus (FTC Docket 9302) (Opinion of the Commission of 2 August 2006)
Rambus Inc v FTC 522 F.3d 456 (DC Cir 2008)
Ritz Camera & Image LLC v SanDisk Corp 700 F 3d 503 (Fed Cir 2012)
Rohm & Haas Co v Crystal Chemical Co 722 F 2d 1556 (Fed Cir 1983)
Scanner Technologies Corp v Icos Vision Systems Corp NV 528 F 3d 1365 (Fed Cir 2008)
SCM Corp v Xerox Corp 645 F 2d 1195 (2nd Cir 1981)
Senza-Gel Corp v Seiffhart 803 F 2d 661 (Fed Cir 1986)
Southern Pacific Communications Co v AT&T Co 740 F 2d 980 (DC Cir 1984)
Spectrum Sports Inc v McQuillan 506 US 447 (1993)
St Joseph's Hospital Inc v Hospital Corp of America 795 F 2d 948 (11th Cir 1986)
Star Scientific Inc v RJ Reynolds Tobacco Co 537 F 3d 1357 (Fed Cir 2008)
Stevens, JP & Co Inc v Lex Tex Ltd 747 F 2d 1553 (Fed Cir 1984)

- Swift & Co v United States 196 US 375 (1905)
- Therasense Inc v Becton, Dickinson & Co 649 F 3d 1276 (Fed Cir 2011) (en banc)
- Times-Picayune Publishing Co v United States 345 US 594 (1953)
- Tops Markets Inc v Quality Markets Inc 142 F 3d 90 (2nd Cir 1998)
- Toys “R” Us v FTC 221 F 3d 928 (7th Cir 2000)
- Transource Int’l Inc v Trinity Industries Inc 725 F 2d 274 (5th Cir 1984)
- Twin City Bakery Workers v Astra Aktiebolag 207 F Supp 2d 221 (SD NY 2002)
- Tyco Healthcare Group LP v Mutual Pharmaceutical Co Inc 762 F 3d 1338 (Fed Cir 2014)
- Union Oil Company of California (FTC Docket 9305) (Opinion of the Commission of 7 July 2004) (*Unocal*)
- United Mine Workers of America v Pennington 381 US 657 (1965)
- United States v Aluminium Company of America (Alcoa), 148 F 2d 416 (2nd Cir 1945)
- United States v Columbia Steel Co 334 US 495 (1948)
- United States v El du Pont de Nemours & Co 351 US 377 (1956)
- United States v Grinnell Corp 384 US 563 (1966)
- United States v Line Material Co 333 US 287 (1948)
- United States v Microsoft Corp 253 F 3d 34 (DC Cir 2001)
- United States v Standard Electric Time Co 155 F Supp 949 (D Mass 1957)
- United States v Univis Lens Co 316 US 241 (1942)
- Unitherm Food Systems Inc v Swift-Eckrich Inc 375 F 3d 1341 (Fed Cir 2004)
- USM Corp v SPS Technologies Inc 694 F 2d 505 (7th Cir 1982)
- USS-Posco Industries v Contra Costa County Building & Construction Trades Council 31 F 3d 800 (9th Cir 1994)
- Verizon Communications Inc v Law Offices of Curtis V Trinko, LLP 540 US 398 (2004)
- Walker Process Equipment Inc v Food Machinery & Chemical Corp 382 US 172 (1965)
- Whelan v Abell 48 F 3d 1247 (DC Cir 1995)
- Windsurfing International Inc v AMF Inc 782 F 2d 995 (Fed Cir 1986)
- Woods Exploration & Producing Co Inc v Aluminum Co of America 438 F 2d 1286 (5th Cir, 1971)

