

# Federal Circuit orders unprecedented en banc hearing in Banner & Witcoff client Lexmark's case over printer cartridges

On April 14, 2015, the U.S. Court of Appeals for the Federal Circuit sua sponte ordered an en banc hearing on whether the Supreme Court's 2012 decision in *Kirtsaeng v. John Wiley & Sons, Inc.*, should cause the appeals court to "overrule *Jazz Photo Corp. . . .* to the extent it ruled that a sale of a patented item outside the United States never gives rise to United States patent exhaustion."

The Federal Circuit will also consider whether the Supreme Court's 2008 decision in *Quanta Computer Inc. v. LG Electronics, Inc.*, should cause it to "overrule *Mallinckrodt, Inc. . . .* to the extent it ruled that a sale of a patented article, when the sale is made under a restriction that is otherwise lawful and within the scope of the patent grant, does not give rise to patent exhaustion."

Lexmark is represented in this matter by lead trial counsel Timothy C. Meece, as well as V. Bryan Medlock, Jr., Jason Shull and Audra Eidem Heinze of Banner & Witcoff, Ltd.; Constantine L. Trela, Jr. and Benjamin Beaton of Sidley Austin LLP; and Steven B. Loy of Stoll Keenon Ogden PLLC.

Please click [here](#) to read the order.

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