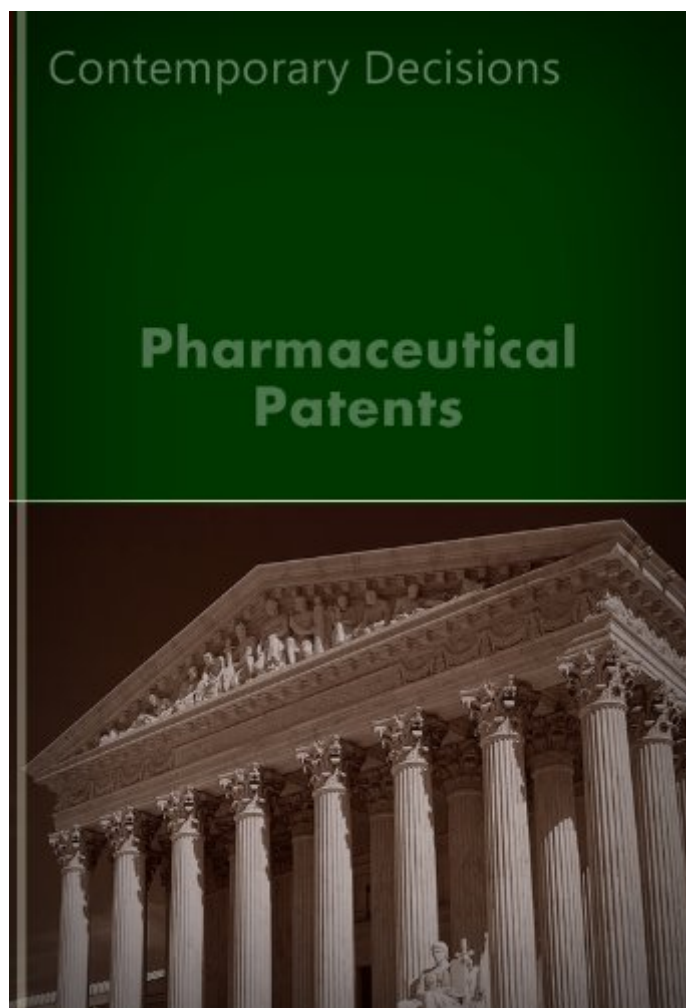


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Pharmaceutical Patents (Intellectual Property Law Series)



Synopsis

This casebook contains a selection of 143 Federal Court of Appeals decisions that address issues surrounding pharmaceutical patent disputes. The decisions span from 2005 to the date of publication. Most of the decisions were issued by the Federal Circuit and they are organized by year of issuance. For each year, the decisions are listed in the order of frequency of citation. The most cited opinions appear first.

• Newly discovered results of known processes directed to the same purpose are not patentable because such results are inherent. It matters not that those of ordinary skill heretofore may not have recognized the inherent characteristics of the prior art. *In re Montgomery*, 677 F. 3d 1375 (Fed. Cir. 2012)

• A district court will not lose jurisdiction simply because the period of possible first generic market entry arrives. While the initial burden of establishing the trial court's jurisdiction rests on the party invoking that jurisdiction, once that burden has been met courts are entitled to presume, absent further information, that jurisdiction continues. If a party to an appeal suggests that the controversy has, since the rendering of judgment below, become moot, that party bears the burden of coming forward with the subsequent events that have produced that alleged result. The "heavy burden of persuading" the court that a case is moot lies with the party asserting mootness. *Dey Pharma, LP v. Sunovion Pharmaceuticals Inc.*, 677 F. 3d 1158 (Fed. Cir. 2012)

• A district court has discretion to award reasonable attorney fees to a prevailing party in a patent case if the court determines that the case is "exceptional." 35 U.S.C. § 285. *MarcTec, LLC v. Johnson & Johnson*, 664 F. 3d 907 (Fed. Cir. 2012) When deciding whether to award attorney fees under § 285, a district court engages in a two-step inquiry. First, the court must determine whether the prevailing party has proved by clear and convincing evidence that the case is exceptional. If the district court finds that the case is exceptional, it must then determine whether an award of attorney fees is justified. *Ibid.* A case may be deemed exceptional under § 285 where there has been willful infringement, fraud or inequitable conduct in procuring the patent, misconduct during litigation, vexatious or unjustified litigation, conduct that violates Federal Rule of Civil Procedure 11, or like infractions. *Ibid.* Absent litigation misconduct or misconduct in securing the patent, a district court can award attorney fees under § 285 only if the litigation is both: (1) brought in subjective bad faith; and (2) objectively baseless. Under this standard, a patentee's case "must have no objective foundation, and the plaintiff must actually know this. Whether a case is objectively baseless requires an "objective assessment of the merits." *Ibid.*

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