

## Winston & Strawn Wins Victory for Hospira Inc.

APRIL 9, 2012

On April 9, 2012, the Federal Circuit handed a huge victory to Winston & Strawn client Hospira Inc. in a case against Sanofi-Aventis SA. The Court affirmed a district court's decision invalidating two patents covering a cancer drug known as docetaxel (Taxotere), which is an enormously successful drug with sales exceeding \$1.5 billion annually.

The case was important not only commercially, but also legally. The case represents the very first time the Federal Circuit affirmed a finding of inequitable conduct (essentially defrauding the Patent Office) after an *en banc* decision in May 2011, making the defense much harder to prove. On April 10, 2012, *Law360* quoted commentators finding the opinion "rather surprising, given that everyone talked about Therasense as sounding the death knell for inequitable conduct claims." Even so, the Federal Circuit unanimously concluded that the district court's "inequitable conduct determination withstands even the more rigorous standard" they recently adopted.

In its opinion from April 9, the Federal Circuit found that a Sanofi inventor intentionally concealed two important articles from the Patent Office, and that he did so because he was trying to deceive the Patent Office into improperly awarding patents to Sanofi. For its finding that the inventor acted with that deceptive intent, the Federal Circuit, like the district court, relied heavily on Winston's cross examination of the inventor at trial.

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Jovial Wong