

## Federal Circuit Holds that a "Covenant Not to Sue" Authorized Sales of Patented Products Under the Doctrine of Patent Exhaustion

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In an important decision published last week, the Federal Circuit affirmed a decision by the Northern District of Texas, holding that a covenant not to sue in a settlement agreement authorized sales of patented products and exhausted the plaintiff's patent rights. Prior to this decision, the prevailing view had been that a covenant not to sue is personal in nature and, unless legislated for in the covenant itself, does not extend to downstream users of patented products. Therefore, this decision has significant implications for the drafting and interpretation of patent licenses and settlement agreements.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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