

## Lemley on *Metallizing Engineering*, in Perspective

Esteemed Stanford University Law School Professor Mark A. Lemley joined by several dozen academic colleagues has produced an impressive *amicus* brief in *Helsinn Healthcare S.A. v. Teva Pharmaceuticals USA, Inc.*, Fed. Cir. 2016-1284. Professor Lemley argues that *Metallizing Engineering Co. v. Kenyon Bearing & Auto Parts Co.*, 153 F.2d 516 (2d Cir.1946), should be considered good law under the *Leahy Smith America Invents Act*.

**Whither the Karshtedt Critique?** Prof. Lemley's *amicus* brief is consistent with his arguments published in the Texas Law Review last year. See Mark A. Lemley, *Does "Public Use" Mean the Same Thing it Did Last Year*, 93 Texas L. Rev. 1119 (2015), but does not fully respond to the critique of George Washington University Law School Professor Karshtedt. See Dmitry Karshtedt, *The Riddle of Secret Public Use: A Response to Professor Lemley*, 93 Texas L. Rev. See Also 159 (2015)(attached).

**Whither the Harmonization Goal of the New Law?** One may wonder why an isolationist position would be taken that the holding in *Metallizing Engineering* should be followed in the new law, given that *Metallizing Engineering* makes the United States the odd man out, when a prime goal of the new law is harmonization. The result of *Metallizing Engineering* would perpetuate disharmony, setting America apart from the global mainstream, as explained in the *amicus* brief of The Naples Roundtable, Inc. (attached).

Regards,

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