

MDMA – FINNEGAN CASE UPDATE

Title: Finnegan Case Update: Perfect Surgical and Antedating Prior Art

In *Perfect Surgical Techniques, Inc. v. Olympus America, Inc.*, 841 F.3d 1004 (Fed. Cir. 2016), the U.S. Court of Appeals for the Federal Circuit clarified the standard for antedating prior art to prove an earlier invention date. Under patent law, a patentee may be able to avoid having a patent invalidated based on disclosures in the art by showing that the patentee invented the subject matter before the date of the art. In this case, the Patent Trial and Appeal Board invalidated patent claims relating to bipolar forceps for electrosurgery based on earlier disclosures in the art. The Federal Circuit vacated the decision, holding that the standard to antedate prior art is “reasonably continuous diligence,” not the Patent Trial and Appeal Board’s heightened standard of “continuous exercise of reasonable diligence for the entire critical period.” Further discussion of the decision can be found on [Finnegan’s Federal Circuit IP Blog](#).