



THE FEDERALIST SOCIETY'S INTELLECTUAL PROPERTY PRACTICE GROUP

Presents:

ARE PATENTS "PRIVATE PROPERTY" UNDER THE FIFTH AMENDMENT?

The modern regulatory state affects all forms of property rights, from land to chattels to intellectual property. The only constitutional limit on the government dispossessing a property owner, or excessively restricting the use of property through regulations, is the Takings Clause in the Fifth Amendment. Although most takings cases traditionally involve land, arising from direct condemnations or environmental regulations, the property rights in patents are increasingly becoming the subject of state regulation. In 2001, federal officials threatened to ignore Bayer's patent in Cipro, the antibiotic that treats Anthrax, in order to mass produce the drug cheaply. The new Democratic majority in the 110th Congress has promised to lower prices on patented drugs through legislative action. These governmental actions, and many others, reflect the fact that patents are now essential assets in our modern economy, contributing daily to every American's quality of life.

Does the Fifth Amendment impose any constitutional limits on the government's infringement or regulation of patents? The Federal Circuit recently answered this question with a definitive "no" in *Zoltek v. U.S.*, holding that patentees can obtain remuneration from the government for unauthorized uses of their inventions only at the legislative prerogative of Congress. *Zoltek* has tremendous implications for the constitutional security of these property rights, establishing far-ranging regulatory power over patents and potentially impacting innovation policy in ways that neither jurists nor patentees have realized just yet. This panel will discuss these doctrinal, policy, and historical issues raised by the increasingly important constitutional question whether patents are secured under the Takings Clause as "private property."

Confirmed Speakers to Date:

- Prof. Shubha Ghosh, Southern Methodist University, Dedman School of Law
- Mr. Michael A. Gollin, Venable LLP
- Mr. Dean A. Monco, Wood Phillips
- Prof. Adam Mossoff, Michigan State University College of Law
- Hon. Loren A. Smith, United States Court of Federal Claims--*Moderator*

Tuesday, March 6, 2007
12:00 noon – 2:00 p.m. (lunch will be served)
Wiley Rein
1776 K Street N.W.
Washington, D.C.