

No. 16-

IN THE
Supreme Court of the United States

MERCK & CIE, BAYER PHARMA AG, AND BAYER
HEALTHCARE PHARMACEUTICALS INC.,
Petitioners,

v.

WATSON LABORATORIES, INC.,
Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit**

PETITION FOR A WRIT OF CERTIORARI

ADAM K. MORTARA
BARTLIT BECK HERMAN
PALENCHAR & SCOTT LLP
54 W. Hubbard Street
Suite 300
Chicago, IL 60654
(312) 494-4400

CARTER G. PHILLIPS
JONATHAN F. COHN*
RYAN C. MORRIS
JOSHUA J. FOUGERE
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000
jfcohn@sidley.com

*Counsel for Petitioners Merck & Cie, Bayer Pharma
AG, and Bayer HealthCare Pharmaceuticals Inc.*

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* Counsel of Record

QUESTION PRESENTED

The Patent Act provides that a “person shall be entitled to a patent unless ... the invention was ... in public use or on sale in this country, more than one year prior to the date of the application” for the patent. 35 U.S.C. § 102(b) (2006).

The question presented is:

Whether the “on sale” bar found in § 102(b) applies only to sales or offers of sale made available to the public, as Congress, this Court, and the United States have all made clear, or whether it also applies to non-public sales or offers of sale, as the Federal Circuit has held.

(i)

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are Merck & Cie, Bayer Pharma AG, Bayer HealthCare Pharmaceuticals Inc., and Watson Laboratories, Inc.

RULE 29.6 STATEMENT

Bayer Pharma AG and Bayer HealthCare Pharmaceuticals Inc. are wholly owned subsidiaries of Bayer AG, a publicly held company.

Merck KGaA is a publicly held company that owns more than 10% of Merck & Cie.

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