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ABSTRACTS

NOTE

TOY STORY: Being Right for the Wrong Reasons in the Search for a “Greater Freedom”—A Critical Analysis of the Dissenting En Banc Opinions in *Reliable Consultants, Inc. v. Earle*

Steven L. Boldt 1

This Note analyzes how the landmark United States Supreme Court case of Lawrence v. Texas has been used by the Fifth Circuit in Reliable Consultants, Inc. v. Earle to extend “sexual privacy interests” into the commercial realm. This Note begins by exploring the historical trend of cases that have led to the birth of sexual privacy. The Fifth Circuit in Reliable was given the task to decide whether the Texas legislature’s statutory proscription of promoting or selling devices used for sexual stimulation infringed on a mere commercial right or an individual’s right to sexual privacy. After the Fifth Circuit held in favor of the plaintiff-businesses that sold sexual devices, the defendant-state petitioned for a rehearing en banc. The majority that denied the rehearing curiously refrained from filing an opinion; however, the judges who did not agree with the Reliable majority filed dissenting opinions to the denial for rehearing. Because both the majority opinion and dissents to Reliable use Lawrence as the key case influencing their opinions, this Note critically scrutinizes the Lawrence decision in correlation to the dissenting judges’ arguments and finds that although the dissenting opinions are correct in that the majority is stretching the applicability of Lawrence too far, they are wrong in their reasoning as to why this is so.

COMMENT

Current Trends in Inequitable Conduct are Adverse to Patent Policy as Seen Through the Exemplary Case of Big Pharma

Joshua M. Austin 33

This Comment explores the rather difficult and rapidly changing field of patent law, discussing specifically the doctrine of inequitable conduct, a defense raised by the infringing party by which a patent can be rendered unenforceable. Recent trends in inequitable conduct, as it has been used by the Federal Circuit, have made this confusing area of law even more so. This comment identifies these confusions and the Federal Circuit’s failure to maintain clear cut precedent. This Comment further discusses the impacts of these current trends, postulating that these trends go so far as to undercut the principal policy purposes behind patent law itself. Finally, this Comment will give a concrete example of the impact of these trends and uncertainties by looking at an industry particularly impacted by such rules, that of Big Pharmaceutical companies.

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