

[Celanese International Corporation v. ITC, 2022-182 \(Fed. Cir. 8/12/2024\)](#)

This is an appeal from the ITC's investigation No. 337-TA-1264. Celanese appealed. The Federal Circuit affirmed.

**Legal Issue: 35 USC 102(b), on sale bar; process claims. Whether a patent subject to post-AIA law, for a process claim filed more than one year after sale of product made by a secret use of the process, is barred.**

The Federal Circuit held that the AIA did not change the pre-AIA law that sales of a product using a secret process triggered the on-sale bar for the claims to the process.

The question before this court is whether the AIA changed Section 102's on-sale bar such that Celanese's pre-2015 sales of Ace-K made using a secret process would not invalidate its later-sought claims on that process. Consistent with the Supreme Court's holding in *Helsinn*, we agree with the Commission that the AIA did not effect such a change. [[Celanese International Corporation v. ITC, 2022-182 \(Fed. Cir. 8/12/2024\)](#).]

Accordingly, we hold that the enactment of the AIA did not constitute a foundational change in the theory of the statutory on-sale bar provision, 35 U.S.C. § 102(a)(1), in particular, to require that sales of products made using a secret process cannot trigger the on-sale bar. We conclude that Celanese fails to show the AIA overturned settled precedent that pre-critical date sales of products made using a secret process preclude the patentability of that process. Celanese's pre-2015 sales of Ace-K made using its secret process thus trigger the on-sale bar and preclude patentability of that process. Those sales thus render invalid Celanese's later-sought patent claims on that process. [[Celanese International Corporation v. ITC, 2022-182 \(Fed. Cir. 8/12/2024\)](#).]