

Scandalous, Immoral and Disparaging Patents in Light of Tam

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Omar Khan and Richard Crudo explore the potential implications of Tam in the patent context in this article published by *Law360* on February 25, 2016.

The Federal Circuit sitting en banc recently held in *Tam* that Section 2(a) of the Lanham Act, which prohibits the US Patent and Trademark Office from registering trademarks that “may disparage” persons, institutions, or beliefs, is unconstitutional and violates the First Amendment on its face. The nine-judge majority found that trademarks generally contain some expressive content protected by the First Amendment, and that the regulation of such content “amounts to viewpoint discrimination” that fails strict scrutiny review. In so holding, the majority noted that, although the statute does not prohibit an applicant from using a disparaging mark in commerce, it does deny the “truly significant and financially valuable benefits” that federal registration bestows. The denial of such benefits, according to the majority, creates an impermissible chilling effect on speech. [Read more](#)

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