

# DETHRONING *LEAR*? INCENTIVES TO INNOVATE AFTER *MEDIMMUNE*

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In January 2007, the U.S. Supreme Court radically changed the rules on licensing U.S. patents to the substantial disadvantage of anyone hoping to derive reliable revenues from the extraction of royalties. At the time of the decision in *MedImmune v. Genentech*,<sup>1</sup> the law was fairly well-established: a licensee in good standing—that is, a licensee who was not in breach of its licensing agreement and therefore not at risk of having the license terminated—was barred from challenging the validity of the licensed patent.<sup>2</sup> To gain access to federal court, such a licensee had to

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1. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007).

2. *See, e.g., Gen-Probe Inc. v. Vysis, Inc.*, 359 F.3d 1376 (Fed. Cir. 2004); *Cordis Corp. v. Medtronic, Inc.*, 780 F.2d 991 (Fed. Cir. 1985).