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ARTICLE

Don't Fear IP-Antitrust 'Turducken' in Reverse-Payment Cases

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This article discusses whether apprehension associated with applying a "Turducken" analysis (the word "Turducken," which was penned by former American football coach and sportscaster John Madden, referring to a chicken stuffed inside a duck stuffed inside a turkey), or a patent case inside an antitrust case, to reverse-payment antitrust actions is warranted. The article analyzes whether it is fair to hold a generic pharmaceutical company liable for antitrust damages based on a surrogate proof of patent weakness based on the existence of a reverse payment, instead of requiring a private plaintiff to prove the patent merits directly. According to the authors, the 2013 US Supreme Court case of *Federal Trade Commission v. Actavis Inc.* does not require bypassing direct proof of the patent merits to determine antitrust injury in private actions.

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