DEFINITIVE HOLDINGS v. POWERTEQ, Appeal No. 2024-1761 (Fed. Cir. April 14, 2026). Before Moore, Dyk, and Cunningham. Appealed from D. Utah (Judge Barlow).

Background:

Definitive Holdings sued Powerteq for infringing a patent directed to updating engine controller software, in which a device connects to the engine controller to replace portions of the stock software while retaining an image of it for potential reversion to the stock settings. Powerteq moved for summary judgment of invalidity based on a sale by Hypertech, a non-party to the lawsuit, of its product PP3, which allegedly embodied the claimed invention, before the critical date of the patent. The district court relied on Hypertech's sales records, the deposition testimony of Hypertech's CEO, the source code of PP3, and Powerteq's expert testimony that analyzed the source code. The court then held that the PP3 sale triggered the on-sale bar. Definitive Holdings appealed, arguing that the district court relied on inadmissible hearsay of the CEO's testimony and that the sale did not trigger the on-sale bar because it did not disclose PP3's innerworkings or functionality.

Issues/Holdings:

(1) Did the district court err in relying on the deposition testimony of Hypertech's CEO? No, affirmed.
(2) Did the district court err in holding that the on-sale bar was triggered based on prior sale of Hypertech's device? No, affirmed.

Discussion:

Definitive Holdings argued that the deposition testimony was inadmissible because, per Federal Rule of Evidence 602, a witness may testify to a matter only if there is sufficient evidence to support a finding that the witness has personal knowledge of the matter. The CEO joined Hypertech years after the alleged sale of PP3. The Federal Circuit, however, stated that the evidence to prove personal knowledge can be witness's own testimony. The CEO testified that he personally reviewed the sales records and took apart the PP3 device with an engineer to confirm the software version. The Federal Circuit held that a rational juror could conclude that the CEO had personal knowledge of the PP3 sale and its source code.

Definitive Holdings also argued that the sale of PP3 did not disclose the source code or any of its innerworkings, so it did not trigger the on-sale bar. However, the Federal Circuit reminded that the on-sale bar does not require disclosure of the claimed invention and can be triggered by a secret sale. The Federal Circuit stated that the proper question is not whether the sale discloses the invention at the time of sale, but whether the sale relates to a device that embodies the invention. The Federal Circuit distinguished *W.L. Gore* where the on-sale bar was not triggered when a manufacturing process was not discoverable from the sale of a product manufactured by that process. In this case, PP3 performed the patented method and became the claimed device as it ran on its source code. "This case is not a case where Hypertech had a secret manufacturing process that permitted it to make a product in a new way undiscoverable from the product itself…Instead, Hypertech was directly selling to the public the ability to perform the claimed method and to use the claimed apparatus." Thus, the district court's summary judgment is affirmed.