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Federal Circuit Confirms that Takeda's Prevacid Not Infringed by Sun Pharma's Generic Version

The anti-ulcer drug Prevacid is covered by Takeda's patent. The patent describes an "enteric coating agent" and a "sustained release agent."

Sun Pharma filed an Abbreviated New Drug Application (ANDA). Takeda then sued.

During patent claim construction, Takeda argued that the two agents could be made of the same chemical compound. Sun argued they had to be two different compounds. The district court largely sided with Sun.

The parties stipulated to non-infringement under the district court's claim construction so that Takeda could appeal.

Without explanation, the Federal Circuit affirmed the district court decision.

COMMENT:

In the absence of explanation from the Federal Circuit for its decision, it's not at all clear what might be Takeda's next move. The patent claim interpretation that now stands might create problems for Takeda in trying to stop other generics.

ThermoLife and Stanford University Ordered to Pay \$1.3M in Attorney's Fees

Stanford owned patents to physical performance enhancing compounds. The patents were licensed to ThermoLife.

ThermoLife filed numerous lawsuits against numerous defendants. The cases were consolidated in San Diego district court.

The district court found the patents invalid based on prior art. Defendants then sought recovery of their attorneys' fees.

The court awarded \$1.3M in attorneys' fees based on the "severely" deficient "pre-filing investigation" by plaintiffs, the "objective unreasonableness" of plaintiffs' infringement contentions, and plaintiffs' motivation to "extract nuisance-value settlements from a large number of defendants."

COMMENT:

This case demonstrates the potential problems of suing multiple defendants at the same time, while trying to gain efficiency from a high volume of lawsuits. Issues may not receive the individualized attention they require.

What Does "Connected" Mean in a MedTech Patent?

Skedco owned a patent for a "trauma training system" that used a mannequin to train medical personnel. The patent referred to a "controller connected to" a pump and a valve.

Strategic Operations (StOps) had a blood pumping system that had valves that were not physically separate from its pump but were instead inside of the pump.

First, the Federal Circuit determined that the patent did not require the pump and valve to be physically separated, since the patent only required the valve to be "in fluid communication with" the pump. The court reiterated that the patent is "not limited to inventions looking like those in the drawings."

Second, the Federal Circuit explained that "connected to" includes both direct and indirect connections. And, the connection does not have to be a physical one, since the controller is merely an "activation mechanism." Therefore, "connected to" means "directly or indirectly joined, united, or linked."

COMMENT:

This is a reminder to describe the invention in your patent as "an exemplary embodiment" or the like.

Jury Hits Kimberly-Clark for \$454M On Its Surgical Gowns

A class action lawsuit was brought against Kimberly-Clark and its spinoff Halyard. The class members included hospitals and health centers.

The lawsuit claimed that defendants' surgical gowns did not provide protection against disease, such as Ebola, as advertised.

The California jury found defendants liable for \$454M in damages.

COMMENT:

Kimberly-Clark has said it will appeal and added that 70 million gowns have been sold without one complaint of injury.

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