Insights: Publications

The Sound of Silence: Take Two

Kilpatrick Townsend MEMO|Biopharma Industry Blog

October 31, 2022

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In claiming a negative limitation, where the specification is silent as to that limitation, the written description requirement for support is a showing of inherency. So says a June 2022 split decision of the re-constituted panel of the Federal Circuit Court of Appeals on rehearing and reversal of *Novartis Pharmaceuticals Corp. v. Accord Healthcare, Inc.* Judge O'Malley, who wrote the original Federal Circuit decision (also split) in January 2022, retired in March and was replaced with Judge Hughes for this appeal. On rehearing, Chief Judge Moore wrote the majority opinion invalidating the patent, with Judge Hughes joining her and Judge Linn dissenting.

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