

IP Beacon, April 2016

April 26, 2016 David Clark, Russ Emerson, Gavin George, Mini Kapoor

PRACTICES Chemical, Intellectual Property Litigation, AI and Technology, Mechanical, Privacy and Cybersecurity, Patent Litigation, Patent Office Trials, Patents, Technology Transactions, Intellectual Property, Hatch-Waxman/ANDA, Biosimilars

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The IP Beacon is a Haynes Boone Newsletter highlighting current issues and trends in Intellectual Property Law. Articles featured in the April 2016 issue include:

[Cuozzo and the Limits of Patent Office Discretion](#)

The U.S. Supreme Court recently granted certiorari in *Cuozzo Speed Technologies v. Lee*, its first foray into patent office inter partes review practice. The decision to grant cert was not surprising, given that *Cuozzo* involves a fundamental question of patent interpretation that deeply divided the Federal Circuit. But the Supreme Court surprised many by granting cert on a second issue: the Federal Circuit's power to review whether the Patent Trial and Appeal Board exceeded its statutory authority when it determines whether or not to institute review.

[Read more.](#)

[The Recent Federal Circuit Decision in *Acorda Therapeutics v. Mylan Pharmaceuticals* May Not be the Last Word on Jurisdiction in ANDA Cases](#)

On March 18, 2016, the Federal Circuit held that Mylan Pharmaceuticals, Inc., a generic drug manufacturer, was subject to specific jurisdiction in Delaware because of Mylan's filing an abbreviated new drug application and "contemplate[d] plans to engage in marketing of the proposed generic drugs" in the state. The ruling affirmed two different decisions by judges in the United States District Court for the District of Delaware that Mylan was subject to specific jurisdiction in Delaware.

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[7 Ways to Survive an Alice Patent Challenge](#)

The Supreme Court in June 2014 struck down Alice Corp.'s patents on computerized trading methods, holding that abstract ideas implemented with a computer cannot be patented under Section 101 of the Patent Act. As a result, the courts and U.S. Patent and Trademark Office examiners are taking a tougher stance against these patents. While this decision has led to a wave of software related patents being invalidated by district courts, there are still opportunities for obtaining protection for such inventions from the patent office and keeping them intact in an infringement fight.

[Read more.](#)

[Circumstances Mandating a Commercial Marketing Notice by a Biosimilar Applicant Ripe for Guidance from the High Court](#)

While several cases are pending around the country, no consensus exists on the circumstances that would require a biosimilar applicant to provide a commercial marketing notice under the Biologics Price Competition and Innovation Act (BPCIA). In light of the implications on the biosimilar's entry to the market, the courts' interpretation on whether and when notice is required is of considerable significance to the biologics and biosimilar field.

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[EU and U.S. Finally Reach Deal on New Data Transfer Framework](#)

Less than two days after an enforcement moratorium expired, U.S. and EU officials in transatlantic data transfer talks reached a new "Privacy Shield" framework to replace the Safe Harbor regime struck down in the Schrems case last year. The new framework, also known as Safe Harbor 2.0, is expected to increase obligations on U.S. companies that handle the personal data of Europeans, while bringing stronger privacy enforcement by the U.S. Federal Trade Commission. The new Privacy Shield framework also includes new limitations on data surveillance by U.S. authorities, which had been a major sticking point during the negotiations.

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