David O’Brien in Bloomberg Law: ‘Gray Areas in Patent Review Denials Catch Agency Director’s Eye’

By David W. O'Brien | October 3, 2022

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Haynes Boone Partner David O’Brien, who leads the firm’s Patent Office Trials Practice Group, was featured in a *Bloomberg Law* article. Below is an excerpt:

US Patent and Trademark Office Director Kathi Vidal has wielded a US Supreme Court-granted power to audit her agency’s patent validity decisions nearly a dozen times since taking the agency’s helm in April, and practitioners say she’s giving initial patent review denials a particularly close look.

Attorneys say she’s displayed a focus on clearing up when it’s appropriate for the Patent Trial and Appeal Board to use its discretion to reject a validity review based on factors other than the patent’s merits—such as when a parallel infringement lawsuit is proceeding in federal court—and when the board might reconsider a review it initially declined to take up.

In the past six months, Vidal has initiated her director review authority in cases involving a wide-range of patents, from data communication to pig virus vaccines. …

The vaccine patent case—in which the PTAB denied Boehringer Ingelheim Animal Health USA’s request for post-grant review of Kansas State University Research Foundation’s patent—turns on whether “substantially the same written description arguments were previously presented” to the board, said David O’Brien, who leads Haynes Boone’s Patent Office Trials Practice Group. …

[A]ccording to Haynes Boone’s O’Brien, the sum of the director review decisions contribute to the sense that “Fintiv discretionary denial doctrines have been repudiated or at least neutered.”

Excerpted from *Bloomberg Law.* To read the full article, click here.

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