Sarah Kagan Pens Law360 Expert Analysis on Two Recent Federal Circuit Decisions

Banner Witcoff attorney Sarah A. Kagan, Ph.D., examined a pair of recent opinions from the U.S. Court of Appeals for the Federal Circuit for a Sept. 18 expert analysis published in Law360.

Summarizing the court's decisions in Ajinomoto v. U.S. International Trade Commission, and Eli Lilly and Co. v. Hospira Inc., Sarah noted the court held that an amendment made by an applicant during examination bore no more than a tangential relation to the equivalent at issue. Therefore, she explained, the amendment in each case — which excluded the equivalent from the literal scope of the claim — did not bar the court from applying the doctrine of equivalents and finding infringement.

"The Federal Circuit's finding of only a tangential relation between an amendment and an accused infringing product in both Lilly and Ajinomoto, permitting the patentees to successfully apply the doctrine of equivalents, may signify the court's desire to loosen its application of the doctrine of equivalents consistent with the Supreme Court's guidance toward flexibility in other areas of patent law," Sarah wrote in her piece.

Subscribers of Law360 can read Sarah's expert analysis, "2 Fed. Circ. Decisions May Signal Pro-Patentee Swing," by clicking here. The expert analysis is an updated and expanded version of a Sept. 4 Banner Witcoff IP Alert, which can be viewed here.

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