Bloomberg Law Quotes Scott Kelly on Federal Circuit Ruling on IPR Filing Date

Banner Witcoff attorney Scott M. Kelly commented in a June 21 Bloomberg Law article about a recent ruling from the federal appeals court over a patent validity challenge.

The article detailed the June 21 decision of U.S. Court of Appeals for the Federal Circuit, which affirmed that Patent Trial and Appeal Board was within its rights to let Merck Sharp & Dohme Corp. add its parent company as a real party in interest to an inter partes review without having to change its filing date.

Mayne Pharma International Pty. Ltd. had argued that Merck's addition of Merck & Co. Inc. required the U.S. Patent and Trademark Office to assign the petition a later filing date. Had that been done, the article explained, Merck's patent validity challenge would have been denied as time barred.

"The takeaway here is the Federal Circuit is on board with the idea that you can fix some of these things after filing, as long as it doesn't lead to an unfair result," Scott told Bloomberg Law. "The Federal Circuit is saying they don't have a problem with the PTAB's position that making corrections like this doesn't necessarily require a new filing date."

The article, "Merck Scores in Mayne Patent Appeal, Not Time-Barred," is available online to subscribers.

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