

Axinn IP Update: Federal Circuit Agrees to Reconsider Controversial “Skinny Label” Decision

February 10, 2021

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Axinn Update

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Intellectual Property

On February 9, 2021, the Federal Circuit vacated its controversial decision regarding induced infringement and “skinny labelling” in *GlaxoSmithKline LLC v. Teva Pharms. USA*, Appeal No. 18-1976, -2023.

Back in October 2020, a divided panel reinstated a jury verdict against Teva for inducing infringement of GSK’s method of use patent, despite Teva having omitted the patented use from its label. What made that decision so controversial was the Court’s reliance on press releases and marketing materials stating Teva’s generic carvedilol capsules are “AB-rated” to GSK’s branded product, Coreg. The dissent countered that the panel’s holding went against Congress’s express intention of promoting low-cost generic alternatives following the expiration of a compound patent. Further, the dissent added, there was no evidence of causation between Teva’s communications and doctors’ prescribing practices, which is a requisite for finding induced infringement.

As a result of yesterday’s vacatur, the original panel will now rehear argument on the issue of “whether there is substantial evidence to support the jury’s verdict of induced infringement[.]” The rehearing will take place via telephone on February 23, 2021. Axinn is monitoring this case closely and will provide updates on notable developments.