

Axinn Wins Summary Judgment on Behalf of Mutual Pharmaceutical Company

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PRACTICE AREAS

Intellectual Property

On May 4th, 2010, the U.S. District Court for New Jersey granted Mutual Pharmaceutical's motion for summary judgment in a patent dispute with Tyco Healthcare Group over the sleep-aid drug Temazepam, according to Axinn, lead counsel for Mutual.

Tyco's patent claimed low dose temazepam capsules for the treatment of insomnia. Mutual demonstrated that the use of low dose temazepam capsules were a well-known and recognized treatment for insomnia. Based on evidence presented by Mutual, the Court found that "the problem of finding a treatment of insomnia with minimal adverse effects was a known problem at the time of the invention. The solution – use of 7.5mg dose of temazepam – was not merely an obvious solution at the time of invention; as the [prior art] shows, it was a known solution."

Mutual obtained FDA approval for its generic version of Tyco's 7.5 mg temazepam capsule in September 2009. With the court's refusal to enjoin Mutual's launch in August 2009 and the invalidation of Tyco's patent, Mutual's way has been cleared to continue production of its generic drug without having to pay Tyco any damages for patent infringement.

A copy of the court's opinion can be found [here](#):