

Axinn IP Update: Hikma Pharmaceuticals USA, Inc. v. Vanda Pharmaceuticals, Inc.

A photograph of a modern building with a curved glass facade, showing multiple floors and windows, set against a light blue sky.

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Axinn Update

Today the Supreme Court took the relatively uncommon step of calling for the views of the solicitor general as to the petition for certiorari in *Hikma Pharmaceuticals USA, Inc. v. Vanda Pharmaceuticals, Inc.*, Docket No. 18-817. Whereas the Court grants certiorari to only about one percent of petitions generally, it grants around one third of the petitions for which it has called for the views of the solicitor general. If the Court grants certiorari here, it will address the question “[w]hether patents that claim a method of medically treating a patient automatically satisfy Section 101 of the Patent Act, even if they apply a natural law using only routine and conventional steps.” The petition was an appeal from a decision by a split Federal Circuit panel that a method for treating a patient with schizophrenia, which involved analyzing the patient’s DNA and adjusting the dosage of a drug accordingly, was patent eligible because it was not directed to a law of nature under step one of the *Mayo/Alice* two-step subject matter eligibility test. *Vanda Pharmaceuticals, Inc. v. West-Ward Pharmaceuticals International Limited*, 887 F.3d 1117, 1133-36 (Fed. Cir. 2018). Any decision could have a significant impact on patents directed to methods of treatment in the pharmaceutical and biologics industries.

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