

Federal Circuit Rules for Axinn Client in Tamiflu Patent Appeal

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PRACTICE AREAS

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HARTFORD, Conn.--(BUSINESS WIRE)--A ruling by the U.S. Court of Appeals for the Federal Circuit has given **Axinn** client **Natco Pharma Ltd.** a second chance at invalidating **Gilead Sciences Inc.'s** patent on the popular flu drug Tamiflu. The decision could pave the way to Natco's planned issuance of a generic version of the drug in the United States. Natco was represented by Axinn attorney Thomas Hedemann.

The April 22 Federal Circuit ruling vacated a December 2012 district court ruling that Gilead did not unlawfully extend a patent covering Tamiflu and remanded the issue of the patent's validity back to the district court for reconsideration.

This is the first time the Federal Circuit has addressed whether a commonly-owned patent that issues after—but expires before—another patent can be rendered invalid for double-patenting. By ruling that it can, the court reaffirmed the double patenting doctrine, which prohibits inventors from unreasonably extending patent protection past the statutory limit.

The ruling also establishes a bright-line rule for patent practitioners and continues to provide inventors like Natco Pharma with the ability to use terminal disclaimers to overcome obviousness-type double patenting rejections.

In March, the U.S. Food and Drug Administration (USFDA) granted Natco tentative approval to sell its generic version of Tamiflu in the U.S. market. The approval, however, is contingent upon Natco successfully resolving its patent dispute with Gilead Sciences.