

Claims Directed to a “Method of Treatment” Are Patent Eligible

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Endo Pharmaceuticals, Inc. v. Teva Pharmaceuticals USA, Inc., No. 2017-1240 (Fed. Cir. Mar. 28, 2019)

The patentee sued for infringement of a patent directed to methods of pain treatment for patients with poor kidney function. Specifically, the patent claimed that less of the drug was necessary to treat pain in patients with poor kidney function than for patients with normal kidney function. The magistrate judge issued a report and recommendation finding that the claims were ineligible for patenting, and the district court adopted the magistrate judge's report and recommendation. On appeal, the Federal Circuit reversed and found that the claims covered patent-eligible subject matter.

Applying the Supreme Court's two-step framework from *Alice*, the court found that the claims were directed to patent-eligible subject matter. The court had found claims to a method of treatment with a drug patent-eligible in *Vanda Pharmaceuticals Inc. v. West-Ward Pharmaceuticals Int'l Ltd.* The court found these claims “legally indistinguishable” from the claims in *Vanda*. The court explained that the claims in this case require administering the compound to a patient who had specific characteristics, to treat a specific condition, and using a specific compound, and were patent-eligible.

The court further found that the claims in this case differed from the claims in *Mayo Collaborative Servs. v. Prometheus Labs*. In *Mayo*, the claims were not directed at treating a specific disease or at treating a patient based on certain test results. In this case, the drug is administered based on test results regarding kidney functioning. Further, the inventor in this case did not claim merely the relationship between the drug and patients with poor kidney function. Instead, the inventor claimed a method of treatment by lowering the drug dose for patients with poor kidney function, which was patent-eligible.

[A copy of the opinion can be found here](#)

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