

Winston Team Accelerates Path to Market for Generic Cancer Drug

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A Winston trial team led by Chicago partners George Lombardi, Bryce Cooper, and Kurt Mathas scored an important trial win for our client MSN Laboratories that will potentially help MSN accelerate its launch of a generic version of a blockbuster cancer drug by four years. In a decision handed down on January 19, following a bench trial last May in the District of Delaware, Judge Richard Andrews found that MSN does not infringe a patent owned by Exelixis, Inc. that was alleged to protect Exelixis's Cabometyx® product. Cabometyx® is a drug that is indicated for the treatment of certain kidney, liver, and thyroid cancers, and which generated approximately \$1.4 billion in U.S. sales in 2022.

Exelixis's patent covers a particular polymorphic form of cabozantinib, the active ingredient in Cabometyx®. At trial, Winston showed that MSN's product, as it will be made and sold, will not contain the claimed polymorphic form. Exelixis nevertheless argued, based on testing and testimony from its expert, that when MSN's product is exposed to certain accelerated testing conditions (e.g., increased heat and humidity) that the claimed polymorphic form is present in MSN's product. Based on the effective examinations and compelling arguments of the Winston team, Judge Andrews found that Exelixis had not proven that MSN will infringe Exelixis's polymorph patent.

The trial win will potentially allow MSN to launch a lower-cost generic version of Exelixis's blockbuster drug as early as August 2026 when another Exelixis patent expires, rather than waiting until October 2030, when Exelixis's polymorph patent is set to expire.

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