
WilmerHale Earns Win for Braintree Labs in Hatch-Waxman Case

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On May 5, 2017, WilmerHale client Braintree Laboratories, Inc. was victorious at the Federal Circuit when the appeals court reversed a district court's grant of summary judgment of noninfringement for Breckenridge Pharmaceutical and remanded with instructions to enter judgment in Braintree's favor.

This Hatch-Waxman matter involved a patent owned by Braintree pertaining to its product SUPREP, a highly successful product designed to cleanse the colon safely before a colonoscopy. Breckenridge had filed an ANDA to market a generic copy of SUPREP and suit was later filed by Braintree for patent infringement. The appeals court said the lower court's interpretation of a key phrase in the patent was foreclosed by an earlier Federal Circuit decision in another case that Braintree brought against a different generic company. The court also rejected Breckenridge's argument that it could not infringe because the FDA-approved use of its generic product was not the same use covered by Braintree's patent. In doing so, the appeals court concluded that Breckenridge's generic copy of SUPREP would infringe because the claims of Braintree's patent cover the means to achieve the FDA-approved use.

Partner [Mark Fleming](#) argued the case in the Federal Circuit, while the full WilmerHale team included Partners [Chris Noyes](#) and [Colleen Superko](#), Senior Counsel [Jack Regan](#), Counsel [Anna Lumelsky](#), Senior Associates Jenn Brown and [Michael Greene](#) and former Counsel David Chavous.