Federal Circuit Hears Oral Argument in *Ariad Pharmaceuticals v. Eli Lilly*

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On December 7, 2009, the en banc Federal Circuit heard oral argument in *Ariad Pharmaceuticals v. Eli Lilly*, a case that will determine what an inventor must disclose to obtain a patent. An earlier panel decision held that the claims of U.S. Patent No. 6,410,516 that Ariad had asserted against Lilly's Evista® and Xigris® products were invalid because they did not adequately describe the claimed invention.

The order granting en banc review asked the parties to brief two questions:

1. Whether 35 U.S.C. § 112, paragraph 1, contains a written description requirement separate from an enablement requirement?
2. If a separate written description requirement is set forth in the statute, what is the scope and purpose of the requirement?

WilmerHale authored an amicus brief in support of maintaining the written description requirement.

"At oral argument there did not seem to be much interest from the bench in moving away from the Federal Circuit's longstanding view that Section 112 contains a separate written description requirement," said WilmerHale Partner Bill McElwain. "But it remains to be seen whether the court will modify the test it uses to determine whether an invention is adequately described, and the court could always surprise us."

"The questions presented in Ariad are of tremendous importance to a wide range of companies," added WilmerHale Co-Managing Partner Bill Lee. "No matter what happens in the Federal Circuit, one of the parties is likely to file a cert. petition. Cases like this bring together WilmerHale's traditional strengths in intellectual property and appellate litigation, and we will be following the developments every step of the way."

Read the full text of the recent WilmerHale Email Alert, Federal Circuit Hears Oral Argument in *Ariad Pharmaceuticals v. Eli Lilly*.

More details about the case, including the briefs, are available on the web page Written Description: *Ariad v. Lilly*.

Lawyers in WilmerHale's Intellectual Property Litigation Practice have considerable experience trying intellectual property cases in the Federal Circuit, federal district courts from coast to coast, and the US International Trade Commission, as well as courts in the United Kingdom and Germany. We have tried jury and non-jury cases involving technologies ranging from complex mathematical algorithms and devices for manufacturing semiconductor chips to recombinant genetics and the construction of golf balls. We also regularly handle patent appeals before the CAFC and appeals of other IP cases before the regional courts of appeals. For more information, please see our Intellectual Property Litigation practice page.

Lawyers in WilmerHale's Appellate and Supreme Court Litigation Practice have argued more than 130 cases before the US Supreme Court, including leading cases in areas such as antitrust, banking law, bankruptcy, communications, constitutional law, employment, energy regulation, federal preemption, patent and securities regulation. Combining our trial and appellate strengths allows us to shape litigation strategy from the outset to maximize the likelihood of ultimate success. Clients also retain us to advise them on complex and often unsettled legal issues, no matter what the particular forum or context. For more information, please see our Appellate and Supreme Court Litigation practice page.

WilmerHale's combined strengths in intellectual property and appellate litigation have positioned us as a leading firm in the representation of clients before the Federal Circuit. In 2009, our lawyers were involved in more than 30 cases before the Federal Circuit, including five arguments in the first week of November alone.