

ARIAD PHARMACEUTICALS V. ELI LILLY & COMPANY

The Court of Appeals for the Federal Circuit (the Court that hears all patent appeals) issued a decision on March 22, 2010 in the case of *Ariad Pharmaceuticals, Inc., v. Eli Lilly & Company* (–F.3d–, 2010 WL 1007369 (C.A.Fed., 2010)) reaffirming a written description requirement that is separate and distinct from the enablement requirement under the patent statute.

Ariad Pharmaceuticals obtained a patent on methods for treating human disease by reducing activity of a protein complex called NF- κ B (U.S. patent number 6,410,516). The patent disclosed three broad classes of NF- κ B inhibitors but failed to describe any specific inhibitors. Ariad sued Eli Lilly alleging that Lilly sold two infringing drugs (Evista® and Xigris®). A jury found that both of Lilly's drugs infringed Ariad's patent.

On appeal, the Federal Circuit determined that Ariad's patent was invalid for failing to describe any specific inhibitory compounds. According to the Federal Circuit, the so-called written description requirement is not satisfied by a generic statement of an invention's boundaries. Rather, when a patent claims a generic function or result, it must provide a sufficient number of examples to accomplish that function.

The ruling in *Ariad* confirms the existence of a written description requirement in the patent law that is separate and distinct from other patent law requirements, such as the enablement requirement. The decision may impact the ability of university researchers and others to meet the written description requirement for basic research prior to some proof of concept. The *Ariad* decision, while reaffirming the written description requirement, does not provide substantive guidance as to how much disclosure is required to support generic patent claims. Rather, in keeping with a long line of Court precedent, the *Ariad* case states that the disclosure must be sufficient to reasonably convey to those skilled in the art that the patent applicant had possession of the invention at the time of filing. Thus, while greatly anticipated, this decision does not substantially change the existing law regarding the written description requirement.



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