

News & Insights

IP Attorney Randy McCarthy for Bloomberg Law - High Court's 'Skinny Label' Ruling Boosts Patent Case Defenses

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The US Supreme Court's recent ruling protecting generic-drug "skinny labels" has the potential to give technology, medical-device, and other companies a new weapon against allegations of encouraging patent infringement.

The justices last week unanimously ruled that Amarin Pharma Inc. failed to plausibly allege that Hikma Pharmaceuticals Plc induced doctors to prescribe its generic version of Amarin's heart-health drug Vascepa for a still-patented treatment method.

Randy McCarthy head of the IP Law Group at Hall Estill, said the decision is likely to have the most immediate impacts on "high-stakes ongoing" litigation involving medical devices, software, and consumer electronics.

They include disputes over dual-use surgical systems, software instructions or user interfaces that allegedly encourage infringing configurations, and configurable wireless or health-tracking features, he said.

Patent owners in such cases often rely on allegations tied to product capabilities, generalized training materials, and companies' knowledge of how customers use their products, he said.

The Supreme Court has now made it harder to rely on those theories without evidence of affirmative encouragement, McCarthy said.

Attorneys

- Randall K. McCarthy

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