

Precedent-Setting Patent Win in Federal Circuit Creates Media Buzz From *Bloomberg Law*, *Reuters*, and More

November 7, 2023

On November 6, Katten's Intellectual Property Litigation team drew considerable media coverage for their successful appeal on behalf of Mylan Pharmaceuticals in the patent infringement case regarding its generic alternative to Actelion's pulmonary arterial hypertension drug, Veletri. The Katten team was comprised of Intellectual Property partners Deepro Mukerjee, global chair of the Intellectual Property practice, Lance Soderstrom, Patent Litigation co-chair, and Jitty Malik, along with Appeals and Critical Motions partner Eric Werlinger, who argued the appeal. Also supporting the Katten team were Intellectual Property associate Jillian Schurr and Appeals and Critical Motions associate Timothy Gray.

In 2020, Actelion's parent company Johnson & Johnson (J&J) sued Viatris, parent company of Mylan Pharmaceuticals, alleging patent infringement after Viatris applied to make a generic version of Veletri. According to *Reuters*, the US District Court for the Northern District of West Virginia interpreted parts of the patents in J&J's favor and sided with Actelion in February 2022, which Viatris then appealed.

Bloomberg Law recounted how a three-judge panel of the US Court of Appeals for the Federal Circuit determined that the district court had interpreted a key part of the patents, the pH levels of each drug's active ingredient being 13 or higher, incorrectly. The court remanded the case to the district court for reconsideration, giving Mylan Pharmaceuticals another chance to prove that its proposed generic drug "would not violate J&J's patent rights and should be allowed to go to market."

In an opinion deemed to be precedential, Circuit Judge Kara F. Stoll said the two patents' claims, specifications and application histories were "susceptible to two 'equally plausible' interpretations" and that "the textbook discussion, in contrast, 'appears highly relevant to how a person of ordinary skill would understand the language.'"

["Actelion Veletri Patent Win Wiped Out by Federal Appeals Court,"](#) **Bloomberg Law*, November 6, 2023

["Viatris US court win reopens path to generic of J&J hypertension drug," Reuters, November 6, 2023](#)

["Fed. Circ. Gives Viatris 2nd Shot In Actelion Patent Fight," *Law360, November 6, 2023](#)

["CAFC Orders Review of Extrinsic Evidence to Determine Proper Limit of Claimed pH Range," IPWatchdog, November 6, 2023](#)

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