United States Court of Appeals for the Federal Circuit

FILED ENTERED
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FEB 20 2009
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2006-1634, -1649

CLASSEN IMMUNOTHERAPIES, INC.,

Plaintiff-Appellant,

v.

BIOGEN IDEC,

Defendant-Appellee,

and

GLAXOSMITHKLINE

Defendant-Appellee,

and

MERCK & CO., INC.,

Defendant-Cross Appellant,

and

CHIRON CORPORATION, KAISER-PERMANENTE, INC., KAISER PERMANENTE VENTURES, KAISER PERMANENTE INTERNATIONAL, KAISER PERMANENTE INSURANCE COMPANY, THE PERMANENTE FEDERATION, LLC, THE PERMANENTE COMPANY, LLC, THE PERMANENTE FOUNDATION, THE PERMANENTE MEDICAL GROUP, INC., KAISER FOUNDATION HOSPITALS, KAISER FOUNDATION ADDED CHOICE HEALTH PLAN, INC., and KAISER FOUNDATION HEALTH PLAN INC.,

Defendants.

Judgment

ON APPEAL from the United States District Court for the District of Maryland

in CASE NO(S). 04-CV-2607

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

DATED DEC 19 2008

Jan Horbaly, Clerk

ISSUED AS A MANDATE: FEB 17 2009

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

By: Valerie Date: 2/17/09

NOTE: This disposition is nonprecedential.

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Defendants.

Joseph J. Zito, Zito tlp, of Washington, DC, argued for plaintiff-appellant.

Joshua M. Hiller, Wilmer Cutler Pickering Hale and Dorr LLP, of Boston, Massachusetts, for defendant-appellee, Biogen IDEC. On the brief were David B. Bassett, of New York, New York, and David A. Wilson, of Washington, DC.

George F. Pappas, Covington & Burling LLP, of Washington, DC, argued for defendant-appellee, GlaxoSmithKline. With him on the brief were Jeffrey B. Elikan and Kevin B. Collins. Of counsel was Scott C. Weidenfeller.

Mary B. Graham, Morris, Nichols, Arsht & Tunnell, LLP, of Wilmington, Delaware, argued for defendant-cross appellant. With her on the brief was James W. Parrett, Jr. Of counsel on the brief were Robert L. Baechtold, Fitzpatrick, Cella, Harper & Scinto, of New York, New York; and Edward W. Murray and Mary J. Morry, Merck & Co., Inc., of Rahway, New Jersey.

Appealed from: United States District Court for the District of Maryland

Judge William D. Quarles, Jr.

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2006-1634, -1649

CLASSEN IMMUNOTHERAPIES, INC.,

Plaintiff-Appellant,

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and

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and

MERCK & CO., INC.,

Defendant-Cross Appellant,

and

CHIRON CORPORATION, KAISER-PERMANENTE, INC., KAISER PERMANENTE VENTURES, KAISER PERMANENTE INTERNATIONAL, KAISER PERMANENTE INSURANCE COMPANY, THE PERMANENTE FEDERATION, LLC, THE PERMANENTE COMPANY, LLC, THE PERMANENTE FOUNDATION, THE PERMANENTE MEDICAL GROUP, INC., KAISER FOUNDATION HOSPITALS, KAISER FOUNDATION ADDED CHOICE HEALTH PLAN, INC., and KAISER FOUNDATION HEALTH PLAN INC.,

Defendants.

Appeal from the United States District Court for the District of Maryland in Case No. 04-CV-2607, Judge William D. Quarles, Jr.

DECIDED: December 19, 2008

Before NEWMAN and MOORE, Circuit Judges, and FARNAN, District Judge.*

MOORE, Circuit Judge.

In light of our decision in In re Bilski, 545 F.3d 943 (Fed. Cir. 2008) (en banc), we affirm the district court's grant of summary judgment that these claims are invalid under 35 U.S.C. § 101. Dr. Classen's claims are neither "tied to a particular machine or apparatus" nor do they "transform[] a particular article into a different state or thing." Bilski, 545 F.3d at 954. Therefore we affirm.

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
By: Valerie D. [signature] Date: 2/17/09

* Hon. Joseph J. Farnan, Jr., United States District Court for the District of Delaware, sitting by designation.