

Bristol-Myers' Patents Successfully Defended

Detroit, Michigan

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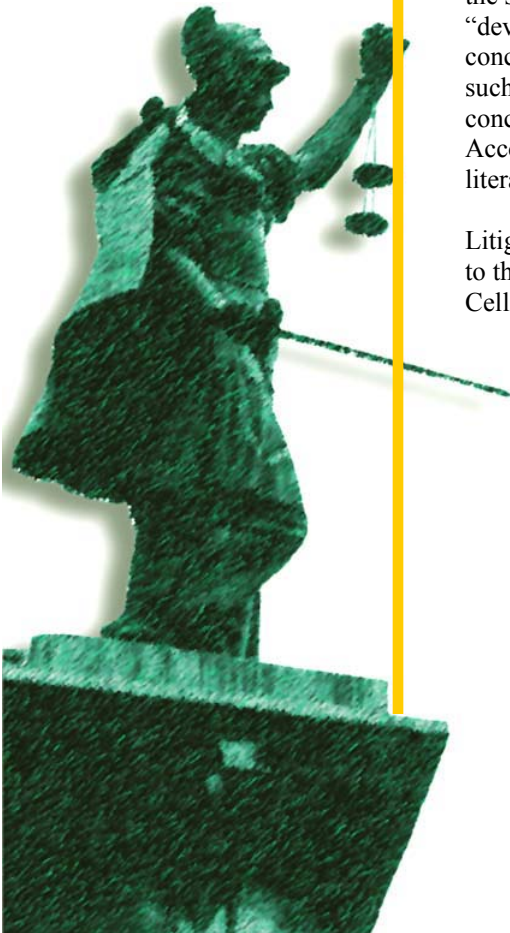
Court finds that competing scientist failed to make any inventive contribution to seven Bristol Myers' patents

After a month long bench trial, Judge George Steeh of the United States District Court for the Eastern District of Michigan rejected the inventorship claims of the Repligen Corporation and the University of Michigan. Plaintiffs sought to have one of their scientists, Dr. Craig Thompson named as the inventor or co-inventor on seven patents held by the Bristol-Myers Squibb Company. The patents relate to a protein called CTLA4 that is found in human T-cells and can be used to regulate the body's immune response.

In December 1989, Dr. Peter Linsley, a Bristol scientist, discovered the binding interaction of two proteins – B7 and CD28. Blocking the interaction of these proteins could allow for the control of unwanted immune responses. Such control would be of great help in the treatment of auto-immune diseases and in organ transplantation when the body's immune system attacks the transplanted organ. However, to block this interaction, it was necessary to find a protein that would also bind with B7 and which had a greater affinity to bind with B7 than did CD28. Dr. Linsley turned to the CTLA4 protein. The seven patents in this case relate to Bristol Myers' development of a derivative of CTLA4 which can be used to block the B7/CD28 interaction.

The plaintiffs argued that Dr. Thompson provided the inventive conception upon which the seven Bristol patents were based. The Court held, however, that the record was "devoid" of any clear and convincing evidence that Dr. Thompson communicated the conception to Bristol scientists prior to the time that Dr. Linsley already had the idea. As such, the Court found that Dr. Thompson had not made an inventive contribution to conceiving, designing, or making any of the matters covered by the patents' claims. According to the Court, "if Thompson suggested anything, it was either already in the literature or already conceived by the Bristol Myers' scientists."

Litigation Strategies Ltd. provided strategic consultation and witness preparation services to the Bristol-Myers Squibb trial team led by Bob Baechtold and Scott Reed of Fitzpatrick Cella Harper & Scinto's New York office.



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