

By: Thomas McKiernan and Michael Badagliacca

Abbott Laboratories v. Sandoz, Inc.

Decided May 18, 2009

No Infringement of a Product-by-Process Claim

In a decision *en banc*, the Federal Circuit held that infringement of a product-by-process claim requires practicing the claimed process steps. In a product-by-process claim, process terms which define the product serve as enforceable limitations. Abbott is the exclusive licensee of a crystalline under the trade name Omnicef. Sandoz (among others) had gained approval from the FDA to market a generic version of Omnicef which uses different process steps than those disclosed in Abbott's patent to create varying structures of crystalline. Citing *Atlantic Thermoplastics Co. v. Faytex Corp.*, 970 F.2d 834 (Fed. Cir. 1992), the Federal Circuit held that Abbott has presented no evidence that Sandoz was practicing the process steps set forth in the claims.