

## CAFC Decision Prevents Skinny Label Use, Warns Dissenting Judge

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A Federal Circuit panel recently handed down a key decision making it easier for patentees to prove infringement by skinny-label generics. While the panel was divided in their decision, the ruling overturned a district court judgment and reinstated a \$234 million damages award to a multinational pharmaceutical company.

This is a very important decision in that it allows a brand company the ability to build an induced infringement case against a generic company even when the generic company is seeking FDA approval based on a skinny label, comments Maria Zacharakis of McCarter & English: "The Federal Circuit has provided guidance on how exactly a brand company can go about doing that using circumstantial evidence, such as press releases, product catalogs and the testimony from doctors that they are relying on such press releases and other marketing material."