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Protecting your animal healthcare products: Patent eligibility challenges in the USA and Europe

Jeremiah B Frueauf
Sterne, Kessler, Goldstein & Fox P L L C, USA

With the global animal healthcare market expected to exceed USD 40,000 million by 2020, the need to protect the underlying products will never be greater. Patents, among other forms of intellectual property, play a key role protecting products in this industry. However, recent decisions by USA courts have cast a cloud over several tools used for animal healthcare. For example, the USA Supreme Court's Myriad decision and subsequent rulings by the lower courts upended well-settled expectations in the USA regarding the patent eligibility of nature-based products, including polypeptides, polynucleotides, microorganisms and the products that they create. The USA is not alone in experiencing a significant disruption of patent law, as Europe went through a similar upheaval about 10 years ago. And while the law on patent eligibility at the European Patent Office (EPO) is now largely settled, the situation in the United States Patent and Trademark Office (USPTO) is less certain at present. An understanding of the similarities and differences between the EPO and USPTO is critical to a comprehensive patent portfolio strategy needed to succeed in the global animal healthcare market. This presentation will provide a summary of the EPO's and USPTO's approaches to examining patents in animal healthcare, including application of the USPTO's examining guidelines to the tools used in and products made by the industry.

Biography

Jeremiah B Frueauf is the Director of the Biotechnology/Chemical group, counsel domestic and international clients on the preparation, prosecution and management of complex worldwide patent portfolios. He is also experienced in the research and preparation of freedom-to-operate, validity, infringement and patentability analyses and uses these tools to advise his clients on their business strategy. He has experience in various *inter partes* matters, including District Court Litigation, USA Patent and Trademark Office litigation, and Section 337 investigations before the USA International Trade Commission. He is a contributing author of "*Patent Office Litigation*", a two-volume set focused on the new contested proceedings under the America Invents Act published in 2012 by Thomson Reuters Westlaw. This book examines how the proceedings interact with other aspects of patent procurement and enforcement, and delivers practical analysis and advice.

jfrueauf@skgf.com

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