VLP Partner Edward Kwok Quoted in Law360 Article “Restasis Ruling Could Be Bad Sign For Tribal Patent Pacts”

VLP Intellectual Property Partner Edward Kwok was quoted in the *Law360* article “Restasis Ruling Could Be Bad Sign For Tribal Patent Pacts.”

The article reported on a ruling by a federal judge in a patent case involving the dry-eye drug Restasis and generic drug makers. The judge invalidated four patents for the drug, but the case is significant because of the judge’s concerns about the drug company striking a deal with a Native American tribe to shield the patents from review at the Patent Trial and Appeal Board (PTAB).

The article noted that the ruling was a blow for Allergan, the manufacturer of Restasis, which paid the Saint Regis Mohawk Tribe to take ownership of the patents for its $1.5 billion drug in an effort to use the tribe’s sovereign immunity to protect them from PTAB review.

The article further reported that Allergan, which has faced public relations backlash and criticism from Congress over the deal, has said it will appeal the judge’s ruling. But if the decision holds up, it will open the door for generic versions of the drug to hit the market.

According to the article, the judge didn’t just invalidate the asserted claims in the patents, he also expressed concern about Allergan’s attempt to “rent” the tribe’s sovereign immunity to escape inter partes reviews at the PTAB.

Legal experts quoted in the article said that, even though he didn’t rule definitively on the validity of the agreement, it was clear that the judge was sending a message to patent owners thinking about making similar deals with sovereign entities.

“Yes, the game could go on a little bit, but I think that people would be a lot more apprehensive about just jumping into these deals,” Mr. Kwok said.

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