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LAWYERS CO-AUTHOR ARTICLE IN 'LAW360' ON PATENT ELIGIBILITY

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BCLP Partners Cory Smith and George Chen co-authored an article published Dec. 16 by *Law360* concerning patent litigation strategies and the need for careful drafting of claims for a patent that may invoke one of the judicially created exceptions to eligibility. "In the CareDx Inc. v. Natera Inc. decision, the U.S. Court of Appeals for the Federal Circuit added to the long line of patent eligibility rulings — holding the patents that Stanford University and its exclusive licensee CareDx Inc. asserted against Natera Inc. and Eurofins Viracor Inc. were patent-ineligible because they attempted to claim the use of natural phenomena with well-known techniques to diagnose organ transplant rejection," they wrote. "The takeaway practice points from the CareDx case come in two flavors: first, claim strategy; and second, litigation strategy. Regarding claim strategy, when the invention uses or even mentions something that could be construed as one of the judicially created exceptions to patent eligibility — abstract idea, natural phenomenon, or natural product — care should be taken to establish applications of the judicial exceptions throughout the specification. … Regarding the litigation strategy, when dealing with a set of claims that invoke one of these judicially created exceptions to patent eligibility, … care should be taken to review the claim scope of the patents that could be asserted for language in both the claims and the specification that could be used to invalidate the patent based on Title 35 of the U.S. Code, Section 101."

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