

Insights

DUTY OF CANDOR AND GOOD FAITH WITH THE USPTO COVERS NON-INVENTORS AND NON-PRACTITIONERS, 'LAW JOURNAL NEWSLETTERS'

Oct 11, 2022

SUMMARY

BCLP Partners George Chen and Cory Smith and Law Clerk Ryan Fitzpatrick authored an article published in the October issue of *Law Journal Newsletters* concerning the significance of the Federal Circuit decision in *Belcher Pharm. v. Hospira, Inc.* They highlight that practitioners and non-practitioners associated with the examination of patents and patent applications should be vigilant about information that may be material to patentability to avoid having an issued patent be deemed unenforceable.

“Belcher Pharm. v. Hospira, Inc., 11 F.4th 1345 (Fed. Cir. 2021), confirms important details regarding the duty of candor and good faith when interacting with the United States Patent & Trademark Office (USPTO),” they wrote. “For example, withholding information that is material to the patentability of a pending claim of a patent application during prosecution can cause a resultant patent to be found unenforceable. In view of the *Belcher* decision, the USPTO released a Notice on July 29, 2022 that provides additional guidance on the duty of candor and good faith. Practitioners and non-practitioners that are associated with the examination of patents and patent applications should be vigilant about information that may be material to patentability to avoid having an issued patent be deemed unenforceable,” particularly when the patent covers products that are the subject of separate applications to the Food and Drug Administration (FDA), the Federal Communications Commission (FCC), and other government agencies, which must approve the products before they are sold.

RELATED PRACTICE AREAS

- Intellectual Property and Technology

MEET THE TEAM



George C. Chen

Phoenix

george.chen@bcplaw.com

[+1 602 364 7367](tel:+16023647367)



Cory G. Smith

Phoenix

cory.smith@bcplaw.com

[+1 602 364 7442](tel:+16023647442)



Ryan Fitzpatrick

Phoenix

ryan.fitzpatrick@bcplaw.com

[+1 602.364.7268](tel:+1602.364.7268)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.