

BARTLIT BECK WINS IMPORTANT ANDA TRIAL FOR BAYER & MERCK KGAA



Merck & Cie, et. al. v. Watson Labs (Beyaz®/Safyral® Litigation) (D. Del. 2015)

Bartlit Beck lawyers J. Scott McBride, Rebecca Horwitz, and Faye Paul Teller scored an important trial victory for Bayer AG, Bayer HealthCare, and Merck & Cie in the Hatch-Waxman case against Watson Laboratories regarding Bayer oral contraceptive products Beyaz® and Safyral®, which contain Merck & Cie's advanced folate, Metafolin®.

Beyaz® and Safyral® are oral contraceptives developed and marketed by Bayer and are under patent protection until 2022. The oral contraceptives contain Metafolin®, a singularly stable crystal conformation (polymorph) of 5-methyl-(6S)-tetrahydrofolate. U.S. Patent No. 6,441,168 covers Metafolin® and was the only patent at issue. Watson challenged the '168 patent on three separate technical grounds (anticipation, obviousness, and written description) and also challenged it under the § 102(b) on-sale bar.

The Court's opinion ruling in favor of Merck on all issues can be found at *Merck & Cie v. Watson Laboratories*,—F. Supp.3d —, 2015 WL 5117614 (D. Del. Aug. 31, 2015). Watson appealed Bartlit Beck's victory to the Federal Circuit on only one theory: the on-sale bar. Oral argument is set for February.

ATTORNEYS

Rebecca T. Horwitz

J. Scott McBride