

Federal Circuit Finds Loophole Allowing Patents To Cover Later Developed Technologies

[*In re Entresto*, 125 F.4th 1090 \(Fed. Cir. 2025\)](#)

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After Novartis’ patent on the blockbuster blood pressure medication Entresto was found invalid at the district court for covering technology that was developed after the patent was filed, the Federal Circuit reversed that decision. The Federal Circuit explained that while the later-arising technology fell within the claims of the patent for purposes of infringement, that does not mean that the patent must provide adequate written support for that later discovered technology.

Generic drug manufacturers sought approval to sell a generic version of Entresto, which in 2023 alone, had sales in the United States totaling more than \$3 billion. In response, Novartis asserted infringement of its Entresto patent against these manufacturers. Novartis’ patent claims compositions comprising two different drugs used “in combination”. Both Entresto and the generic manufacturers’ products include a compound of the two different drugs mixed together as a “complex”, where such complexes were not known at the time of the filing of the patent.

The district court, construing “in combination” to have its plain and ordinary meaning, found that such complexes fell within the claims of Novartis’ patent. The district court, however, found that because these complexes were not described in the specification, Novartis’ patent was invalid for failing to provide an adequate written description. The district court reasoned it would be impossible for the inventors to have had possession, i.e., satisfy the written description requirements, for technology that had not yet been invented.

The Federal Circuit reversed finding sufficient written description. The Federal Circuit explained that the written description requirement pertains **only** to the claims themselves and the construction thereof. As neither the claims nor the claim construction mentioned complexes, no written description support for complexes was required, merely support for a “combination,” which was present. It is improper to require that a patent must support, through its written description, potentially infringing products that are covered by the claims but not explicitly called out by either the claim language or their constructions. The District Court improperly “conflated the distinct issues of patentability and infringement, which led it astray in evaluating written description.”



Potential defendants beware. Whereas previously a company might have thought that using new technology would avoid infringement of an older patent, that is not always the case. A patent can cover technology that was developed after the patent was filed.