

Rothwell Figg Achieves Rare Reversal of Section 101 Rejection for Client Gen-Probe

Rothwell Figg attorney Richard Wydeven successfully convinced the USPTO's Patent Trial and Appeal Board to reverse an examiner's rejection that its client's patent application was directed to non-patent eligible subject matter.

Application Serial No. 14/222,180, by Gen-Probe, Incorporated (a subsidiary of Hologic, Inc.), is directed to a method for accurately and efficiently determining the concentration of an analyte in a patient sample by numerically filtering out extraneous noise contributions to a detected signal. The application was rejected by the examiner on the grounds that it implemented an abstract idea using conventional laboratory and signal processing techniques. Applying the 2019 *Revised Patent Subject Matter Eligibility Guidance* issued by the USPTO, the Board agreed that while the claims recite an abstract concept, the claims integrate the concept into a practical application and thus are directed to eligible subject matter. Although the USPTO issued *Revised Patent Subject Matter Eligibility Guidance* after the appeal was fully briefed, Rick filed a supplemental brief arguing the applicability of the *Guidance* shortly before oral argument. The Board apparently found the supplemental brief to be persuasive, as it cited that brief extensively in its decision reversing the rejection.

Key Contact

Richard Wydeven

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