

Swimming Upstream: Developing and Commercializing Diabetes Products in a Patent Protected World

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Abstract

Many, if not most, commercially available diabetes treatment products are protected by some form of intellectual property. This article discusses the development and commercialization of products in view of the state of intellectual property for the diabetes treatment market, with respect to possible discouragement, for some, from seeking patent protection or commercializing a new product under the belief that patent protection is either unavailable or difficult to come by, or for fear of infringing existing patents. Upon closer investigation, the evolution of technology almost always creates opportunities for new improvements, which likely can be patent protected. Furthermore, while avoiding the claims of existing patents is sometimes challenging and opinion based, and thus not a guarantee of avoiding a patent litigation, patent litigation may be delayed and is often settled early on.

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Abbreviations: (DOE) doctrine of equivalents, (FDA) Food and Drug Administration, (FTO) freedom to operate

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