

The Appeals Review Panel's In Re Xencor Decision: The USPTO Provides Its Position on Written Description and Means-Plus-Function Claims



On May 17, 2024, an Appeals Review Panel (ARP) of the United States Patent and Trademark Office (“USPTO”) released its decision in *Ex parte Chamberlain* (referred to in Federal Circuit proceedings as *In re Xencor*; “**Chamberlain**”). The **Chamberlain** decision provides some clarity on the USPTO’s position on written description requirements for Jepson and means-plus-function claims in the life sciences space. Importantly, it suggests that carefully drafted means-plus-function claims are a potential path for Applicants to claim antibodies broadly by use of functional language (i.e., by their targets) once again.

The two claims considered in **Chamberlain** are functional claims to an antibody styled as (a) a Jepson claim (claim 8) and (b) a means-plus-function claim (claim 9). In the **Chamberlain** decision, officially dated May 21, 2024, the ARP maintains the Patent Trial and Appeal Board’s (“PTAB”) rejection of both claims for lack of written description, reverses the rejection of claim 9 for indefiniteness, and reverses the Examiner’s obviousness-type double patenting rejections of claims 8 and 9 (not addressed in this publication).

Read the full alert [here](#).