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Sophie Wang Quoted in Law360 on Double Patenting Case

Sophie Wang is quoted in a recent Law360 article, "Full Fed. Circ. Warned Of Fallout From Double Patenting Case." The article highlights the recent briefs filed backing the request for en banc rehearing of an August Federal Circuit decision holding that two patents expiring at different times due to patent term adjustment can still be held invalid for double patenting.

In 1999, federal law created patent term adjustments to ensure patents are given additional time when the USPTO causes delays in an application examination. However, there is also a judicially created guideline of obviousness-type double patenting, which prohibits follow-on patents that are not "patentably distinct" from another patent. This will have far-reaching implications for many businesses across industry sectors who file an initial patent application, followed later by subsequent applications that cover additional relevant aspects of the invention.

In the article, Sophie, who filed one of the briefs on behalf of the American Intellectual Property Law Association (AIPLA) notes, "there's a misconception that this case only deals with a minor technical issue about patents and how their terms are calculated. In fact, it's so much bigger than that."

"As we're already seeing in the district courts, this case has created a bright-line, judge-made rule that effectively nullifies a right given to the public by Congress, and in some cases, punishes those who accept that right," she said. "That should be alarming to everyone, even outside of patent law."

Throughout her career, Sophie has represented a number of leading industry organizations at the United States Court of Appeals for the Federal Circuit and the United States Supreme Court in submitting amicus briefs on issues critical to the intellectual property community. In particular, she has represented the Biotechnology Innovation Organization (BIO), the Pharmaceutical Research and Manufacturers of America (PhRMA), the Boston Patent Law Association (BPLA), and the Massachusetts Biotechnology Council (MassBio) in voicing concerns regarding a variety of intellectual property issues such as obviousness-type double patenting, the constitutionality of inter partes reviews, and the "on-sale bar" doctrine under the AIA and its implications for pharmaceutical and biotech companies. Most recently, Sophie represented AIPLA in submitting an amicus brief in support of reversal on the merits in *United States v. Arthrex, Inc., et al.*, which involved whether PTAB judges are constitutionally appointed.

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