

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

EXELIXIS, INC.,
Plaintiff-Appellee,

v.

MICHELLE K. LEE, Deputy Director,
United States Patent and Trademark Office,
Defendant-Appellant.

2013-1175

Appeals from the United States District Court for the
Eastern District of Virginia in No. 12-CV-0096, Judge T.
S. Ellis, III.

EXELIXIS, INC.,
Plaintiff-Appellant,

v.

MICHELLE K. LEE, Deputy Director,
United States Patent and Trademark Office,
Defendant-Appellee.

2013-1198

Appeal from the United States District Court for the Eastern District of Virginia in No. 12-CV-0574, Judge Leonie M. Brinkema.

Decided: January 15, 2014

J. MICHAEL HUGET, Honigman Miller Schwartz and Cohn, LLP, of Ann Arbor, Michigan, argued for the Exelixis, Inc. With him on the brief were HEIDI M. BERVEN, NOEL E. DAY, JONATHAN P. O'BRIEN, DEBORAH J. SWEDLOW, and EMILY J. TAIT. Of counsel on the brief were TIMOTHY C. BICKHAM and HOUDA MORAD Steptoe and Johnson LLP, of Washington, DC.

DANA KAERSVANG, Attorney, Appellate Staff, Civil Division, United States Department of Justice, of Washington, DC, argued for Michelle K. Lee, Deputy Director, United States Patent and Trademark Office. With her on the brief were STUART F. DELERY, Acting Assistant Attorney General, NEIL H. MACBRIDE, United States Attorney, and SCOTT R. MCINTOSH, Attorney. Of counsel on the brief were BERNARD J. KNIGHT, JR., General Counsel, NATHAN K. KELLEY, Deputy Solicitor, and BRIAN T. RACILLA and MONICA B. LATEEF, Associate Solicitors, United States Patent and Trademark Office, of Alexandria, Virginia.

TARA CHAND SINGHAL, of Torrance, California, pro se, as amicus curiae.

DAVID P. FRAZIER and JENNIFER A. JOHNSON, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, of Washington, DC, for amicus curiae Abb Vie Biotherapeutics Inc.

Before NEWMAN, DYK, and TARANTO, *Circuit Judges*.

PER CURIAM.

Exelixis, Inc., filed suits in the Eastern District of Virginia that challenged the determination by the Patent and Trademark Office of how much time to add, under 35 U.S.C. § 154(b), to the otherwise-applicable terms of two patents: U.S. Patent Nos. 8,067,436 and 7,989,622. *Exelixis, Inc. v. Kappos*, 919 F. Supp. 2d 689 (E.D. Va. 2013) (the '436 patent suit); *Exelixis, Inc. v. Kappos*, 906 F. Supp. 2d 474 (E.D. Va. 2012) (the '622 patent suit). Exelixis claimed that the PTO's determinations of patent term adjustment rested on two mistaken interpretations of subparagraph 154(b)(1)(B) as it applies to requests for continuing examination under 35 U.S.C. § 132(b). After a final judgment in favor of Exelixis, those issues are now before us on appeal.

We address those two interpretations in our decision today in *Novartis AG v. Lee*, No. 13-1160 (Fed. Cir. Jan. 15, 2014). Based on the ruling in *Novartis*, we vacate the judgments as to patent term adjustment for the '436 and '622 patents in this case and remand for redetermination of the proper adjustments in accordance with *Novartis*.

No costs.

VACATED AND REMANDED