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Worldwide Doctrine of Equivalents and Prosecution History Estoppel

The doctrine of equivalents (DOE) arises in the context of a patent infringement action where the accused product or process does not literally infringe a patented invention, but only differs in insubstantial ways. Recently, DOE was seemingly introduced for the first time in the UK, but the doctrine is recognized in many jurisdictions throughout the world. The September 2017 issue of Sterne Kessler's Global Patent Prosecution Newsletter includes information on DOE and the doctrine of prosecution history estoppel worldwide.

Sterne Kessler's Global Patent Prosecution Newsletter is designed to help meet the needs of biotech/pharmaceutical companies regarding global patent prosecution strategies. For more information, please contact [Paul Calvo](#) or [John Cover](#). If you wish to unsubscribe from this and other newsletters, please click on the unsubscribe link below.

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Recent Trends on the U.S. Doctrine of Equivalents

By: [Lori M. Brandes, Ph.D.](#) and [Peter A. Jackman](#)

U.S. courts have long recognized that a product or process which does not literally infringe a patent can nevertheless infringe under the "doctrine of equivalents" if it is equivalent to the claimed invention. The percentage of patent decisions from the U.S. Court of Appeals for the Federal Circuit (CAFC) that reference the doctrine of equivalents has steadily declined since 2000.

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A Seismic Shift in UK Patent Infringement Law - Actavis v. Eli Lilly

By: [Paul A. Calvo, Ph.D.](#)

In a decision that appears to have introduced a doctrine of equivalents for the first time, the UK Supreme Court has shifted the laws on patent infringement in *Actavis v. Eli Lilly UK [2017] UKSC 48*. While this case represents a significant change in the UK, the decision actually brings the UK law closer to the rest of Europe and the US.

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Doctrine of Equivalents and Prosecution History Estoppel Around the World

By: [Paul A. Calvo, Ph.D.](#) and [Lori M. Brandes, Ph.D.](#)

Country	Doctrine of Equivalents (DOE)[1]	Prosecution History Estoppel[2]
Australia	No However, courts generally adopt "purposive construction," meaning that patent claims are construed based on how a skilled person would understand them in light of the specification.	No

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