

## Written Description Requires Demonstrating That the Inventors Had the Claimed Invention, Which Requires More Than a Mere Recitation of the Claim Language in the Specification

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*Nuvo Pharmaceuticals (Ireland) Designated Activity Co. v. Dr. Reddy's Labs Inc.*, No. 2017-2473 (Fed. Cir. May 15, 2019)

A branded pharmaceutical company sued several generic pharmaceutical companies alleging patent infringement of patents related to proton pump inhibitor (PPI) drugs. The generic companies argued that the claims were not supported by sufficient written description. The district court held that the written description requirement was met. On appeal, the Federal Circuit reversed.

Written description requires that “the inventor conveys . . . he or she was in possession of the invention and demonstrates that by disclosure in the patent specification.” Although experimental data is not necessary to show effectiveness of the claimed invention, the written description requires something more than the claim language appearing in the specification.

In this case, the claims provided that an uncoated PPI would be effective to raise the pH in the stomach. The disclosure, however, provided no information regarding the efficacy of uncoated PPIs. Further, the prior art taught that an uncoated PPI was not effective. Given this record, the Federal Circuit found that there was not sufficient written description to support the claims.

[A copy of the opinion can be found here.](#)

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