

The *Ariad* decision is important for the Office because written description is a critical tool for ensuring that an applicant does not claim more than she is entitled to claim. The Office recently conducted a survey of 6,865 final rejections issued over a 4.5 year period between 2005 and 2010. A written description rejection was made in about 9.7 percent of all applications during this time period. This data shows that the written description doctrine is essential to the Office's ability to perform its basic examination function.

Even if some would consider 9.7 percent to be little used, "little used" should not be conflated with "useless." Far from it, the written description requirement is an essential "backstop" against overclaiming. And the written description doctrine is particularly useful in examining claims that employ functional language, or that merely set forth a desired result without any indication of what achieves that result. I call these "result-orientated" or "results obtained" claims, and strongly support our examiners using the written description requirement to prevent issuance of such vastly overbroad recitations. Unless an applicant has devised every solution to a problem, the applicant is not entitled to patent every solution.

The majority in *Ariad* noted that functional claims have the potential to pose especially difficult problems, particularly when functional language is employed in a genus claim: "For example, a generic claim may define the boundaries of a vast genus of chemical compounds, and yet the question may still remain whether the specification, including original claim language, demonstrates that the applicant has invented species sufficient to support a claim to a genus. The problem is especially acute with genus claims that use functional language to define the boundaries of a claimed genus."

Thus, when confronted with functional claims, as with results obtained claims, I encourage examiners to carefully consider whether such claims -- amended or original -- are adequately supported by the specification. And the essential tool in this inquiry -- the written description requirement. Little used perhaps, but extremely useful to protect the integrity of the patent system, and the public, against the issuance of overbroad patents.