

Skilled in the Art: Federal Circuit Is Rejecting Transplant Patents

By Scott Graham

The Federal Circuit sounded frosty last week to patents on a method for detecting organ transplant rejection with a blood test.

Weil, Gotshal & Manges partner Ed Reines pleaded with the court that Stanford University patents licensed to CareDx should be patent eligible. They claim not just a method of detecting cell-free DNA in a blood sample, but a new way of measuring the precise amount that correlates with organ rejection, he said.

“The claims don’t read that way,” Judge Alan Lourie said. “It’s not a method for measuring.”

“It is,” Reines insisted. “It is.”

“No, it’s a method for detecting,” said Lourie.

Judge Todd Hughes sounded similarly skeptical. “You can get a patent on a novel laboratory technique, if you’re the ones who invented it. But if you take that and use it in a new way to just measure



Courtesy Photo

Latham & Watkins partner Gabriel Bell.

a natural phenomenon or a law of nature, isn’t the whole thrust of the Supreme Court and our precedent that that’s not eligible?” Hughes asked. “Whether that should be changed or not is a different story,” he added.

Reines persisted, but **Latham & Watkins Gabe Bell** and Goodwin Procter partner Willy Jay sounded likely to prevail for

Natera and Eurofins Viracor, respectively.

“The specification at every turn admits that what you’re doing is using conventional, existing technology to observe a natural phenomenon,” Bell said. “Whether you couch that as quantifying it, or couch it as diagnosing it or simply observing it, it all amounts to the same thing.”