

PATENTWATCH

Baffled by claim construction

A much-awaited ruling in a complex case concerning the invention of specialized steel panels could have wider implications for claim construction and interpretation in the biotechnology and pharmaceutical industries. The case of *Phillips v AWH Corporation* centred on whether the definition of a word should be interpreted according to the context of the patent, or according to the broader dictionary definition.

A panel of the US Court of Appeals overruled previous case law of using the dictionary first by ruling that intrinsic evidence (such as the patent specification), rather than extrinsic evidence (such as dictionaries), is to be the primary tool for interpreting patent claims. Extrinsic evidence can still be used in interpreting claims, but the context in which a term is used in the asserted claim is of greater importance. Significantly, the focus must always be on how a person skilled in the art understands a claim term in the context of the entire patent. However, despite affirming this opinion, after re-hearing the case the Appeals Court reversed the decision of non-infringement, allowing the broader dictionary definition to be used.

Edward Phillips patented his invention of modular steel-shell panels that can be welded together to form impact-resistant walls in 1987, and in 1989 entered into an agreement with AWH Corporation to market and sell his invention. That agreement ended in 1990, but in early 1991 Phillips became convinced that the company was continuing to use his technology without his consent.

In 1997, after several rounds of correspondence, Phillips sued AWH in a United States District Court for infringement of several claims in his patent. The court focused on the definition of a feature of the wall panels called a 'baffle' that enables it to deflect projectiles and resist impact. The Phillips patent described

baffles with specific angles, potentially restricting the claims of his patent to exclude baffles with different angles. Phillips argued that the term 'baffle' should be construed based on Webster's dictionary, which has a broader definition than that in his patent. But AWH argued that, based on the patent alone, the Phillips baffle had a different definition to the one in their product. So, under AWH's intrinsic evidence-based definition there would be no infringement, whereas under Phillips' dictionary-based definition there probably would be infringement.

This case has caused much argument within the US Courts. The District Court previously ruled that the definition of baffle used in the patent claims was limited to one that formed a particular angle, rather than the broader dictionary definition. Because Phillips could not prove infringement under that claim construction, the District Court granted summary judgement of non-infringement to AWH. Phillips appealed, and although the majority of Circuit judges agreed that the term 'baffle' in Phillips's patent clearly excluded structures of a particular angle, a dissenting judge argued that nothing in Phillips's patent specifically limited the use of the term to less than its dictionary meaning. The Appeals Court then reheard the case, concluding that 'baffle' had been too narrowly interpreted, and reversed the District Court's ruling of non-infringement.

Disagreement continues over the verdict of this case, but it at least reaffirms that patent specification is more significant than the dictionary definition of a term, which is important for highly technical industries in which claims often include terms that in the context of the patent differ significantly from normal every day use.

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Phillips versus AWH Corp. *et al.*: <http://www.fedcir.gov/opinions/03-1269.pdf>

