

## *Dynamic Claim Interpretation*

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Textual claims are the heart of the patent document and the core of patent law itself. Much of patent practice and policy revolves around determining the scope granted to patent claims, and modern patent scholarship has shown how claim scope is central to the purposes of the patent system. The process of claims interpretation draws heavily on the common law interpretive tool kit; indeed, the United States Court of Appeals for the Federal Circuit has adopted a highly formalistic approach to claim interpretation, including “plain meaning” methodologies and lexical constructs derived from parallel modes of statutory interpretation. But as William Eskridge pointed out many years ago, formalism is merely interpretive purpose veiled behind claims of neutrality and determinism. As such, interpretive formalism subordinates legal functionality in order to maintain a façade of Inevitability. Courts reviewing patent claims might do better to adopt purposive approaches akin to Eskridge’s “dynamic statutory interpretation” in order to effectuate the proper function of claims in the patent system.