

Law & Economic Analysis of Patent Claim Construction

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Much legal scholarship had devoted itself to the question of how best to interpret patent claims in a way that protects patentees without deterring further invention, innovation, and research. Much of this scholarship has focused on certainty as fundamental to these goals, but no one has yet examined more closely the value of either of these qualities in law and economics terms. This Article suggests that, at the margin, certainty and accuracy may be unnecessary in producing efficient outcomes. Among other reasons, the exogenously inherent uncertainties of patent value and the difficulties of defining "accuracy" in patent claim construction may cause the steep adjudication costs of patent litigation to outweigh the putative benefits of highly refined accuracy and certainty in claim construction.