

# *Did Phillips Change Anything? Empirical Analysis of the Federal Circuit's Claim Construction Jurisprudence*

**R. Polk Wagner (co-authored with Lee Petherbridge)**

The United States Court of Appeals for the Federal Circuit's role in the U.S. Patent system has never been so controversial. And at the center of the debate concerning the institutional structure of the patent system lies the Federal Circuit's 2005 en banc decision in *Phillips v. AWH*, representing that court's effort to resolve problems with perhaps the most important doctrine in the patent law—claim construction, or the interpretation of patent claims. Building on our prior work in this area, we report the results of an empirical study evaluating the jurisprudence of claim construction at the Federal Circuit. We find little to suggest that the *Phillips* opinion has had any measurable effect on the law of claim construction. Indeed, we find that the open-ended nature of the *Phillips* opinion, and its failure to resolve the longstanding split in claim construction jurisprudence, has undermined the Federal Circuit's efforts to develop a coherent and predictable jurisprudence. Accordingly, *Phillips* stands forth as an unfortunate example of poor decision-making by the court, and one which negatively impacts its overall role in the patent system.