Patent Claims and the Canons of Legal Interpretation

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The drafting of accurate patent claims is particularly difficult, and the interpretation of these claims is critically important. The important task of interpreting these difficult-to-write patent claims—at least authoritative interpretation of these claims—is the role of judges. Notably, the judges engaging in this practice of patent claim interpretation in the first instance—federal district judges—typically emerge from experience outside of the field of patent practice. These judges will bring their own knowledge and experience interpreting other legal texts. But do the same principles apply in the context of interpreting patent claims? One approach would be to interpret patent claims just like any other legal text. In this regard, Justice Antonin Scalia will long be remembered for his view that the best—most legitimate, accurate, and predictable—method of interpreting legal texts is what he referred to as the "fair reading" method of textualism. In this Article, I consider whether the law governing the interpretation of patent claims conforms to the tenets of this "fair reading" method of textualism. I do so by comparing and contrasting the Federal Circuit's methodology of patent claim interpretation to the principles and canons Justice Scalia advocated as governing the interpretation of all legal texts. I seek to determine whether the courts—primarily the Federal Circuit given its exclusive jurisdiction over appeals in patent cases—apply these principles and canons consistently with Justice Scalia's descriptions of how they ought to and do operate in other types of cases.