

Teva and the Process of Claim Construction

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In *Teva Pharmaceuticals USA v Sandoz, Inc.*, the Supreme Court addressed (and likely resolved, for now) a oft-discussed jurisprudential disconnect between itself and the US Court of Appeals for the Federal Circuit: whether patent claim construction was ‘legal’ or ‘factual’ in nature, and therefore whether (and how much) deference is due to District Court decision-making in this area. The *Teva* holding—that only determinations of extrinsic evidence are owed deference under Rule 52 of the Federal Rules of Civil Procedure, and indeed the scope of the claims themselves are subject to de novo review—is likely to have only very modest effects on the incidence of deference to District Court claim construction. Because the ultimate conclusion, as well as all analysis of the intrinsic evidence, is legal in nature, the Federal Circuit will (mostly) continue its role as primary arbiter of claim meaning in the patent system.

However, *Teva* is a far more important—and potentially beneficial—case than it appears. While the question answered in *Teva* is limited to standards of review, the case is likely to have substantial impacts on the methodology of patent claim construction. We think there are at least two reasons for this. First, the players involved in District Court patent litigation (the parties and the District Court) now have an enlarged incentive to introduce extrinsic evidence concerning claim meaning and to argue that such evidence is critical to the outcome of claim construction. Second, the *Teva* opinion itself contemplates a two-step process of evidentiary analysis in claim construction: first an analysis of extrinsic evidence (fact), then an analysis of the weight and direction of such evidence in the patent (law). In both cases, the post-*Teva* mode of claim construction at District Courts is likely to be far more focused on objective, factual information—such as the ordinary meaning of claim terms, or the ways that persons of skill in the art would understand these terms generally. And with this additional focus comes a more rigorous attention to the process of claim construction—where the line between extrinsic and intrinsic evidence lies, and how extrinsic evidence should be understood in the context of the patent.

In our view, these changes to how we do claim construction—to the methodology of claim construction—are generally positive. By anchoring claim meaning in objective evidence, and following an established process for evaluating claim terms, this methodology should result in more predictability in litigation-driven claim construction, and—in the longer-term—better drafted patent claims.