

Intellectual Property Insights

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Supreme Court Modifies Claim Construction Review Standard

By: Rex Hwang

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On Tuesday, the U.S. Supreme Court issued its decision in *Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.* partially modifying the standard of review to be applied by the Federal Circuit when reviewing a district court's construction of a claim term. Prior to *Teva*, the Federal Circuit applied a *de novo* standard for claim construction review. Now, based on the *Teva* decision, the Federal Circuit must apply a "clear error" standard for factual questions, and a *de novo* standard for legal questions when reviewing a claim construction on appeal.

In its decision, the Supreme Court also explained how the new standard should be applied. Specifically, when a district court reviews only intrinsic evidence to construe a claim term, then the Federal Circuit can review that construction *de novo*. However, if the district court needs to consult extrinsic evidence to construe a claim term, then the court will need to make subsidiary factual findings about the extrinsic evidence. The district court judge, after deciding the factual dispute, will then interpret the patent claim in light of the facts as he or she has found them. The judge's resolution of this underlying factual dispute can only be overturned based on clear error. However, the ultimate construction of the claim is a legal conclusion that the Federal Circuit can still review *de novo*.

It remains to be seen what practical impact the *Teva* decision will have going forward. On one hand, the *Teva* decision undoubtedly places greater legal restrictions on the Federal Circuit's ability to overturn a district court's claim construction. On the other hand, a substantial number of claim constructions are effectively determined based on the intrinsic evidence alone, so the *Teva* decision will have very little, if any, impact in those appeals. Moreover, based on the lowered claim construction reversal rates following the Federal Circuit's decision in *Phillips*, the Federal Circuit was arguably giving "informal deference" to district court claim constructions prior to *Teva* anyway. As such, the practical impact of the *Teva* decision may not be as substantial as some practitioners are predicting today.