

When is Batting "Lofty"? Look to the Specification

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In an opinion addressing the definiteness of a term of degree, the US Court of Appeals for the Federal Circuit affirmed a final determination of the US International Trade Commission (ITC), concluding that an asserted claim was not invalid because the specification explained the meaning of the claim term and provided objective boundaries on the claim's scope with reasonable certainty. *Guangdong Alison Hi-Tech Co. v. Int'l Trade Comm.*, Case No. 18-2042 (Fed. Cir. Aug. 27, 2019) (Stoll, J).

Aspen Aerogels filed a complaint with the ITC, alleging that Guangdong Alison imported certain materials that infringed several of its patents, including one directed to an aerogel composite that uses a "lofty fibrous structure" or "lofty batting." During claim construction, Alison argued that the claim phrase "lofty . . . batting" was indefinite, but the administrative law judge (ALJ) disagreed, finding that the specification explained the meaning of the term. In an initial determination, the ALJ found that the claims including "lofty . . . batting" were not invalid and were infringed. The ITC affirmed, entering a limited exclusion order barring the importation of the materials. Alison appealed.

Before the Federal Circuit, Alison argued that the claim term "lofty batting" was an indefinite term of degree without a precise boundary. While the Court agreed that "lofty batting" is a term of degree, it explained that the written description provided reasonable certainty regarding the objective boundaries of claim scope. As an initial matter, the specification provided express definitions for the phrase and its components. Moreover, the patent detailed the functional characteristics of what a "lofty batting" is. The specification provided multiple examples and metrics further explicating the meaning of the term, including "particularly suitable" materials that qualify, along with metrics regarding the materials' parameters. Furthermore, during prosecution, the examiner emphasized that the specification defined the term, and distinguished prior art based on this definition (similarly, the Patent Trial and Appeal Board denied institution of *inter partes* review based on an agreed construction of the term). Extrinsic evidence further confirmed the objective boundaries of the term. As the Court explained, "[s]ome modicum of uncertainty . . . is the price of ensuring the appropriate incentives for innovation." *Nautilus*.

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