

Supreme Court Holds That Factual Findings for Patent Claim Interpretation are Reviewed for Clear Error

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Ultimate Claim Interpretation is Still Reviewed De Novo

In *Teva Pharms. USA, Inc., et al. v. Sandoz, Inc., et al.*, No. 13-854 (Jan. 20, 2015), the Supreme Court held that in patent cases the Federal Circuit must apply a “clear error” standard when reviewing a district court’s factual findings within a claim interpretation (“claim construction”). This reverses the practice of the Federal Circuit using only *de novo* review when considering claim construction decisions.

Even so, the *Teva* decision maintains that the Federal Circuit must still review a district court’s ultimate construction of a claim *de novo*. Thus, the *Teva* holding only changes the legal standard of review for factual findings (i.e., extrinsic evidence) relied upon by a district court in construing claims. To the extent a district court bases its construction solely on intrinsic evidence (i.e., the patent claims, specification, and prosecution history), the Federal Circuit must continue to apply the *de novo* standard.

While *Teva* formally modifies the standard of review for claim construction, in practice the Federal Circuit has on many occasions already given deference to lower court fact-findings when determining claim construction issues on appeal, as acknowledged by the Supreme Court. Thus, the *Teva* decision merely makes providing such deference as to factual findings a formal requirement of the Federal Circuit.

Teva will likely not have a significant practical effect on claim construction review, and it should be a rare occasion when this decision changes the outcome of any case. However, litigating parties may weigh more carefully the decision to introduce extrinsic evidence, including expert testimony, during the claim construction process, since doing so may make it more difficult to challenge a district court’s claim construction.

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