

## **Eidos Display, LLC v. AU Optronics Corp: Claim Definite Enough for those of Skill in the Art, even if Not the Eastern District of Texas**

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The Eastern District of Texas has long been known as a patentee-friendly venue for litigation, but in *Eidos Display, LLC v. AU Optronics Corp.*, Case No. 2014-1254 (Fed. Cir. March 10, 2015), the Federal Circuit turned the tables by finding claim language to be definite, reversing the District Court's finding of indefiniteness.

The patent at issue, U.S. Patent No. 5,879,958, is directed toward manufacturing processes for electro-optical devices (e.g., LCDs). One of the steps of asserted claim 1 recites "patterning the passivation film to form ... a contact hole for source wiring and gate wiring connection terminals." The problem faced by the patentee was that the source wiring and gate wiring connections are separate, and the patent discloses separate contact holes for the two terminals. Accordingly, the District Court found the claim to be indefinite because, read in light of the specification, "the Court is unable to arrive at a construction that would allow a person of ordinary skill in the art to determine what is claimed" by the "contact hole," applying 35 U.S.C. § 112, ¶ 2.

The Federal Circuit, on review of the same record, instead found that one of ordinary skill in the art, would interpret "a contact hole for source wiring and gate wiring connection terminals" to mean two separate contact holes. The accused infringer argued that this interpretation essentially rewrote the claim, but the Federal Circuit disagreed, holding that "[D]etermining how a person of ordinary skill in the art would understand the limitation ... is different from rewriting the limitation." Accordingly, the Federal Circuit reversed the lower court's finding of indefiniteness.

In making this determination, the Federal Circuit relied on several points:

The parties agreed that the state of the art for manufacturing LCD panels was to form contact holes for source wiring terminals that are separate from contact holes for gate wiring connection terminals, and that the specification does not teach otherwise.

The patent does not teach how to create a working LCD panel that uses a novel shared contact hole. Accordingly, if the claims were directed to such a contact hole, the claims would fail the written description requirement.

The parties agreed that, as recited in another claim, “ ‘a contact hole for source wiring and gate wiring connection terminals’ requires separate contact holes for each connection terminal.”

This point would seem to be dispositive. However, in reviewing the audio of the oral argument (<http://oralarguments.cafc.uscourts.gov/default.aspx?fl=2014-1254.mp3>, starting at 20:00), it appears that while the question was posed to the accused infringer, counsel did not concede the point.

The take-away from this decision for prosecutors is, of course, to be careful when drafting claims. Reciting “a contact hole for source wiring and a contact hole for gate wiring” would have avoided the finding of indefiniteness by the District Court and subsequent appeal costs. For litigators, the Federal Circuit’s decision provides support for arguments that claims should be interpreted in a way that supports validity, even when that interpretation does not precisely track the literal language of the claim.

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National Law Review, Volume V, Number 71

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