

Patent Claim Construction Database Project: Federal Circuit 2000-2010

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Construing patent claims is one of if not the most important ruling that a district court judge makes during a patent case. Despite claim construction's importance in litigation, however, courts have struggled to develop workable standards for predictably construing claims. The Federal Circuit has developed a bewildering number of doctrines in order to assist district courts properly define claim terms, but with little success. Prior scholars have found that claim construction decisions are reversed on appeal approximately 40% of the time. Furthermore, reversal rates do not appear to decline with judicial experience.

This project seeks to expand upon the empirical literature on claim construction through the use of a much more granular database of claim construction decisions. Our database codes each claim term construed by the Federal Circuit from 2000 through 2010. Our coding records three major information categories for each case: the type of claim term construed, the evidence used to construe the claim, and the legal doctrines applied in construing the term. We have also begun coding those same cases at the district court level – prior to appeal and following remand. This first paper will report the initial results of the Federal Circuit coding. In addition to updating and refining the existing claim construction literature, this project sheds light on whether district courts consistently err on particular points of doctrine, whether certain technological fields are more difficult to correctly construe, and whether claim boundaries are inherently fraught with uncertainty. In addition, we will be able to assess the extent to which the *Phillips* decision, falling at the midpoint of our dataset, affected reversal rates, predictability of claim construction, and the bases for appellate scrutiny.