

No.

In the Supreme Court of the United States

CENTRIPETAL NETWORKS, LLC, PETITIONER

v.

CISCO SYSTEMS, INC., RESPONDENT

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

*MATTHEW J. DOWD
Counsel of Record
ROBERT J. SCHEFFEL
ELLIOT A. GEE
MORRIS D. YOUNG
DOWD SCHEFFEL PLLC
1717 Pennsylvania Ave. NW
Suite 1025
Washington, DC 20006
(202) 559-9175
mdowd@dowdscheffel.com*

QUESTION PRESENTED

Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996), instructs that the court, not the jury, decides the scope of a patent claim, through the claim-construction process. This is paramount because the patent claim's scope defines the legal right to exclude and, consequentially, sets the boundary for the entire patent-infringement action, including claims, defenses, discovery, and admitted evidence.

Years of settled practice under *Markman* have led to the established practice that claims are construed early in the litigation so that plaintiffs and defendants alike will have a fair opportunity to develop evidence and present their respective cases. Because claim scope must be settled before parties develop their proofs, a late claim construction—announced after the evidentiary record has closed—demands notice and a fair chance to adjust. This case presents a stark deprivation of due process stemming from the Federal Circuit's increasing rudderless invocation of a standardless distinction between a “new” claim construction, on one hand, and a so-called “clarification” or “elaboration” after trial. In this case, the post-trial, post-verdict “elaboration” of two claim terms wiped out a \$2.6-billion judgment of willful infringement without affording the patent owner an opportunity to respond to the new construction.

The question presented is:

Whether a court, without providing notice, may adopt a new, dispositive, materially different claim construction after the evidentiary record is closed, and without permitting supplemental briefing or a meaningful opportunity to be heard.

PARTIES TO THE PROCEEDING BELOW

Petitioner Centripetal Networks, LLC was plaintiff in the district court and appellant in the court of appeals. Respondent Cisco Systems, Inc. was defendant in the district court and appellee in the court of appeals.

Centripetal Networks, LLC is not a publicly held corporation and therefore does not have a stock ticker symbol.

Cisco Systems, Inc.'s stock ticker symbol is CSCO.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioner states that Centripetal Networks, LLC is not a publicly held corporation, is wholly owned by its parent CNI Holdings Inc. and no publicly held corporation owns 10% or more of the stock of Centripetal Networks, LLC.

RELATED PROCEEDINGS

This case arises from the following proceedings:

Centripetal Networks, LLC v. Cisco Systems, Inc.,
No. 2024-2097 (Fed. Cir. Apr. 29, 2026);

Centripetal Networks, Inc. v. Cisco Systems, Inc.,
No. 2021-1888 (Fed. Cir. June 23, 2022); and

Centripetal Networks, LLC v. Cisco Systems, Inc.,
No. 2:18-cv-00094 (EWH) (E.D. Va. Dec. 12, 2023)
(entering partial judgment pursuant to Rule 54(b)).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals for the Federal Circuit is not published in the Federal Reporter but can be found at 2026 WL 1162800 and reproduced at Pet.App. 1a-421a.

JURISDICTION

The judgment of the court of appeals was entered on April 29, 2026. On July 22, 2026, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including September 18, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

INTRODUCTION

The fair adjudication of property rights, particularly patent rights, requires a court to construe the scope of the legal right so that the parties—plaintiffs and defendants alike—have fair notice and an opportunity to present evidence in support of their claims and defenses. In patent litigation, the patent claim is “the portion of the patent document that defines the scope of the patentee’s rights.” *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). Defining the patent claim through claim construction informs the entire patent litigation, including the evidence presented by the parties, witnesses, and expert testimony. When a court changes the claim construction after all evidence is presented—especially after a full trial with a finding on infringement—fundamental principles of due process require that the parties are afforded notice and an opportunity to respond to the new claim construction, *e.g.*, with additional evidence or argument as may be relevant to the changed scope of the legal dispute.

In this case, the appeals court incorrectly condoned a district court’s new claim constructions that came after a full trial on the merits and after a remand proceeding to a new judge—all without notice and opportunity for Petitioner Centripetal Networks, LLC to present evidence and arguments responsive to the new claim constructions.

The appeals court’s decision reflects a continued wayward course that drifts far from *Markman* and other settled principles that require either (a) a defined legal scope of the patent within which the parties can litigate the case and present their respective claims and defenses to the jury or court for decision-making, or (b) fair notice and opportunity to present responsive evidence and argument to a changed claim interpretation that a court adopts late in the game. The Federal Circuit has

increasingly condoned eleventh-hour claim constructions under the guise of “clarifications” or “elaborations.” But those terms capture a distinction without a difference, and they hide the basic flaw with changing the legal scope of the patent dispute after the parties have tried their case.

The belated claim construction here is particularly egregious. Agreeing to the ordinary meaning of the two key terms, Centripetal and Respondent Cisco Systems Inc. presented their evidence over the course of a twenty-two-day bench trial. The court then found that Cisco willfully infringed Centripetal’s asserted patents. That verdict was cast aside, however, after the disqualification of the late Judge Henry Coke Morgan, Jr. based on the belated discovery of his wife’s ownership of less than \$5,000 in Cisco stock. The appellate court remanded the case but left intact the claim-construction framework that governed the trial.

A second judge presided over the subsequent Rule 63 hearing. Despite considering largely the same infringement evidence, the second judge found non-infringement, after materially changing the meaning of two key patent claims, and without affording Centripetal notice and an opportunity to introduce evidence and argument responsive to the new claim interpretations.

In short, Cisco’s liability of \$2.6 billion for willful infringement was lost on substantially a nearly identical factual record but due to a materially different understanding of two claim terms. The result has laid bare the problem with the Federal Circuit’s outcome-driven approach contravening the need for notice about new claim constructions. This Court’s intervention is needed to ensure that plaintiffs and defendants alike are not subject to patent rulings predicated on shifting property rights that change after the evidence is fully litigated.

STATEMENT OF THE CASE

I. Centripetal And Its Patented Innovation

Centripetal is an innovator in secure network design. It developed award-winning technology and was granted numerous patents for its innovations in network security. It developed its own product RuleGATE that embodies the inventions protected by the two patents litigated here.

U.S. Patent No. 9,686,193 (“the ’193 patent”), known as the “Exfiltration” patent, covers novel methods that prevent hackers from accessing secure computer networks, thus preventing exfiltration of confidential information. Pet.App. 3-5a. At a high level, the invention works by filtering packets (discrete “packages” of data) that are transmitted through computer networks. *Id.*

U.S. Patent No. 9,203,806 (“the ’806 patent”), known as the “Rule Swap” patent, enables seamless updates of a network device’s packet-filtering rules. Pet.App. 5-6a. The rules are used to scan data in the packets to screen and prevent entry of dangerous packets, *e.g.*, those containing malware. The invention updates a first rule set by sending a signal instructing the implementation of the “second rule set,” with the process involving five specific steps that accomplish the seamless rule swap without loss of packets, and thus without loss of data. *Id.*

II. Proceedings Below

A. District Court Trial in 2020

Centripetal sued Cisco in the U.S. District Court for the Eastern District of Virginia in February 2018. Pet.App. 171a. Centripetal sued Cisco for infringing several patents, including the ’193 and ’806 patents.

The ’193 patent, in Centripetal’s view, covered Cisco’s systems that filter packets based on quarantining packets that are tagged as problematic. For packets that contain those tags, *e.g.*, particular types of transfers, Cisco’s systems drop the packets. For the ’806 patent,

Centripetal contended that Cisco's switches, routers, and firewalls (in combination with certain management programs) allow for swapping of packet-filtering rules during a period when traffic is ceased, rather than dropping packets while the rules were swapped.

Cisco's alleged infringement occurred after Centripetal confidentially shared with Cisco confidential information about its products and patents under a non-disclosure agreement. Cisco had extensive meetings and discussions with Centripetal about its patented technology. But Cisco declined to license the patents and instead started marketing its own competing products that were later found to be copies of Centripetal's inventions. Pet.App. 368a-383a.

Early in the case, the parties identified several patent claim terms to be construed by the court. Pet.App. 60a-61a; Pet.App. 219a-220a. The parties agreed on the construction of five claim terms, disputed six terms, and agreed that six others would be construed using their plain and ordinary meanings. *Id.*

For the '193 patent, both parties agreed that, for the dispositive claim limitation—"particular type of data transfer"—the plain meaning would be the applicable construction. *Id.* For the '806 patent, the parties likewise agreed that the "responsive to being signaled" limitation would use a plain-and-ordinary-meaning construction. *Id.* The claim constructions were reflected in the court's *Markman* Order, issued on February 20, 2020.

In May and June 2020, the court conducted a twenty-two-day remote bench trial using the court's constructions, including the plain-and-ordinary meanings for terms in the '193 and '806 patents. *See* Pet.App. 9a. The bench trial produced an extensive body of evidence, with "an over 3,507-page record, 26 witnesses, and over 300 exhibits." Pet.App. 141a.

On October 5, 2020, the court found that Cisco willfully infringed, *inter alia*, the asserted '193 and '806 claims. Pet.App. 9a. Judge Morgan's detailed opinion analyzed the witness testimony and documentary evidence presented at trial, and he found that Cisco willfully copied Centripetal's patented inventions. Pet.App. 378a. He summarized how "Cisco was provided with demonstrations of [Centripetal's] product and confidential information regarding Centripetal's proprietary algorithms." *Id.* Less than a year after its meetings with Centripetal, "Cisco released the 'network of the future,'" which included products "embedded with new software functionality that was outlined and detailed to [Cisco] by [Centripetal's] disclosure of the patents and multiple technical discussions and demonstrations." *Id.*

For the '193 patent, Judge Morgan determined Cisco's products met the two-stage limitation based on quarantining packets having data tags such as a "Secure Group Tag" ("SGT"). Pet.App. 298a-299a. The SGTs are data tags that categorize the packets. He found that "the Cisco system operates in a two-stage process that meets the functionality required by the asserted claims." Pet.App. 293a. He made specific findings based on Cisco's expert testimony that Cisco's products transmit or drop packets based on the associated packet SGT. Pet.App. 287a-292a.

For the '806 patent, Cisco's accused products met the "responsive to being signaled" limitation. The accused products perform the five enumerated steps that occur after the rule-swap signal used to switch to the second rule set. Pet.App. 317a-318a. The process used in Cisco's devices, Judge Morgan found, "is the exact functionality as described by the cease and cache elements of the '806 Patent." Pet.App. 318a-319a.

Cisco's noninfringement defense was rejected as not credible because Cisco's own documents contradicted it.

Pet. App. 379a. “[T]he adverse testimony of Cisco engineers” also undermined its defense. *Id.* After considering the evidence, including the credibility of the live expert witnesses, Judge Morgan found that the infringement and validity issues “were clear and not a close call.” Pet.App. 381a.

Before issuing his decision, on August 11, 2020, Judge Morgan learned that his wife owned 100 shares of Cisco stock (then valued at \$4,687.99). Pet.App. 403a. He promptly disclosed this news to the parties and “explain[ed] that the ‘shares did not and could not have influenced [his] opinion on any of the issues in this case.’” Pet.App. 404a. The “full draft of [his] opinion had been prepared” before he learned about the shares, and he had already decided “[v]irtually every issue.” *Id.* (internal quotation omitted).

Less than two weeks later, Cisco asked Judge Morgan to recuse himself based on his wife’s stock ownership. Dkt.No.551. On October 2, 2020, he denied the motion. Pet.App. 421a. Three days later, he issued his infringement ruling (that was adverse to his wife’s stock ownership).

B. First Federal Circuit Appeal

Cisco appealed the willful-infringement judgment and the denial of its recusal motion. Pet.App. 145a. In an opinion authored by Judge Dyk, the Federal Circuit ruled for Cisco on the recusal issue and remanded for further proceedings, but it did not rule on the infringement finding. Pet.App. 168a.

The remand also did not alter the district court’s *Markman* Order, noting that “the only rulings subject to vacatur are those issued after Judge Morgan learned of his wife’s financial interest in Cisco, on August 11, 2020.” Pet.App. 167a. This left in place Judge Morgan’s construction of the disputed claim terms, including the

adoption of the plain-and-ordinary-meaning construction for the key terms of the '193 and '806 patents.

C. Rule 63 Proceeding in 2023

On remand, the case was reassigned to Judge Elizabeth Wilson Hanes for proceeding under Federal Rule of Civil Procedure 63.¹ Because the *Markman* Order was unaffected by the Federal Circuit's remand, both parties agreed during a hearing in October 2022 that no new witnesses needed to be called. C.A. App.18611-18620; C.A. App. 18834; C.A. App. 18849-18856.

On May 25, 2023, Cisco moved to supplement the record. Dkt.No.691. Cisco wanted to add several new documents to the record, including a declaration by one of its experts who testified in the 2020 trial but whom Cisco chose not to recall during the hearing. *Id.* Cisco also sought to add a 39-page document titled Centripetal's Patent Owner's Preliminary Response ("POPR Exhibit"). Three pages of the document had been introduced and referenced during the 2020 trial, but Cisco did not rely on or enter into evidence the entire POPR Exhibit. On remand before Judge Hanes—some three years after trial—Cisco now saw an opportunity to change the claim construction. The POPR Exhibit had no relevance to how Cisco's products operate, *i.e.*, the infringement analysis. It was relevant only to claim construction.

The POPR Exhibit, dated January 4, 2019, had been filed in an *inter partes* review proceeding ("IPR") that Cisco filed in an unsuccessful effort to cancel the '193 patent before the U.S. Patent and Trademark Office ("USPTO"). Cisco had petitioned to cancel all '193 claims, but the USPTO denied the IPR petition because it failed to demonstrate that Cisco was reasonably likely to prove the '193 claims unpatentable. Before Judge Hanes,

¹ Judge Morgan passed away on May 1, 2022, while the appeal was pending.

Centripetal objected to adding the entire POPR Exhibit (including different portions not relied on during the trial) because Cisco was attempting to re-open claim construction despite the *Markman* Order remaining in effect.

Cisco's introduction of the POPR Exhibit was an apparent attempt to invoke the doctrine of "prosecution disclaimer." Dkt.No.731 at 7-8. Courts can use the prosecution-disclaimer doctrine to restrict the scope of a claim based on statements made during the patent application process. By the time of the Rule 63 hearing, however, claim construction had long passed, and the *Markman* Order entered by Judge Morgan remained in effect. *Id.*

On June 6, 2023, Judge Hanes conducted a hearing at which the parties agreed that the Rule 63 proceeding would be based on the fixed evidentiary record from trial, with no additional fact or expert witnesses. Dkt.No.716. On June 21, 2023, Judge Hanes certified familiarity of the record. The Rule 63 hearing took place across three days (June 23-25). Two technical witnesses provided a technical tutorial for the judge, but not about claim-construction issues. At certain points, the court chastised Cisco's tutorial as "look[ing] a lot like claim construction." Dkt.No.750 at 141; *see id.* ("I think you get very close, if not over the line, on claim construction.").

At the hearing's outset, Judge Hanes granted in part Cisco's motion to supplement the record. She denied entry of Cisco's expert declaration because the parties chose not to recall witnesses and it would be "unfair to Centripetal to have the statement come in without any ability to have this witness explain discrepancies." Dkt.No.750 at 11. She nonetheless allowed two exhibits, including the new POPR Exhibit. *Id.* at 8-10. She did not rule on the exhibits' potential relevancy, "leaving that to another day." *Id.* at 11.

Centripetal objected, explaining that it “would like to recall some witnesses based upon the claim construction issue” if the court was going to adopt a new construction adverse to Centripetal. Dkt.No.754 at 432-37. “[A]t the very least,” Centripetal explained, the court should “have a [claim-construction] briefing schedule and allow the parties to present their positions and come in here and argue them.” *Id.* Judge Hanes did not rule on Centripetal’s request during that hearing.

On December 11, 2023, Judge Hanes issued her decision on liability (“Remand Order”). Pet.App. 57a. For both patents, Judge Hanes reversed Judge Morgan’s earlier ruling and found no infringement, despite the factual evidence of infringement being the same. The new narrow claim interpretations became dispositive.

On the ’193 patent, the court found that Cisco’s products did not meet the “particular type of data transfer” limitation. Pet.App. 88a. Notwithstanding the parties’ agreement to use the plain-and-ordinary-meaning construction, Judge Hanes adopted an express construction of the claim—for the first time in the case’s three-year history—that reinterpreted the claim to require “filtration of a subset of packets sent between [endpoint] computers in two different networks.” Pet.App. 89a. This new construction rested, in large part, on the belated POPR Exhibit. Pet.App. 91a. The court viewed the POPR Exhibit as being “consistent with” its new claim construction. *Id.* The Remand Order did not analyze whether the POPR Exhibit’s statements rose to a “clear and unmistakable” disclaimer of claim scope, which Federal Circuit precedent requires.

On the ’806 patent, the Remand Order incorporated another new claim construction for the limitation about the signal initiating the swap to the second rule set. The court reinterpreted the claim to require that the “swap” signal be the but-for, *i.e.*, sole, cause of *each* step in the

claimed sequence of updating to the second rule set. Pet.App. 105a-106a. In other words, each of the five enumerated steps in the rule swap—in particular, the “cease processing” and “cache” steps—could not have a separate basis for being performed in Cisco’s devices. The rule-swap signal had to be the only reason that each step, including the “cease processing” and “cache” steps, occurs as part of the rule swap in Cisco’s devices. *Id.*

Surprisingly, this new view of the claim adopted the same theory that Cisco pushed in the 2020 trial but which Judge Morgan rejected. Pet.App. 316a-319a. Cisco had argued that, because the “cease processing” and “cache” steps also occur during a device’s baseline idle period, those two steps were not “responsive to” the rule-swap signal. Pet.App. 105a-106a. And he found that Cisco’s products performed each of the five enumerated steps when conducting the claimed rule swap after the rule-swap signal. *Id.*

What changed was the claim interpretation. Under the court’s new interpretation, the claim required more than showing the five steps occurring as a result of the swap signal. *See* Pet.App. 108a (“[W]hile there is a temporal relationship between a rule swap and the ceasing processing of packets, ... there is no causal relationship.”). The claim now required a showing that none of the five enumerated steps occurred but for the rule-swap signal. Pet.App. 106a (recognizing that Cisco’s products do perform the “cease processing” and “cache” steps as part of its rule swap).

Centripetal moved for reconsideration of the Remand Order. Dkt.No.787. Judge Hanes denied Centripetal’s motion. Pet.App. 56a (“Reconsideration Order”). In doing so, Judge Hanes admitted that even “further clarification is necessary” for the ’193 patent’s “particular type of data transfer” limitation. Pet.App. 32a-33a. The “further clarification” rested on new extrinsic evidence—

dictionaries neither party entered into evidence. Pet.App. 34a-36a. By using the dictionary definitions of the terms “type” and “data transfer,” the court changed the construction’s focus from “computers in two different networks” to a second new construction that focused on “the specific technique, or method, associated with the data transmission.” Pet.App. 34a-35a. Based on this “further clarification,” the court stood by its non-infringement finding. Pet.App. 35a-36a.

For the ’806 patent, Judge Hanes maintained the new construction, as set forth in the Remand Order. Under that interpretation, the court imposed its “causality” requirement for each of the enumerated five steps, leading to the noninfringement finding, in contrast to Judge Morgan’s infringement finding that did not interpret the claim as requiring a distinct “causality” requirement for each enumerated step.

Centripetal’s motion also asked to reopen the record so Centripetal could address the new claim construction for the ’193 patent. Pet.App. 36a. This request was denied because, according to the court, the new interpretation of “‘particular type of data transfer’ does not diverge from the term’s plain and ordinary meaning,” “Centripetal never requested the Court construe the term,” and Centripetal “has not held a consistent position on the term’s meaning.” Pet.App. 37a-38a.

D. Second Federal Circuit Appeal

Centripetal appealed to the Federal Circuit. Pet.App. 1a-2a. The appeals court affirmed in full, with an opinion again written by Judge Dyk.

For the ’193 patent, the Federal Circuit concluded that Centripetal had adequate notice of the new claim construction based on Cisco’s post-trial and non-infringement positions. Pet.App. 16a-17a. In the court’s view, Cisco’s continuous pressing of its *non-infringement*

theories was enough notice, even though, through three years, the district court never deviated from the plain-and-ordinary-meaning construction and did not apply a new construction—until after the Rule 63 hearing when denying Centripetal’s motion for a new trial. Pet.App. 17a. The court also relied on arguments and evidence that post-dated the 2020 trial as proof of sufficient notice of the district court’s new claim constructions adopted in December 2023 and June 2024. C.A. App. 17865-17866; C.A. App. 19450-19454; C.A. App. 21283.

The appeals court also affirmed the new post-Remand Order construction as correct. Pet.App. 12-13a. The court notably did not rely on the district court’s new dictionary definitions cited in the Reconsideration Order. The appeals court instead turned to eight lines of the patent specification. Pet.App. 13-15a.

The appeals court also relied on one paragraph in the new POPR Exhibit. Pet.App. 14a. The court concluded that “Centripetal’s statements in the IPR proceeding define the scope of the asserted claims to require two-stage filtering, with source and destination filtering being part of the first stage.” Pet.App. 15a-16a. In Centripetal’s view, the isolated reading of the POPR Exhibit overlooked the doctrine of claim differentiation: Separate ’193 claims (claims 16 and 17) commanded a broader construction of the “particular type of data transfer” limitation.² The appeals court’s opinion did not address this claim-differentiation point. *See* Pet.App. 16a n.6.

For the ’806 patent, the court held that Centripetal forfeited its claim-construction argument, without addressing that Cisco’s same claim-construction arguments were presented in the 2020 trial and rejected

² Oral Arg. 7:16-8:18; 26:18-27:59, at https://www.cafc.uscourts.gov/oral-arguments/24-2097_04072026.mp3.

by Judge Morgan. Pet.App. 18a-19a; Pet.App. 316a-319a. The court also agreed with the district court's construction that "the signal must be the but-for cause of ceasing processing packets" because "[t]he asserted claims specify a list of actions the claimed processors must be configured to do responsive to being signaled to process packets in accordance with the second rule set." Pet.App. 19a. (quotation omitted).

REASONS FOR GRANTING THE PETITION

The decision below is incompatible with settled norms of the *Markman* claim construction process and of affording fair notice and an opportunity to respond when a court changes the claim construction. *Markman* recognizes the importance of claim construction, as it "defines the scope of the patentee's rights." 517 U.S. at 372. Claim construction that is a moving target until after a trial is the antithesis of due process and fundamental fairness.

The Federal Circuit's error in this case and others stems in large part from its cases attempting to distinguish a "new" claim construction from a mere "elaboration" or "clarification" of an earlier claim construction. The court's precedents offer no standard by which to distinguish "new" from "elaboration" or "clarification," yet an "elaboration" or "clarification" can be outcome-determinative. Here, the multiple "clarifications" turned a \$2.6-billion willful infringement judgment into a goose egg.

This Court should grant certiorari to instruct that material changes to claim construction—whether deemed "new" or simply an "elaboration" or "clarification"—require sufficient notice and an opportunity for the parties to respond, and that the Federal Circuit must articulate an administrable standard by which courts and litigants can ensure fair process when a court alters the

legal boundary of the dispute through a changed claim construction.

I. A Defined Claim Scope is a Necessary Predicate for the Fair Adjudication of Patent Rights

A. Claim Scope and the *Markman* Process

The scope of the property right in patent cases is defined by the claims. The scope of the claims sets the boundary of the entire patent dispute, including the evidence the parties present.

1. The claims define the scope of the right to exclude. A patent is a grant of the right to exclude. 35 U.S.C. § 154(a)(1); *Bloomer v. McQuewan*, 55 U.S. (14 How.) 539, 549 (1852). Thirty years ago, this Court held that claim construction is for the court, not the jury. *Markman*, 517 U.S. at 372, 388-91. That decision rested in part on a foundational premise captured by Justice Curtis (a former patent practitioner) in *Winans v. Denmead*, 15 How. 330, 338 (1854)—namely that the *first* issue in a patent case is claim construction. *Markman*, 517 U.S. at 384-85 (“The first [issue] is a question of law, to be determined by the court, construing the letters-patent, and the description of the invention and specification of claim annexed to them.”).

That first step is of profound importance. Indeed, “[p]atent construction in particular ‘is a special occupation.’” *Id.* at 388 (quoting *Parker v. Hulme*, 18 F. Cas. 1138, 1140 (C.C.E.D. Pa. 1849) (No. 10,740)). Defining the claim scope defines the metes and bounds of the patent right. See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). Claim construction is so critical that it will frequently be case dispositive. See *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 989 (Fed. Cir. 1995) (en banc) (Mayer, J., concurring) (“[T]o decide what the claims mean is nearly always to decide the case.”), *aff’d* 517 U.S. 370 (1996).

Determining claim scope is a legal issue for a court, not the jury, but claim construction frequently encompasses subsidiary factual questions. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 325-27 (2015). Claim construction is, after all, a practice with “evidentiary underpinnings” that “falls somewhere between a pristine legal standard and a simple historical fact.” *Markman*, 517 U.S. at 378, 388, 390.

2. Claim construction establishes the framework of the patent dispute. The interpreted claims define almost all aspects of patent litigation, including discovery, experts, infringement/invalidity theories, and the evidence presented to the fact-finder.

Significantly, claim scope drives nearly every theory in the case, for both plaintiffs and defendants. Infringement is necessarily determined based on claim scope. 35 U.S.C. § 271. Invalidity defenses, including those under 35 U.S.C. §§ 101, 102, 103, and 112, must account for claim scope. For instance, whether certain prior art is anticipatory will depend on whether the prior-art document meets “each and every limitation” of the claimed invention, but that can only be assessed by knowing what “each and every limitation” means. *E.g., Oakley, Inc. v. Sunglass Hut Int’l*, 316 F.3d 1331, 1339 (Fed. Cir. 2003) (identifying claim construction as “[t]he first step” in a validity analysis).

From a procedural perspective, claim construction will impact potentially dispositive motions, such as motions to dismiss for failure to state a claim. *See Adnexus Inc. v. Meta Platforms, Inc.*, 160 F.4th 1216, 1222 (Fed. Cir. 2025) (in motion-to-dismiss context, authorizing courts to “engage in claim construction, provided they give the parties appropriate notice and an opportunity to be heard”).

Claim interpretation also dictates the scope of admissible evidence. Fed. R. Evid. 401, 402. It in effect

cabins the pretrial discovery process and allows for the development of factual evidence and necessary expert testimony. It similarly controls the scope of admissible expert testimony, particularly on technical issues of infringement and validity. *E.g.*, *Barry v. DePuy Synthes Cos.*, 164 F.4th 896, 903 (Fed. Cir. 2026) (excluding as unreliable and “not helpful to the jury” expert testimony that contradicts the claim construction).

Generally, claim construction occurs separately from any infringement determination and consideration of the accused devices because, to not do so “would make infringement a matter of judicial whim.” *SRI Int’l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1118 (Fed. Cir. 1985); *accord NeoMagic Corp. v. Trident Microsystems, Inc.*, 287 F.3d 1062, 1074 (Fed. Cir. 2002) (“It is well settled that claims may not be construed by reference to the accused device.”). The patent document memorializes the right to exclude, and its legal scope should not and does not change depending on the device or method identified as infringing the patent.

For all these reasons, numerous courts, scholars, and judicial guides have recognized the value of early claim construction in patent litigation. *See, e.g.*, Peter S. Menell, et al., *Patent Case Management Judicial Guide* 5-5 (3d ed. 2016) (“A majority of courts have found that the most opportune time to hold the *Markman* hearing is midway through, or before the close of, fact discovery, and prior to expert discovery.”). The benefit of early claim construction also has motivated the most patent-active district courts to adopt local rules requiring an early claim construction. *Id.* at 2-4. In short, applying a new claim construction post-trial without additional argument or evidence is the anomaly.

3. The claim-construction mechanics. Claim construction typically occurs early in the case in order to facilitate a fair presentation of the relevant issues and

evidence. The *Markman* process concerns the type of relevant evidence, viewed through the lens of an ordinarily skilled artisan, as well as the procedure of gathering and analyzing the evidence to reach a final claim construction defining the legal right being litigated.

The Federal Circuit’s en banc decision in *Phillips* describes the type of evidence informing claim construction. Intrinsic evidence (the words of the claims, the teaching of the patent specification, and the patent’s drawings) is the primary evidence to consider when assessing how a person of ordinary skill in the art would understand a claim term. 415 F.3d at 1332.

Additionally, the prosecution history—the back and forth between the patent applicant and the USPTO examiner—likewise provides an evidentiary aid in interpreting the claims. Relevant prosecution-history-type evidence can also include post-grant review proceedings occurring after the patent grant, such as an IPR proceeding. An IPR is a statutory post-grant challenge. See 35 U.S.C. §§ 311-319; *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 267 (2016). During IPR proceedings, parties may take positions about how a person of ordinary skill in the art would understand a patent claim at issue.

There is also extrinsic evidence, which includes dictionary definitions, inventor testimony, expert testimony, and other documentary evidence probative of how a person of skill in the art would understand the terms. *Phillips*, 415 F.3d at 1318. *Phillips* reaffirmed that extrinsic evidence is generally secondary to intrinsic evidence. *Id.*

Procedurally, the claim construction (or *Markman*) process typically starts with the parties identifying disputed claim limitations that are relevant. They exchange proposed constructions of the disputed terms and detailed briefing. Particularly in complex matters, a

court conducts a *Markman* hearing, where parties can present argument and evidence, including expert testimony so the court can evaluate witness credibility. *Markman*, 52 F.3d at 981.

Not every claim term requires an explicit construction. *O2 Micro Int'l, Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). For some claim limitations, the parties may not dispute that the accused infringing device meets a given limitation. For others, the parties will agree that the ordinary meaning applies as the accepted construction. *Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (holding ordinary meaning should apply unless there is an explicit definition or disavowal).

After the court receives complete briefing and evidence, the court rules on the meaning of the disputed claim terms based on the intrinsic and extrinsic evidence. Additionally, like canons of statutory interpretation, canons of claim interpretation can guide a court to the correct interpretation. Kristen Jakobsen Osenga, *Linguistics and Claim Construction*, 38 Rutgers L.J. 61, 105-07 (2006) (discussing canons of claim construction, including claim differentiation).

One fundamental precept in claim interpretation is the doctrine of prosecution disclaimer, which limits claim scope to exclude subject matter surrendered during prosecution. *Schriber-Schroth Co. v. Cleveland Trust Co.*, 311 U.S. 211, 220-21 (1940); *Roemer v. Peddie*, 132 U.S. 313, 317 (1889); *Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1359-62 (Fed. Cir. 2017). Establishing prosecution disclaimer is a “demanding standard.” *Avid Tech., Inc. v. Harmonic, Inc.*, 812 F.3d 1040, 1045 (Fed. Cir. 2016). For disclaimer to attach, the disavowal must be “both clear and unmistakable”; it does not apply when statements and amendments have alternative meanings or are merely consistent with a given construction. *Id.*

With the claim construction in hand, a court can then proceed with adjudicating the patent-infringement action and asserted defenses.

B. Changing Claim Construction After the Close of Evidence Violates Settled Rules

Unsurprisingly, instances will arise where a claim construction needs to be changed, adjusted, or clarified mid-course or even very late in the patent-litigation proceeding. The proper approach when that happens is to afford the parties the proper notice and an opportunity to address the changed construction.

Many Federal Circuit cases recognize that the parties must be involved in claim construction of disputed terms, and the parties must be provided notice and opportunity to present argument and evidence about the correct construction. *See, e.g., Wi-LAN, Inc. v. Apple, Inc.*, 811 F.3d 455, 465-66 (Fed. Cir. 2016) (holding that while a court may elaborate post-trial on a meaning inherent in an existing construction, a court may not use a post-verdict reconstruction that changes claim scope and undermines a party's tried case); *TNS Media Research, LLC v. TiVo Research & Analytics, Inc.*, 629 F. App'x 916, 939 (Fed. Cir. 2015); *Eon-Net LP v. Flagstar Bancorp.*, 249 F. App'x 189, 195 (Fed. Cir. 2007) ("[W]here a district court construes a patent without following the necessary steps, we should remand the matter for further proceedings so that the district court can follow the appropriate steps."); *Hewlett-Packard Co. v. Mustek Sys., Inc.*, 340 F.3d 1314, 1321 (Fed. Cir. 2003) ("[I]t is too late at the JMOL stage to ... adopt a new and more detailed interpretation of the claim language and test the jury verdict by that new and more detailed interpretation.").

Those cases recognize that accepted norms, established through years of this Court's *Markman* decisions as well as other principles, require fair notice to

litigants when the claim construction is changed mid-stream. *Wi-LAN*, 811 F.3d at 465-66. A new claim construction fundamentally changes the scope of the legal right being litigated, and a shifting legal right cannot be fairly adjudicated.

The significance of changing claim constructions is similarly embedded in the Federal Circuit's waiver/forfeiture jurisprudence. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1370-71 (Fed. Cir. 2002) ("Our precedent makes clear that in the context of claim construction, a waiver may occur if a party raises a new issue on appeal, as by, e.g., presenting a new question of claim scope." (citing *Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1347 (Fed. Cir. 2001))). Just as it is unfair to ask the appeals court to rule on a new claim construction presented for the first time on appeal, it is equally unfair to expect a plaintiff or defendant to be bound by a new claim construction entered post-trial, post-verdict, and with no opportunity to respond.

II. The Federal Circuit's Conflicting Approaches

The Federal Circuit's body of cases has yielded a rudderless approach hinging on a meaningless distinction between a "new" claim construction, on the one hand, and a mere "clarification" or "elaboration," on the other. The standardless precedent obscures the fundamental premise that a settled claim scope, *i.e.*, a defined legal right, is necessary before parties close their evidence presentation and before the court or jury decides infringement, validity, and other dispositive issues.

As noted above, the Federal Circuit does, on occasion, correct errors when a trial court changes the construction too late in the game. *E.g.*, *Wi-LAN*, 811 F.3d at 464-65 (agreeing that "the district court's post-verdict addition of a complex multiplier requirement was a new claim construction," and improper at the JMOL stage). Even where the plain-and-ordinary-meaning construction

applies as “the construction agreed upon by the parties,” a court cannot materially change that construction after adjudication and apply a new construction in a dispositive manner. *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, 169 F.4th 1094, 1102-03 (Fed. Cir. 2026).

A distinct line of Federal Circuit precedent has created a carveout, however, for so-called claim-construction “clarifications” and “elaborations” that purportedly do not rise to the level of a “new” construction. In those instances, the appeals court minimizes the impact of the changed claim construction by characterizing it as a mere “elaboration” or “clarification.” The appeals court has never explained whether “elaboration” and “clarification” are conceptually identical, although dictionary definitions suggest some daylight between the two words’ meanings. *See, e.g.*, Elaborate, *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2020) (defining “elaborate” as “to expand something in detail” or “to add details to”); Clarify, *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2020) (defining “clarify” as “to make understandable” or “to free from confusion”).

For instance, in *Magnolia*, 169 F.4th at 1102, the district court changed from the plain and ordinary meaning and later interpreted the claim as requiring a separate “vent” and a separate “seal.” The Federal Circuit saw this as a “permissible clarification” of “what was inherent in the [plain-and-ordinary-meaning] construction.” *Id.*

In *Mformation Technologies, Inc. v. Research in Motion Ltd.*, 764 F.3d 1392, 1395 (Fed. Cir. 2014), the district court clarified its previous claim construction of the “establishing a connection” limitation to mean that the sub-step must be completed before the “transmitting the contents of the mailbox” sub-step can commence. The Federal Circuit characterized the changed construction

as “at most clarify[ing] its previous construction that was already present in the jury instructions.”

Similarly, in *Cordis Corp. v. Boston Scientific Corp.*, 658 F.3d 1347, 1355-57 (Fed. Cir. 2011), the district court construed the term “undulating” to mean having “a crest and a trough.” Later the district court applied a “post-verdict elaboration” that required multiple waves that was not infringed by a “U shape,” *i.e.*, two crests and one trough. *Id.* This “post-verdict elaboration” was, according to the Federal Circuit, only a clarification of the construction’s “inherent” meaning.

More recently, in *Wyeth LLC v. AstraZeneca Pharmaceuticals LP*, 180 F.4th 1371, 1378-79 (Fed. Cir. 2026), the court allowed a post-verdict “elaboration” of the pharmaceutical term “unit dosage”—about a single dosage form—to also require that the “unit dosage” produces the desired therapeutic effect in the patient.

These and similar decisions provide no standard by which one can discern between (a) a mere “clarification” or “elaboration” that does not require notice and an opportunity to respond and (b) a “new” construction that does. This standardless approach is particularly problematic when a “clarification” or “elaboration” effects a change that the parties did not anticipate—especially in instances, as here, where the “clarification” or “elaboration” completely flips the infringement outcome, wiping out a billion-dollar judgment of liability on the same fact record with respect to the infringement analysis.

Under any label, post-trial modification of claim terms is not appropriate when the party cannot meaningfully respond to the new claim understanding. Due process requires notice and fair opportunity to present evidence with the benefit of the court’s claim construction.

III. The Affirmance of Noninfringement is Erroneous

The Federal Circuit’s affirmance of noninfringement is wrong. Centripetal had no fair notice and no opportunity to address dispositive departures from the previously agreed-upon plain-meaning constructions. The meaning of the claim terms was the settled legal premise of a completed twenty-two-day trial and a final judgment. The claim constructions remained applicable after the Federal Circuit’s vacatur. Pet.App. 168a. The new post-trial claim constructions were determined without notice, *Markman* briefing, or an opportunity to be heard.

A. The Federal Circuit Mischaracterized the Substantial Claim-Construction Shift

The Federal Circuit failed to see the significant material change effected by the new construction of the ’193’s “particular type of data transfer” limitation, as compared to the earlier plain-meaning construction. The court instead vaguely referenced “any shift in the original construction,” but that characterization is a manifestation of the Federal Circuit’s rudderless approach to post-adjudication changes in claim constructions.

Here, the district court’s “clarification” in its Remand Order and later “further clarification” in the Reconsideration Order underscore that material difference with the new construction. It departed significantly from the earlier plain-meaning construction, as used during the trial and in Judge Morgan’s infringement ruling. Pet.App. 218a-221a.

The district court’s first explicit construction of “particular type of data transfer” (in the Remand Order) required “filtration of a subset of packets sent between [endpoint] computers in two different networks.” Pet.App. 88a-90a. Then, in the Reconsideration Order, the court changed again with its “further clarification.”

Pet.App. 32a. There, the court stated that the limitation “refers to the specific technique, or method, associated with the data transmission.” Pet.App. 35a. The initial “clarification” and the subsequent “further clarification” worked to drastically move the legal boundary twice, so much so that the twice-changed claim construction was determinative in overruling the willful infringement finding.

The substantial claim-interpretation change is also reflected in the district court’s need to rely on the new POPR Exhibit, admitted over Centripetal’s objection. The POPR Exhibit was the keystone to the district court’s new construction (later accepted by the Federal Circuit), stemming from the new application of prosecution-disclaimer doctrine. But neither the Federal Circuit nor the district court applied the “clear and unmistakable surrender” standard required by *Aylus Networks*, 856 F.3d at 1359-62. See Pet.App. 15a-16a; Pet.App. 91a.

Ultimately, Judge Hanes viewed the Rule 63 hearing as “day one of the trial,” which it was not. Dk.No.750 at 11. She also believed that the court was “permitted to revisit claim construction,” which created tension with the intact *Markman* Order. *Id.* In the end, the district court did in fact “revisit claim construction,” but in a manner that does violence to *Markman*’s objective of claim-construction uniformity as well as settled procedures to ensuring fair process when adjudicating patent rights.

Here, the Federal Circuit’s decision, as in its other decisions, expresses little about the claim-construction departure, well captured by its “any shift in the original construction” remark. Pet.App. 17a. Overlooking the magnitude of the “shift in the original construction” is a manifestation of the appeals court’s quagmire of cases advancing a meaningless distinction between a “new” construction and so-called “clarifications” and “elaborations.”

**B. Centripetal Had No Notice of or
Opportunity to Respond to the New Claim
Constructions**

Centripetal did not receive notice of the new interpretation of “particular type of data transfer” for the ’193 patent, until after the Rule 63 hearing. Neither party asked for an explicit construction of the “particular type of data transfer” limitation. At most, the district court expressed interest in reconsidering the claim constructions, despite the *Markman* Order remaining in force after the remand. *See* Dkt.No.750 at 11. Despite its expressed interest to reassess claim scope, the district court did not ask for any *Markman* briefing, as is standard, accepted practice. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314-15 (1950) (“The fundamental requisite of due process of law is the opportunity to be heard.”).

The Federal Circuit dismissed the lack of notice in a single paragraph. Pet.App. 16a-17a. The terse ruling embodies legal error on what constitutes sufficient notice in view of such a radically changed claim construction. *Eon-Net LP*, 249 F. App’x at 193-95 (vacating where “Eon-Net did not have notice that the district court would sua sponte grant summary judgment on issues of claim construction”).

First, the Federal Circuit did not account for the parties’ acceptance of the plain-meaning construction throughout the litigation, as opposed to the later new construction adopted after the Rule 63 hearing. That the court and the parties agreed to use the plain-meaning construction for three years is the antithesis of being on notice about a possible subsequent change after the Rule 63 hearing. If anything, Centripetal reasonably expected that the same plain-meaning construction applied by Judge Morgan would likewise be applied by Judge Hanes.

Second, the Federal Circuit relied on evidence that cannot establish fair notice. Two of the cited documents were filed in 2023 during the Rule 63 proceeding, long after the 2020 trial. *See* Pet.App. 16a-17a. The court also relied on Cisco’s counsel’s closing argument in the June 2023 Rule 63 hearing. Of course, closing argument is far too late to advance a new claim construction.

The Federal Circuit also relied on *Hamilton Beach Brands, Inc. v. freal Foods, LLC*, 908 F.3d 1328 (Fed. Cir. 2018), and *Google LLC v. EcoFactor, Inc.*, 92 F.4th 1049 (Fed. Cir. 2024). Neither case is remotely similar. In *Hamilton Beach*, the party had a chance to respond in its reply brief to a new claim construction proposed by the patent owner in its opposition. 908 F.3d at 1338. In *Google*, both parties recognized that “the core issue related to the scope and boundaries” of the disputed limitation. 92 F.4th at 1057. Neither case authorizes a district court to adopt and apply a new claim construction after a case has been tried.

Further, Centripetal explicitly informed the court that it “would like to recall some witnesses based upon the claim construction issue” if the court were to adopt a new construction adverse to Centripetal. *See, e.g.*, Dkt.No. 754 at 432-37. Because the request was denied, *id.*, the expectation was that the Rule 63 proceeding would use the same plain-meaning claim constructions applied by Judge Morgan.

The Federal Circuit’s legal error was not harmless for several reasons. Centripetal could have shown that the POPR Exhibit did not constitute a clear and unmistakable surrender under Federal Circuit precedent. Additional evidence would show that the new claim construction was wrong based on, for example, a correct reading of the patent specification and a correct application of the claim-differentiation doctrine. Had the Federal Circuit applied the law correctly and not accepted

the post hoc claim-construction change, then infringement should have been found, consistent with Judge Morgan’s ruling.

C. The Court Committed Similar Error for the ’806 Patent

The Federal Circuit’s decision repeated a similar lack-of-notice error when affirming noninfringement of the ’806 patent. The appeals court affirmed the changed construction of the term “responsive to being signaled,” Pet.App. 18a-19a, that, after the Rule 63 hearing, became determinative of the district court’s non-infringement ruling, Pet.App. 105a-116a. All evidence relevant to infringement of the ’806 patent during the Rule 63 proceeding was the same evidence in the 2020 trial. The controlling difference was Judge Hanes’s late-breaking construction of “responsive to being signaled,” effected without *Markman* briefing or a hearing.

In its Remand Order, the district court applied a new express construction for the first time, requiring that the rule-swap signal be the but-for, *i.e.*, sole, cause of *each* enumerated step in the claimed sequence for updating to the second rule set. *Id.* That narrowing construction eliminated Centripetal’s entire infringement theory and thus foreclosed Centripetal’s ability to prove that Cisco’s products meet the “responsive to being signaled” limitation. The new claim construction was the only difference, the factual evidence being identical.

The ’806 patent is the “Rule Swap” patent. The invention enables the network device to swap one rule set with a second rule set, “on the fly without bringing down the network.” Dkt.No.750 at 42. Evolving threat conditions may warrant the implementation of new rules that are more effective at addressing network threats. *Id.*

The rule-swap claim provides the steps employed for seamlessly updating to the second rule set. The claim includes five enumerated steps, as set forth below.

- [1] cease processing of one or more packets;
- [2] cache the one or more packets;
- [3] reconfigure to process packets in accordance with the second rule set;
- [4] signal completion of reconfiguration to process packets in accordance with the second rule set;
- and
- [5] responsive to receiving signaling that each other processor ... has completed reconfiguration ..., process, in accordance with the second rule set, the one or more packets.

Pet.App. 7a-8a. The five steps accomplish the update to the second rule set, which occurs “responsive to being signaled to process packets in accordance with the second rule set.” *Id.*

Using Centripetal’s plain-and-ordinary-meaning construction, Judge Morgan found that Cisco’s products met this limitation because Cisco’s products are configured to perform the five steps once the signal indicates that a second rule set should be implemented. Pet.App. 316a-319a. Absent the signal to switch to the second rule set, the Cisco products do not perform the five-step process set forth in the ’806 claim.

Cisco argued that, in its products, the first two steps (“cease processing” and “cache”) occur all the time, even outside the context of being responsive to the rule-swap signal. But simply because the first two steps may occur in Cisco’s default configuration does not avoid the “responsive to being signaled” limitation—unless the claim is narrowed to require that the rule-swap signal is the only reason the device performs the first two steps.

Cisco’s “responsive to being signaled” argument (adopted by the court as the predicate to the noninfringement finding) necessarily reinterpreted the claim as requiring the causal connection between the rule-swap signal and all five enumerated steps. In other words, even though the rule-swap signal is the reason why the Cisco products perform the five enumerated steps, the district court imposed a new construction that excluded that activity from infringement (in contrast to Judge Morgan’s earlier ruling).

Beyond the apparent change in claim interpretation, the new interpretation is wrong. The text, grammar, and structure of the claim do not impose any requirement that the swap signal must be the causative predicate for each of the five enumerated steps. To wit, when the five steps occur together in sequence, as a whole, as a result of the rule-swap signal, the claimed rule-swap sequence is performed, even if one or two of the enumerated steps occur in another process.

During the Federal Circuit oral argument, Judge Taranto noted that reading the five enumerated steps “as a single thing ... is obviously responsive because the signal triggers ... the sequence as a whole,” and that the dispute “is just a claim construction problem.” Oral Arg. 28:41-29:34. He also queried whether the “sequence as a whole” reading is “confirmed by the way ... the last step specifically adds the word ‘responsive’ ... and that’s missing from ... the ceasing step.” Oral Arg. 14:42-15:20. That view reflects a paradigmatic plain and ordinary reading of the term, based on standard English textual interpretation.

Equally important, there could not be waiver of Centripetal’s arguments about the plain meaning of the “responsive to being signaled” limitation because the arguments responded to precisely the same Cisco arguments Judge Morgan rejected in 2020. Pet.App.

316a-319a. Judge Morgan applied the plain-and-ordinary meaning construction in a manner consistent with Centripetal’s infringement case in both the 2020 trial and the Rule 63 proceeding. The subsequent about-face—on the factual finding of infringement to no infringement—is attributable solely to Judge Hanes’s narrowing construction requiring but-for causation. It is unclear how Centripetal could have forfeited its plain-meaning construction that prevailed at the first trial and then was rejected three years later.

Had the Federal Circuit and the district court applied the accepted plain-and-ordinary-meaning construction of “responsive to being signaled” correctly to the infringement-related facts (which were the same set of infringement facts from the 2020 trial), then Judge Morgan’s infringement ruling should have withstood the Rule 63 proceeding.

IV. The Federal Circuit’s Error is a Recurring Issue of Exceptional Importance

Disputes about fair notice and the opportunity to respond to late claim constructions arise frequently, and the Federal Circuit’s continued standardless rulings exacerbate the judicial landscape equally for patent owners and accused infringers. The Federal Circuit’s missteps are not isolated but follow from its failure to adequately respect the importance of the settled *Markman* process and associated procedural norms noted above.

1. Fair notice about the scope of an asserted patent claim is a fundamentally important issue in all patent cases. After all, “the name of the game is the claim.” *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) (quoting Judge Giles S. Rich’s famous phrase); *see also* Mark A. Lemley, *The Changing Meaning of Patent Claim Terms*, 104 Mich. L. Rev. 101, 101 (2005) (“The

claims of a patent are central to virtually every aspect of patent law.”).

It is critically important to ensure that any legal dispute—especially a patent dispute—is not decided based on moving definitions of the legal right. No fair judicial process condones moving-target adjudication. And because claim construction is so fundamental to every patent dispute, a shifting claim construction is anathema to the fair resolution of patent disputes.

2. The need for uniformity for such a fundamental patent-law issue is particularly acute. Clear patent-law rules promote investment, facilitate technology transfer, encourage competition through innovation, and strengthen the United States’s leadership in critical industries. Because patent law shapes decisions affecting countless innovators and billions of dollars in economic activity, the question presented is one of exceptional national importance. Without reasonable certainty about patent rights, the innovation-backed investments become susceptible to being coopted by infringers, free riders, and others who disregard the significant time and monetary resources needed to keep advancing innovation.

3. The Federal Circuit’s inconsistent treatment of late-construed patent claims, including after trial and verdict, is a recurring and significant hurdle to the fair adjudication of patent rights. Importantly, the question presented affects patent owners and accused infringers alike. Litigants asserting or defending against patent-infringement claims need an administrable rule that establishes what process is due when a court changes the claim construction during the course of the case. The sought-after relief does not favor those who favor strong patent rights. Nor does it favor those who believe that innovation is better advanced through other incentives. The Federal Circuit’s lack of an administrable rule acts as an equal-opportunity hurdle, impacting the business

expectations of companies that need patents to protect their research and investments and also of companies that compete and advance through other means.

V. The Case Is A Good Vehicle For Resolving The Question Presented

This case presents a clean vehicle to address the Federal Circuit's standardless precedent concerning when a late breaking, materially different claim construction requires a full and fair opportunity to respond to the new construction.

The non-infringement ruling by the court of appeals is predicated on a legal issue that, if resolved in Centripetal's favor, would grant Centripetal its sought-after relief. The construction of each claim limitation of each patent is outcome-determinative of the infringement question for each patent, as decided by the appeals court.

The issue has sufficiently percolated at the Federal Circuit. There is no indication that the appeals court is positioned to resolve the lack of a reasonable standard for assessing new claim constructions. The court's reliance on the distinction between a "new" construction and a so-called "elaboration" or "clarification" has been percolating for years.

Finally, the legal question has been preserved throughout the course of the litigation. Centripetal objected when the claim-construction issue first emerged at the Rule 63 hearing. Centripetal requested an opportunity to brief the issue and submit new evidence before the district court, and on appeal, it challenged the district court's application of new claim constructions, adopted without notice or *Markman* briefing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

MATTHEW J. DOWD
Counsel of Record
ROBERT J. SCHEFFEL
ELLIOT A. GEE
MORRIS D. YOUNG
DOWD SCHEFFEL PLLC
*1717 Pennsylvania Ave.,
NW
Suite 1025
Washington, DC 20006
(202) 559-9175
mdowd@dowdscheffel.com*

SEPTEMBER 2026