



Post-*Phillips* Cases Supplement

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Plain Meaning – *Purdue v. Endo*

- *Purdue Pharma v. Endo Pharma.*, 2006 U.S. App. LEXIS 2887 (Fed. Cir., Feb. 1, 2006):
 - ❖ Decision on rehearing:
 - vacated and remanded finding of inequitable conduct;
 - on cross appeal on infringement, affirmed trial court ruling of infringement
 - ❖ D.Ct. construed claims to require acceptable pain control for 90% of patients over a four-fold dosage range.
 - No express limitation in claim for this
 - D.Ct. said the “invention itself” was so limited

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- Parties:
 - ❖ Def't. Endo urged that the four-fold limitation was proper, that all other limitations of claim were met, but that evidence was insufficient to show it would use this limitation
 - ❖ Pltf. Purdue urged that it was error to import the four-fold limitation into the claims.
- Fed. Cir. ruled that claim construction begins with the claim language
- Trial court correctly rejected Endo's contention that claim term "controlled release" is a proper basis for this limitation. Such term should be given its customary and ordinary meaning – that oxycodone is released in a controlled manner over an extended time.

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- Nothing in the written description uses that “controlled release” term in a manner inconsistent with that ordinary meaning.
- Prosecution history:
 - ❖ Review it for prosecution history disclaimer: to see whether the patentee limited the meaning by making a clear and unmistakable disavowal of scope during prosecution
 - ❖ D.Ct. erred in finding such a disclaimer. Even though Purdue urged the “four-fold” feature, the statements are not a clear disavowal of claim scope.

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- ❖ Instead, this was a statement of a property of the formulation or a result of administering it.
- Without any specific claim language to interpret, the trial court impermissibly imported a limitation into the claims.
- The claims contain no such limitation, and Endo's non-infringement argument is therefore moot. Judgment of infringement affirmed.

Not Plain Meaning – *Curtiss-Wright Flow Control v. Velan*

- Appeal 05-1373 decided Feb. 15, 2006
 - ❖ Vacated and remanded a grant of prelim. inj.
- Patent concerns petroleum refining:
 - ❖ Claim 14. A coke drum bottom de-heading system comprising: ... an adjustable dynamic, live loaded seat coupled to said main body ...
 - ❖ D.Ct. rules that “adjustable” in claim 14 means that the bias force on the seat can be changed in a manner that is “not limited by any time, place, manner, or means of adjustment.”

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- D.Ct. acted reasonably, though erroneously:
 - ❖ Followed a logical path
 - ❖ First set forth the ordinary meaning of “adjustable”
 - ❖ Then decided that a narrower construction would be inconsistent with other claims, i.e. applied claim differentiation
 - ❖ Explained that a construction of “adjustable” that calls for the specific adjustment mechanism disclosed in the patent would be an impermissible narrowing.

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➤ D.Ct. errors:

- ❖ Too much emphasis on ordinary meaning “without adequate grounding of that term within the context of the specification of the ... patent.”
- ❖ Claim differentiation is a “limited tool of claim construction.”
- ❖ Specification is single best guide to meaning of a claim term. *AWH v. Phillips*.
- ❖ This patent specification associates adjustability of the seat with the critical aspect of the invention of not having to remove a head unit during operation.

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- Errors, ctd.
 - ❖ The spec'n. "consistently, and without exception, describes adjustment that occurs during operation of the de-header system."
 - ❖ D.Ct. construction finds no support in the spec'n.
 - ❖ The broad definition of the D.Ct. renders the term nearly meaningless.
 - ❖ Not a case of importing limitations because the word "adjustable" is already in claim 14 and must be construed.
- In light of the spec'n., the term means that the dynamic, live loaded seat can be adjusted *while the de-heading system is in use*.
 - ❖ In-use adjustability does not imply an adjustment mechanism.