

No. 26-392

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

**BRIEF FOR *AMICUS CURIAE*
US INVENTOR INC. IN SUPPORT
OF PETITIONER CENTRIPETAL
NETWORKS, LLC**

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QUESTION PRESENTED

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

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INTEREST OF AMICUS CURIAE¹

US Inventor, Inc. is an inventor-led and inventor-funded non-profit advocacy organization. We have approximately 80,000 members, consisting of independent inventors and the small businesses they founded, own, and operate. We seek to educate lawmakers, agencies, and courts on matters that affect our members, and participate as permitted in shaping and reforming those policies.

We are neither lawyers nor lobbyists, merely inventors who were harmed by unintended consequences of policies from the past and desire a better environment so that the next generation of inventors can flourish and help society. Our directors and volunteers would prefer to be tinkering in our garages or launching new products, but we have come to recognize that policymakers and courts benefit from our experiences and viewpoints as they make and apply patent law.

US Inventor was founded to support the innovation efforts of independent inventors, seeking reliable patent rights for developing our inventions, bringing those inventions to a point where they can be commercialized, creating jobs and industries, and promoting continued innovation. In short, we are proponents of the constitutional objective of securing to inventors the exclusive right to their discoveries in order to promote the progress of science and the useful arts. U.S. Const. art. I, § 8, cl. 8.

1. No counsel for a party authored this brief in whole or in part. No person or entity other than amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. The parties received notice per Rule 37.2.

Our members decide whether to develop, finance, license, and enforce inventions in reliance on the scope of their patent claims as courts construe them. Many have been forced to determine or litigate the scope of their patent rights, and to do so without certainty about what claim construction will govern the case once the evidence is presented. US Inventor has previously appeared before this Court on how claims should be construed. *See* Brief for US Inventor Inc. as Amicus Curiae in Support of Petitioner, *Akeva L.L.C. v. Nike, Inc.*, No. 20-863.

This petition asks whether a court may adopt a materially different claim construction after the evidentiary record has closed, without notice or an opportunity to respond. As an organization whose members lack the resources of most patent litigants, US Inventor has perspective to supply additional reasons, beyond those named by Petitioner, for why this Court's intervention is warranted.

SUMMARY OF THE ARGUMENT

A patent claim is the property line. Everything in a patent case is organized around where that line sits. This includes what discovery is taken, which experts are retained, what evidence comes in, which prior art matters. That is why courts construe claims early, and why the parties build their cases on the construction the court gives them. This case asks whether a court may redraw the line after the evidence has closed, without telling anyone beforehand, and without letting the owner say a word about it.

The Federal Circuit says yes, so long as the party who benefited from the redrawing had been arguing for it all along. That rule treats an adversary's advocacy as if it were the court's notice. It is not. Every claim-construction loser has been argued against; if hearing the other side's position were notice that the court might adopt it at a case's end, notice would never be lacking and the requirement would mean nothing. And the rule cuts both ways. It cut against Centripetal here. It will next cut against an accused infringer, which is why the question deserves an answer from this Court.

For the inventors US Inventor represents, the stakes are plain. They commit to inventing, financing, licensing, and enforcing on the strength of a claim as granted and construed. When the construction can move after the evidence is closed, they cannot price the risk, and investment in new ideas suffers. If a plaintiff with Centripetal's resources, a twenty-two-day trial, and a Markman order that stayed in force on remand cannot get notice and an opportunity to respond, small inventors cannot expect better.

The fix is modest and well within the ability of the district courts: a court that adopts a different claim construction from the one on which the case was tried must give the parties notice and a chance to be heard before it relies on it. Courts routinely do exactly that. The rule also avoids the unworkable line between a "new" construction and a mere "clarification" on which the Federal Circuit's cases now turn. The petition should be granted.

ARGUMENT

Imagine the shoe on the other foot. A first trial is held on a particular claim construction, and the court concludes that Cisco does not infringe. For reasons outside Cisco's control, Centripetal earns a mulligan and gets a rehearing before a new judge. The evidence is substantially the same. When the refreshed judgment issues, it finds Cisco liable for \$2.6 billion by revising the claim construction, with no advance notice that revision was coming and no opportunity for Cisco to argue against it. Would a reasonable appeals court vacate because Cisco was deprived of due process? Of course it would. It is staggering that Centripetal could not obtain the same relief when the same thing effectively happened to it.

Turn the hypothetical around and it is this case. Centripetal and Cisco agreed that the dispositive terms of the '193 and '806 patents would carry their plain and ordinary meanings, and the district court's Markman order reflected that agreement. Pet. 5. The case was then tried for twenty-two days on a record of more than 3,500 pages, with twenty-six witnesses and over 300 exhibits. Pet. 5. The court found willful infringement, Pet. 6, in a judgment the petition values at \$2.6 billion, Pet. 3. The Federal Circuit then concluded that the trial judge was required to recuse, vacated the judgment, and remanded to a new judge under Federal Rule of Civil Procedure 63, leaving the Markman order in place. Pet. 7-8; Pet. App. 9a. The new judge decided the case on the existing trial record. Pet. 9. Her decision found no infringement of either patent, on the strength of express constructions of the dispositive terms that no one had proposed, that no court had announced, and that Centripetal had never

been invited to address. Pet. 10-11, 26. Centripetal had told the court that, if it meant to adopt a new construction, Centripetal wished to recall witnesses and, “[a]t the very least,” to have a briefing schedule. Pet. 10. The court did not rule on that request at the hearing, Pet. 10, and later denied Centripetal’s motion to reopen the record, Pet. 12. The Federal Circuit affirmed. Pet. App. 1a-21a.

I. Claim-Scope Certainty Is the Foundation of Front-End Investment

A. A Patent Claim Is the Property Line from Which Everything in the Case Is Measured

The claims of a patent do for an invention what a deed does for land. They mark where the right begins and where it ends. A patent is a grant of the right to exclude, 35 U.S.C. § 154(a)(1), and the 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). Judge Rich put it more briefly: “the name of the game is the claim.” *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) (citation omitted); *see* Pet. 31.

Claim scope is not just one ordinary issue among many. It organizes the case. Infringement is measured against it. 35 U.S.C. § 271. Invalidity defenses must account for it. Pet. 16. It cabins discovery, determines which experts are needed and what they may say, and sets the boundary of admissible evidence. Pet. 16-17. As one judge observed, “to decide what the claims mean is nearly always to decide the case.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 989 (Fed. Cir. 1995) (en banc) (Mayer, J., concurring), *aff’d*, 517 U.S. 370 (1996).

The parties need to know the construction before they put on their proof, not after.

Imagine trying a trespass case in which the court may move the boundary line after the surveyors and the neighbors have testified about where the fence stands. No one would call that a trial. Yet that is the effect of a claim construction that shifts once the evidence is closed. The witnesses have testified to one line; the court decides on another. That is why courts and commentators favor early construction, and why the most patent-active districts require it by local rule. Pet. 17. Applying a new construction after trial, with no further argument or evidence, is the anomaly. *Id.*

Amicus has urged this Court before that patent claims should be read from their words, not from a later sense of what the inventor “actually invented.” *Akeva* Br. 2-5, 10. This case presents the procedural complement of that argument. Whatever methodology governs, it must be announced before the evidence is closed, not after.

B. Inventors and Those Who Fund Them Price Claim Scope Long Before Anyone Files Suit

Litigation is the end of the story, not the beginning. Long before a complaint is filed, inventors and their investors decide whether to invent, whether to build a company around the invention, whether to seek a license, whether to send a letter, and whether to sue. Each decision depends on what the claims are worth, and what the claims are worth depends on what they will be held to mean. Amicus made this point in *Akeva*: with settled claim

scope, patentees know when to start a pre-suit negotiation, industry actors know when and how to design around, and out-of-court resolutions become more likely. Akeva Br. 8-9. A patentee that finds a claim too narrow also knows it can seek reissue. *Id.* at 9 (discussing 35 U.S.C. § 251).

Uncertainty about methodology is bad enough. Amicus called it a “haze of meta-uncertainty.” Akeva Br. 3. Uncertainty about whether a construction already announced and relied on will survive trial is worse. The first is a risk that a patentee can at least research. The second is a risk that nobody can price, because it does not depend on the evidence, the claim language, or the law. It depends on whether a court, at some unspecified moment after the record closes, decides to read the claim differently. Each added contingency is a cost that must be built into every decision at the front end. The cost falls hardest on the inventor with a single patent and a single shot. Those who finance new ideas will demand a premium for that risk or will decline to take it. The petition makes the same point: clear rules “promote investment, facilitate technology transfer, [and] encourage competition through innovation.” Pet. 32.

Amicus does not argue that a Markman ruling is carved in stone. District courts revise interim rulings, and sometimes must. The petition itself recognizes that “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.” Pet. 20. The point is narrower. When the change comes after the evidentiary record has closed, and decides the case, the parties must be told and heard. *Id.*

II. Treating an Adversary's Persistent Advocacy as Notice of the Court's Reconsideration Compounds the Uncertainty

A. Notice of an Opponent's Position Is Not Notice That the Court Will Change Its Ruling

The Federal Circuit rejected Centripetal's notice argument on the '193 patent because Centripetal "had adequate notice of Cisco's claim construction positions." Pet. App. 16a. The court pointed to Cisco's post-trial proposed findings, its trial brief, and its argument at the Rule 63 hearing, each of which urged that the claims require two-stage filtering. Pet. App. 17a. From that it concluded that "any shift in the original construction does not create any unfairness" where the challenger "consistently put the patentee on notice of its interpretation." *Id.*

Notice of what an adversary wants is not notice of what the court will do. It is certainly not notice of future reconsideration of an existing court decision that frames the case, especially if packaged in a brief that does not have "Motion for Reconsideration" in the title. Every litigant knows the other side's position; that is why it is called an adversary. A lawyer who has tried a case on an agreed construction does not brief the contingency that the court will, three years later, abandon the construction it has already announced. Parties are entitled to assume that the court means what it said. Here, the parties agreed on plain meaning, Pet. 5; the Markman order survived the remand, Pet. 7-8; neither side asked for an express construction of "particular type of data transfer," Pet. 26; and the first express construction appeared in the December 2023 remand order, "for the first time in the

case’s three-year history.” Pet. 10. As to the ’806 patent, the narrowing reading the court adopted was the one Cisco had advanced at the 2020 trial, and which the first judge had rejected. Pet. 11. A theory that a court has rejected is not notice that the court will accept it.² The Federal Circuit also relied on filings made in 2023, long after the 2020 trial, and on closing argument at the Rule 63 hearing. Pet. 27. Closing argument is where parties ask the court to apply the law as announced, not where they learn that the law has changed.

The court of appeals also reached the ’193 construction on its own reading of the specification and of the patent owner’s preliminary response in an *inter partes* review, a document Cisco sought to add to the record three years after trial. Pet. App. 12a-16a; Pet. 8-9. It noted that Centripetal conceded at argument that it would lose under that construction. Pet. App. 16a. Amicus does not ask this Court to decide which reading of the ’193 specification is correct. The concession simply describes the construction’s effect, and that effect is why the missing opportunity matters. Appellate review of the intrinsic record is no substitute for a trial-court record developed with notice, particularly where, as the petition explains, construction can turn on subsidiary facts and on how post-grant statements should be understood. Pet. 16, 25, 27. A party told only after trial that the construction has

2. The court of appeals separately held that Centripetal forfeited its argument on the ’806 patent and, in any event, read the claim to require but-for causation. Pet. App. 18a-19a. Petitioner disputes the forfeiture holding. Pet. 30-31. Amicus takes no position on it. The ’806 patent matters here for a narrower reason: as with the ’193 patent, the dispositive construction appeared for the first time after the Rule 63 hearing. Pet. 28.

changed will, on appeal, be held to the consequences of a construction it never had a chance to contest.

B. The Federal Circuit’s Authorities Do Not Support Its Rule, and Its Logic Cuts Both Ways

The two decisions the Federal Circuit cited do not carry the weight the court placed on them. In *Hamilton Beach Brands, Inc. v. f’real Foods, LLC*, 908 F.3d 1328, 1338-39 (Fed. Cir. 2018), the party had a chance to respond in its reply brief to the new construction. In *Google LLC v. EcoFactor, Inc.*, 92 F.4th 1049, 1057 (Fed. Cir. 2024), both sides recognized that the scope of the disputed limitation was the core issue. Neither case authorizes a district court to adopt and apply a new claim construction after the case has been tried. Pet. 27.

The court’s own parenthetical is revealing. It reasoned that notice principles apply “even in the PTAB context (with more stringent procedural requirements than in district court cases).” Pet. App. 17a. Taken at face value, that describes an anomaly: a patent owner receives more procedural protection before an administrative panel than before a federal trial judge. Nothing in the Federal Circuit’s reasoning explains why the district court, where the case is tried and the judgment entered, should demand less.

The Federal Circuit’s approach hurts patentees and accused infringers alike. Run it through the earlier-discussed hypothetical where Centripetal benefits, but Cisco suffers a post-hearing claim construction edit that made it newly liable for \$2.6 billion. In that case Centripetal might have argued all along for the broader construction received (via late reconsideration) only after the evidence

closed and without any notice. Under the Federal Circuit's reasoning, Cisco would then have been on notice that the court might adopt it, and the \$2.6 billion judgment would stand. Almost no one would accept that result. A rule that would be rejected out of hand when applied when the shoe is on the other foot is one this Court should not let stand.

C. Small Patentees Cannot Brief Every Contingency in Which a Court Might Revisit a Settled Ruling

Centripetal tried its case over twenty-two days on a record of more than 3,500 pages. Pet. 5. It had a Markman order that stayed in force through vacatur and remand. Pet. 7-8. If a patentee with that record and that effort cannot obtain notice and an opportunity to respond when a court rewrites the construction after trial, an independent inventor whose invention has been trespassed has no reason to expect that she can.

Inventors read results like these, and they draw conclusions from them. The first appeal set aside a judgment of this size because the trial judge's spouse owned Cisco stock worth less than \$5,000. Pet. 3, 7; Pet. App. 9a. The second appeal affirmed a reversal of the result on substantially the same record, after a changed construction on which the patent owner had never been heard. Pet. 3, 12-13. Amicus does not suggest that any judge acted in bad faith. But an inventor watching a judgment of this size undone, once for a reason unrelated to the merits of the evidence and once for a reason about which the owner was never heard, may be forgiven for concluding that winning at trial is not winning. That conclusion, repeated across a community of inventors, is itself a cost to the system that depends on them.

A small patentee's costs are also different in kind. A second trial, a second round of experts, or a second appeal is an ordinary expense for a large company and an existential one for an independent inventor. A rule requiring patentees to brief every conceivable contingency, including the contingency that the court will abandon a construction it has already announced, is a rule that only the best-funded litigants can follow.

III. The Remedy Is Modest, Administrable, and Well Within the Capability of District Courts

A. The Rule: Notice and an Opportunity to Respond Before a Different Construction Is Applied

The rule Amicus supports is the one the petition seeks: a court that adopts a different claim construction from the one on which the case was tried must give the parties notice and an opportunity to respond before it relies on that construction. Pet. i, 14-15. Notice need not be elaborate. It can be an order stating that the court is considering a different reading, followed by short briefs, and, where the new reading may turn on evidence, or may affect what evidence is germane, an opportunity to supplement the record (and maybe take discovery beforehand). What the rule forbids is the surprise.

B. District Courts Already Have the Tools

Nothing in the proposed rule asks district courts to do what they cannot do. The Rule 63 proceeding in this case already included trial briefs from each side, proposed findings of fact and conclusions of law, a hearing, and a

technology tutorial from each side. Pet. App. 9a-10a. A short round of claim-construction briefing would have added days to that process, not months. Centripetal asked for as much. Pet. 10. District courts routinely run the Markman process of exchanging proposed constructions, receiving briefs, and, in complex cases, holding a hearing at which the parties may present argument and evidence. Pet. 18-19.

Some earlier Federal Circuit decisions recognized the principle. *See* Pet. 16 (discussing *Adnexus Inc. v. Meta Platforms, Inc.*, 160 F.4th 1216, 1222 (Fed. Cir. 2025), which permits claim construction at the motion-to-dismiss stage only if the parties receive appropriate notice and an opportunity to be heard); Pet. 20-21 (discussing *Wi-LAN, Inc. v. Apple, Inc.*, 811 F.3d 455, 464-66 (Fed. Cir. 2016), and *Hewlett-Packard Co. v. Mustek Systems, Inc.*, 340 F.3d 1314, 1321 (Fed. Cir. 2003), which reject post-verdict redefinition of claim scope); Pet. 26 (discussing *Eon-Net LP v. Flagstar Bancorp.*, 249 F. App'x 189, 193-95 (Fed. Cir. 2007), which vacated where the patent owner had no notice that the court would resolve claim construction *sua sponte*); Pet. 22 (discussing *Magnolia Medical Technologies, Inc. v. Kurin, Inc.*, 169 F.4th 1094, 1102-03 (Fed. Cir. 2026), which holds that a court cannot materially change an agreed plain-meaning construction after adjudication). The petition asks this Court to resolve the now-percolated intra-circuit split with a reinforced and emphatic instruction for the Federal Circuit to respect due process rights, by enforcing proper district court notice.

The rule also rests on a principle that has no patent-law exception: “The fundamental requisite of due process of law is the opportunity to be heard.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950);

see Pet. 26. The meaning of a claim is the meaning of a property right. A court may not change that meaning for a party who has not been heard.

C. A Notice Rule Avoids the Unworkable Line Between “New” and “Clarified” Constructions

The Federal Circuit’s cases now turn on a distinction between a “new” construction, which requires notice, and a mere “clarification” or “elaboration,” which does not. Pet. 22-24. The petition collects the results: a plain-meaning construction “clarified” to require a separate vent and a separate seal, *Magnolia*, 169 F.4th at 1102; a connection step clarified to require completion before transmission begins, *Mformation Technologies, Inc. v. Research in Motion Ltd.*, 764 F.3d 1392, 1395 (Fed. Cir. 2014); a “post-verdict elaboration” of “undulating” to require multiple waves, *Cordis Corp. v. Boston Scientific Corp.*, 658 F.3d 1347, 1355-57 (Fed. Cir. 2011); and a “unit dosage” elaborated to require a therapeutic effect, *Wyeth LLC v. AstraZeneca Pharmaceuticals LP*, 180 F.4th 1371, 1378-79 (Fed. Cir. 2026). *See* Pet. 22-23. As the petition explains, those decisions supply no standard for telling the two categories apart, even though an “elaboration” can flip the outcome. Pet. 23.

A notice rule makes the distinction unnecessary. The district court need not decide whether a change is “new” or merely “clarifying.” It need only ask whether the change could matter to the outcome, and, if so, tell the parties and hear from them. A judge who is confident that a construction is a true clarification loses nothing by saying so in an order and inviting a short response.

A judge who is wrong about that has avoided an error that no appellate court could otherwise detect.

D. The Rule Protects Patentees and Accused Infringers Alike

The rule that Amicus supports does not favor patent owners. As the petition says, “[t]he 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.” Pet. 32. It would protect an accused infringer in the same way. The opening hypothetical shows as much: the party that would be heard is whichever party stands to lose from the new reading. Amicus’s members are patent owners, but the rule they ask for is the rule they would want if they were on the other side of the case. That is a fair test of whether a rule is a rule at all.

CONCLUSION

“The name of the game is the claim.” *Hiniker*, 150 F.3d at 1369. But a game in which the rules can be rewritten after the final whistle is not a game that anyone can plan to play. Inventors invest on the strength of the claim as granted and construed. They are entitled to know that the construction on which their case was tried will not change after the evidence is closed without their being told and heard. For the reasons above and in the petition, this Court should grant certiorari and hold that a change in claim construction after the evidentiary record is closed requires notice and an opportunity to respond.

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