

TERLEP V. THE BRINKMANN CORP.: CLAIM CONSTRUCTION

In a recent case applying the principles of *Phillips v. AWH Corp.* (03-1269, -1286) in construing claims of a patent, the CAFC in *Terlep v. The Brinkmann Corp.*, (04-1337), rejected a patentee's argument to construe "clear" as meaning "transparent" because a dictionary definition lists "transparent" and "translucent" as synonyms. The CAFC noted that the same dictionary set forth a distinction between transparent and translucent. Furthermore, the patent specification and prosecution history of the patent at issue distinguished between transparent and translucent materials. The specification indicated that the patentee understood the term "clear" to mean "the ability to transmit light without diffusion or scattering." Additionally, the patentee amended the claim to add "clear plastic..." to overcome prior art that diffuse light output. The CAFC affirmed a district court interpretation of the claim term "clear" to mean "transparent" and not "translucent" by giving deference to the meaning of "clear" as evident from the specification and the prosecution history.

This case highlights the principles of *Phillips v. AWH Corp.* (03-1269, -1286), namely, that extrinsic evidence is "less significant than the intrinsic record in determining the legal operative meaning of claim language." *Id.* at *29.

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