



## 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



## *Purdue v. Endo - 2*

- 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.

## *Purdue v. Endo - 3*

- 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.

### *Purdue v. Endo - 4*

- ❖ 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."

## *Curtiss-Wright v. Velan - 2*

- 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.

## *Curtiss-Wright v. Velan - 3*

- 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.

## *Curtiss-Wright v. Velan - 4*

- 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.