

The University of Texas School of Law

26th Annual Advanced Patent Law Institute

RECENT DEVELOPMENTS IN CLAIM CONSTRUCTION

November 4, 2021
Kenneth R. Adamo

Law Office of KR Adamo
360 W Illinois, Apt 620
Chicago, IL 60654
kradamo23@gmail.com

* Member, Illinois, New York, Ohio and Texas Bars. This presentation reflects only the present considerations and views of the author, which should not be attributed to Law Office of KR Adamo or any of his or its former or present clients. © 2021 Kenneth R Adamo . All Rights Reserved.

1

Surfactant/Solubilizer: What does “/” mean?

2

Bracco Diagnostics Inc v. MAIA Pharmaceuticals, Appeal
No. 2020-1387. slip op(Fed Cir. Dec 17, 2020)

We thus conclude that the district court correctly construed
the backslash in surfactant/solubilizer to mean “and” or “or.”

Slip op. at 18.

Timing claim construction

1. §101

Claim construction required before §101 inquiry made

Open Text Corp.v. Hyland Software Civil Action no. 8-20-CV-02116 (CD Cal May 28,, 2021)
Motion for judgment on the Pleadings CFRCiv. P 12(c))

Blue Younder Group Inc v. Kinosis Inc et al., Civil Action, No. 3-20-cv-03636 (ND Tex. May
17, 2021), Motion to Dismiss-Failure to State a Claim (FRCiv. P. 12(b)(6))

Cardionet LLC et al. v. Info Bionic Civil Action No. 1-17-cv-10445 (D.Mass April 30, 2021),
Motion for Summary Judgement

Moxchange LLC v. Ale USA Inc Civil Action No. 1-20-cv-01123 (D.Del March 18, 2021),
Motion to Dismiss-Failure to a State Claim (F.R. Civ.P. 12(b)(6)).

Timing claim construction cont'd

Ficep Corp. v. Peddinghaus Corp.: Civil Action No. 1-19-cv-0994 (P.Del Jan 26, 2021), Motion to Dismiss - Failure to State a Claim (FR Civ. P. 12(b)(6)).

2. Motion to Dismiss for Failure to State a Claim (F.R.Civ. P. 12(b)).

Claim construction required before motion to dismiss for failure to state a claim.

Kirsch Research & Development LLC. v. Blueline Corp., Civil Action No. 6-20-cv-00326 (WD Tex. July 19, 2021), ([Defendant] “ask the Court to engage in pre-*Markman* claim construction and resolve that construction in its favor, this is premature.”(page 8)).

5

Timing claim construction cont'd

Kirsch Research & Development LLC. v. Intertape Polymer Corp., Civil Action No. 8-20-cv-01982 (MD Fla Dec 15, 2020)

3. Motion for Judgment on Pleading (F.R. Civ. P 12 (c))

Claim construction required before motion on the pleadings

Kove FO, Inc. v. Amazon Web Service Inc., Civil Action No. 1-18-cv-08175 (N.D. Fla March 26, 2021)

4. Motion for Summary Judgement

Claim construction required before motion for summary judgement

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Recent Developments in Claim Construction

Also available as part of the eCourse

[2021 Advanced Patent Law \(Austin\) eConference](#)

First appeared as part of the conference materials for the
26th Annual Advanced Patent Law Institute session

"Recent Developments in Claim Construction"