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# RECENT DEVELOPMENTS IN CLAIM CONSTRUCTION

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**Surfactant/Solubilizer: What does “/” mean?**

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*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)).

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## **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**

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