



UNIVERSITY OF  
MARYLAND  
SCHOOL OF LAW

**PATENT LAW  
UPDATE**

***Inverness Med.  
Switzerland  
GmbH  
v.  
Princeton  
Biomeditech  
Corp.***

No. 01-1188  
Federal Circuit  
Oct. 31, 2002

***“Even where  
the ordinary  
meaning of the  
claim is clear,  
[a] broader  
definition may  
be disclaimed  
. . . where the  
examiner  
adopts a  
narrow  
definition and  
the applicant  
does not  
object.”***

On October 31, 2002, the Federal Circuit vacated and remanded the district court’s summary judgment that Princeton did not infringe U.S. Patents No. 5,622,871, No. 5,602,040, and No. 5,656,506. The patented technology related to analytical testing devices such as those to test a woman’s urine for the presence of human chorionic gonadotropin, a protein indicative of pregnancy. The Federal Circuit stated:

The sole issue of claim construction here is the proper interpretation of the phrase “mobility of said labelled reagent within said test strip is facilitated by . . . a material comprising a sugar, in an amount effective to reduce interaction between said test strip and said labelled reagent.” The parties argue for two different definitions of the term “mobility.” . . . The parties here do not argue that the term “mobility” has an established specialized meaning in technical dictionaries, encyclopedias, or treatises of the relevant field of art, and we agree that “mobility” has no such specialized meaning. Accordingly, standard dictionaries of the English language are the proper source of ordinary meaning of the phrase.

We may look, therefore, to the dictionary definition of the claim term “mobility” as of the date the patents issued. As with most words, the standard dictionaries offered multiple definitions. “[W]here there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meaning.” Here, our examination of the available definitions and the specification suggest that there is only one relevant definition, namely “the quality or state of being mobile: the capacity or facility of movement: MOVABILITY.”

[N]othing in the remainder of the claim language that introduces an ambiguity. [C]onsidering the language of the claim as a whole and the use of the term in other claims, the term “mobility” is not ambiguous, but rather encompasses both release and migration. [T]he general rule that the ordinary meaning of an unambiguous claim term controls is subject to two limitations. First, “a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification . . . .” Second, “[e]ven where the ordinary meaning of the claim is clear, it is well-established that ‘[t]he prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution.’” A broader definition may be disclaimed, for example, where the examiner adopts a narrow definition and the applicant does not object.

[The prosecution history shows no] clear and unambiguous disclaimer of a claim scope that would cover mobility after release as required to deviate from the ordinary meaning of the claim recitation. . . . Because the plain meaning of the unambiguous recitation “mobility . . . is facilitated” is not contradicted by either the specification or prosecution history, that meaning must control. Accordingly the disputed phrase means “the capacity to make movement easier.”