

## Familial Patent Applications Addressing Common Subject Matter Are Treated As Intrinsic Evidence for Claim Construction

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*E.I. Du Pont de Nemours & Co. v. Unifrax I LLC*, No. 2017-2575 (Fed. Cir. Apr. 17, 2019)

A patent owner sued an accused infringer over a patent relating to thermal and acoustic insulation in aircrafts. At trial, a jury found infringement and that the asserted claims were not invalid. The Federal Circuit affirmed.

The accused infringer appealed the district court's construction of claims requiring that a layer of insulation comprise platelets in an amount of "100% by weight." The Federal Circuit adopted the district court's construction, which it found supported by the intrinsic evidence. In particular, the Federal Circuit relied on the patent-in-suit's parent application as intrinsic evidence. The Federal Circuit reasoned that the parent application has a familial relationship to the patent-in-suit, was cited during prosecution, and addresses common subject matter. Even though the cited language of the parent application was removed when the patentees filed the continuation-in-part application leading to the patent-in-suit, the patentees demonstrated the same understanding of "100% by weight" in the patent-in-suit. Based on this construction, the Federal Circuit found that substantial evidence supported the jury's infringement verdict.

The accused infringer further argued that there was insufficient evidence to support the jury's verdict of no anticipation by the prior art. The dispute turned on whether the patentees could predate a public use of the invention by showing prior conception and diligence in reduction to practice with sufficient corroborating evidence. The Federal Circuit found that the inventors did not need to present independent corroborating evidence for every aspect of conception and reduction to practice. Instead, the law requires only that the corroborating evidence support the credibility of the inventors' testimony. Applying a "rule of reason" analysis, the Federal Circuit found that the evidence in its totality supports the jury's finding that the inventors' testimony was sufficiently corroborated. [A copy of the opinion can be found here](#)

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