

Judge Albright Invalidates Claims for Indefiniteness

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On May 24, 2022, in *U.S. Well Servs., Inc., et al. v. Halliburton Co., et al.*, Judge Albright granted Defendants' Motion for Partial Summary Judgment of Invalidity for claims that include a term construed as indefinite by the Court.

On April 15, 2021, plaintiff U.S. Well Services sued Halliburton and Cimarex for infringement of seven patents relating to e-fracking, or the use of electric pumps in the hydraulic fracturing stage of oil and gas extraction. A *Markman* hearing was held on January 4, 2022, and Judge Albright issued an Order on January 17, 2022, finding the term "high pressure" indefinite.

Patent claims must particularly point out and distinctly claim the invention under 35 U.S.C. § 112(b). A claim that fails to inform those skilled in the art about the scope of the invention with reasonable certainty fails § 112(b) and is invalid as indefinite. Citing *Liberty Ammunition, Inc. v. United States*, 835 F.3d 1388 (Fed. Cir. 2016), the Court noted that terms of degree are problematic if their baseline is unclear to those skilled in the art. Judge Albright found the intrinsic evidence did not provide guidance that would clarify the meaning of "high pressure" or provide a baseline to allow those skilled in the art to differentiate a pump that is "high pressure" from a pump that is not.

Because the term "high pressure" failed to inform, with reasonable certainty, those skilled in the art about the scope of the invention, Judge Albright found all claims containing the term invalid for indefiniteness. This rendered indefinite certain independent claims across five of the seven asserted patents, and those claims depending therefrom.

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