In January 2015, the Supreme Court decided *Teva Pharmaceuticals, et al. v. Sandoz, Inc.*, clarifying the standard for appellate court review of patent cases. For nearly 20 years, it has been a settled principle in patent law that claim construction is a question for the judge, not the jury. However, the question remained: what standard of review should appellate courts give claim construction decisions in district courts? Since nearly every patent suit involves a *Markman* hearing—where a district court judge determines the meaning of the key terms in a patent claim—the *Teva* decision will affect many appealed patent suits. *Teva* provides that the Federal Circuit must apply a "clear error," not a *de novo*, standard of review to a district court's resolution of factual matters in claim construction decisions.

Generally, review by lower courts of the construction of written documents, such as deeds or contracts, is a question of law that is reviewed *de novo* by appellate courts. Appellate courts do not give the lower courts deference on these issues. However, findings of fact by lower courts are reviewed under the highly deferential "clearly erroneous" standard. Under this standard, an appellate court gives deference to a lower court absent a finding of clear error. The *Teva* decision clarified that appellate review findings of fact in claim construction should be no different.

This case arose from a suit filed by Teva Pharmaceuticals alleging infringement of a method patent covering the manufacturing method for the multiple sclerosis drug Copaxone. Sandoz and other generic drug manufacturers had marketed a generic version of the drug. Sandoz alleged that the Teva patent was invalid under 35 U.S.C. §112 because it was fatally indefinite, and it did not sufficiently enable a person having ordinary skill in the art to know if he was using the Teva method. Specifically, Sandoz alleged that the Teva patent did not state which one of three methods of calculation – the weight of the most prevalent molecule, the weight as calculated by an average weight of all molecules, or the weight as calculated by an
average of all molecules, where heavier molecules count more – was used in the claim that Copaxone has “a molecular weight of 5 to 9 kilodaltons.” The district court found the patent claims were sufficiently definite, after considering conflicting expert testimony. The court concluded that a person having ordinary skill in the art would know which method was used to calculate the molecular weight. Thus, the patent was valid. The Federal Circuit reviewed the district court’s claim construction de novo, and found the term “molecular weight” was indefinite and Teva’s patent was invalid.

The Supreme Court held when a patent claim uses technical language that is not commonly understood, the words likely give rise to a factual dispute, and the district court’s findings with respect to those words should be given “clearly erroneous” deference. The Court supported this decision with common sense; a district court judge who has presided over the entire proceeding has a greater opportunity to gain the necessary familiarity with specific scientific problems and principles than does an appellate court judge. When claim construction requires only the interpretation of common meanings of words and terms, the Court held that appellate courts should review these constructions de novo, but when a lower court must use extrinsic evidence – outside information – to understand a term of art or the background science the appellate court should review the lower court’s finding only for “clear error.” Respondents argued that the separation between factual and legal questions is too difficult and that it would be simpler for an appellate court to review both factual and legal issues – the entirety of the lower court’s decision – de novo; however, this argument was discarded by the Court. The Court cited the proven ability of appellate courts to separate factual issues from legal issues.

Those seeking to appeal a prior decision on the basis of unfavorable claim construction should take note of this decision. If the patent contains terms of art or involves an advanced scientific understanding, and if the trial court engaged in findings of fact to ascertain the meanings of those terms, the trial court’s construction is likely to stand and will be reviewed only for clear error.