No. 05-961

IN THE
Supreme Court of the United States

IZUMI PRODUCTS COMPANY,

Petitioner,

v.

KONINKLIJKE PHILIPS ELECTRONICS, N.V., PHILIPS ELECTRONICS NORTH AMERICA CORPORATION, and PHILIPS DOMESTIC APPLIANCE AND PERSONAL CARE B.V.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Has the Federal Circuit properly articulated the well-settled principles of law governing when it is appropriate to refer to the specification in construing a claim?

II. Did the Federal Circuit properly apply these well-settled principles to the facts in this case?

RULE 29.6 STATEMENT

Respondent Koninklijke Philips Electronics N.V. states that it has no parent corporation and no publicly-held company owns 10 percent or more of the stock of Koninklijke Philips Electronics N.V.

Respondent Philips Electronics North America Corporation states that Koninklijke Philips Electronics N.V. is the parent corporation of Philips Electronics North America Corporation and no publicly-held company owns 10 percent or more of the stock of Philips Electronics North America Corporation.

Respondent Philips Domestic Appliance And Personal Care B.V. states that Koninklijke Philips Electronics N.V. is the parent corporation of Philips Domestic Appliance And Personal Care B.V. and no publicly-held company owns 10 percent or more of the stock of Philips Domestic Appliance And Personal Care B.V.

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Petitioner presents no general legal issue meriting review. There is no division within the Federal Circuit over the principles of law regarding the proper use of a patent's specification in claim construction; to the contrary, the Federal Circuit recently affirmed the role of a patent's specification in claim construction, and this Court denied *certiorari* in that case. Those principles fully respect the claim-based system for defining inventions and inevitably call for patent-specific inquiries. Moreover, the Federal Circuit's articulation and application of these principles in this case was correct. Petitioner's challenge to the decision presents only case-specific issues not appropriate for review by this Court.

COUNTER-STATEMENT OF THE CASE

I. Background

Petitioner Izumi Products Company ("Izumi") filed a complaint in March 2002, alleging that Respondents Koninklijke Philips Electronics N.V., Philips Electronics North America Corporation and Philips Domestic Appliance and Personal Care B.V. ("Philips") willfully infringed one of Izumi's patents. *See* Petition for Certiorari ("Pet.") at 10. The patent related to rotary shaver blades, and, in specific, a recess on the cutter blades.[1] *See* Appendix to Petition ("Pet. App.") at 64a. After a hearing, the district court granted Philips' cross-motion for summary judgment of noninfringement as to literal infringement. *See* Pet. App. at 60a.

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1. U.S. Patent No. 5,408,749 (the "'749 Patent"). Pet. App. at 64a.

Izumi appealed to the Federal Circuit. *See id.* at 1a. That court, in an unpublished opinion, found that the lower court's claim construction was erroneous, but harmless, and therefore upheld the lower court's finding that there was no infringement. *See id.* at 11a-12a, 14a; *Izumi Prods. Co. v. Koninklijke Philips Elecs. N.V.*, 140 Fed. Appx. 236 (Fed. Cir. 2005) (unpublished).

The Federal Circuit denied Izumi's petition for rehearing and rehearing *en banc* on September 16, 2005. *See id.* at 62a. Izumi filed a petition for a writ of *certiorari* on January 30, 2006.

II. The Federal Circuit's Claim Construction

The claim construction at issue deals with the '749 Patent's description of a "recess" on the trailing edge of an electric rotary razor blade. Izumi asserted that Philips' electric rotary razors, which had a groove on the trailing edge of their blades, infringed the '749 Patent.

The district court construed the '749 Patent claims to require that the patented recess be "formed directly under the cutting edge surface and orientated in a horizontal direction, parallel to the cutting edge surface." *Id.* at 31a.

On appeal, relying on the '749 Patent specification, the Federal Circuit Court of Appeals found that the lower court's claim construction was erroneous, stating that "[a]s Izumi recognizes, under the district court's construction, the embodiment shown in figure 4[2] would not meet either limitation [of the claims], and that result argues against the court's interpretation." *Id.* at 12a.

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2. *See* Pet. App. 68a.

The Federal Circuit, however, construed the claims in a way that rendered the district court's error harmless. In particular, the Federal Circuit observed that the "specification states that an objective of the disclosed invention is 'to provide an electric razor which assures that the shaving debris and other substances do not easily adhere to the cutter blades of the inner cutter,'" and that the "specification further teaches that inner cutter blades having a recess with a cutout angle θ of greater than 90 degrees between the rear side surface of the inner cutter blade surface and the cutting edge surface[3] . . . will not prevent shaving debris adhesion." *Id.* The Federal Circuit accordingly found that the '749 Patent's specification's requirement that the recess have a cutout angle θ of 90 degrees or less "defin[ed] a critical aspect of the invention itself." *Id.* Because none of the accused products had a recess with a cutout angle θ of 90 degrees or less, the Federal Circuit concluded that there was no infringement, and the lower court's error was therefore harmless. *See id.* at 14a.

The Federal Circuit followed the standard canons of claim construction when it concluded that the recess described in the '749 Patent had a cutout angle θ of 90 degrees or less. Although "[c]laim language generally carries the ordinary meaning of the words in their normal usage in the field of invention" (*Invitrogen Corp. v. Biocrest Mfg., L.P.*, 327 F.3d 1364, 1367 (Fed. Cir. 2003)), there is little question that reference to the specification is proper to discern the context and normal usage of the words in a patent claim. *See, e.g., Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1579 (Fed. Cir. 1996). The court respected both of

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3. The recess's cutout angle θ of 90 degrees or less is illustrated in Figures 4 and 5 at Pet. App. at 68a.

two cautions: one against reading limitations appearing only in the specification into claims that carry a plain broader meaning; the other requiring that claims be construed in light of the specification. How these principles apply in a particular case, however, "turns on how the specification characterizes the claimed invention." *Alloc, Inc. v. Int'l. Trade Comm'n*, 342 F.3d 1361, 1370 (Fed. Cir. 2003), *cert. denied*, 541 U.S. 1063 (2004) (citing *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1305 (Fed. Cir. 2003)). Although "it is impermissible to read the one and only disclosed embodiment into a claim without other indicia that the patentee so intended to limit the invention[,] it is entirely permissible [] to limit the claims . . . where the specification makes clear at various points that the claimed invention is narrower than the claim language might imply." *Id.* (citing *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed. Cir. 2002); *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1345 (Fed. Cir. 2001)).

The Federal Circuit clearly followed these canons. First, when discussing whether the patented "recess" must be horizontal, the Federal Circuit found that the claims required a recess, without reference to its orientation, and that the patent specification did not restrict this definition to recesses oriented horizontally, as opposed to vertically. *See* Pet. App. at 13a. Second, when determining whether the patented "recess" had to be formed "directly under the cutting edge surface," the Federal Circuit, *adopting Izumi's argument*, concluded that such a limitation would be inconsistent with the patent specification, and therefore found that the district court's claim construction was erroneous. *See id.* at 12a. Third, when determining whether the '749 Patent described a recess with a cutout angle θ of 90 degrees or less, the Federal Circuit found that "the specification is not describing

an embodiment of the disclosed invention, but rather defining a critical aspect of the invention itself," and therefore concluded that the word "recess," as used in the '749 Patent, should be construed more narrowly than the claim language might imply in a vacuum. *Id. See also, Alloc*, 342 F.3d at 1370 (citing *SciMed*, 242 F.3d at 1345).

Nor did Judge Linn, in dissent, disagree with the principles of law followed by the majority; instead, Judge Linn disagreed with the majority's application of well-settled principles of claim construction. Indeed, Judge Linn explicitly admitted that the specification can: (1) impose "an essential component of the invention" that must be read into the claim; (2) "disclaim[] the use of the invention in the absence of" aspects described in the specification; or (3) "specifically disclaim[] non-disclosed embodiments." Pet. App. at 19a (quoting *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 908 (Fed. Cir. 2004) and citing *SciMed*, 242 F.3d at 1337). In short, Judge Linn accepted that the court can refer to the specification in interpreting the claims, even relying on the specification to define the claim. Judge Linn's only disagreement was in the reading of the specification – unlike the majority, Judge Linn did not believe that a cutout angle θ of 90 degrees or less was an essential component of the invention. *See id.*

REASONS FOR DENYING THE PETITION

I. Petitioner has not articulated a compelling reason to justify discretionary review by this Court.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for a writ of certiorari will be granted only for compelling reasons." *Id.* Izumi has not presented any compelling reason for this Court to exercise discretionary jurisdiction over its attempted appeal of the Federal Circuit's interpretation of the '749 Patent.

First, this case arises from an unpublished opinion that therefore has no precedential value. *See Izumi*, 140 Fed. Appx. at 236 (unpublished opinion); Fed. Cir. R. 47.6(b) ("An opinion or order which is designated as not to be cited as precedent is one determined by the panel issuing it as not adding significantly to the body of law. Any opinion or order so designated must not be employed or cited as precedent"). Second, Izumi attempts to manufacture an issue meriting review by arguing that the law on the proper use of the specification in construing patent claims evidences a "deep intracircuit split" that results in "inherent uncertain[ty]" and "unpredictability." Pet. at 12-14. Having tried to persuade this Court that there is a molehill where there is only flat ground, Izumi proceeds to manufacture a mountain out of this ephemeral molehill, asserting that the Federal Circuit's long-established methodology for interpreting claims has created a "'zone of uncertainty which . . . discourag[e]s invention only a little less than unequivocal foreclosure of the field.'" *Id*. at 12 (quoting *Markman v. Westview Instruments, Inc.* (*Markman II*), 517 U.S. 370, 390 (1996)). As discussed below, Izumi is wrong on all points.

A. This case does not implicate any intracircuit or intercircuit split of authority.

The principles governing the proper use of a patent's specification in construing claims are well-settled and easily summarized. To ascertain the meaning of claims, the court considers three sources: the claims, the specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) ("*Markman I*"), *aff'd*, 517 U.S. 370 (1996) (quoting *Unique Concepts, Inc. v. Brown*, 939 F.2d 1558, 1561 (Fed. Cir. 1991)). Claim construction begins with the words of the claim. *Teleflex*, 299 F.3d at 1324. Claim terms generally take their ordinary meaning,[4] if there is one. *Id.* at 1325. But claims must be read in view of the specification, which "may act as a sort of dictionary, which explains the invention and may define terms used in the claims." *Markman I*, 52 F.3d at 979. Although not at issue here, the prosecution history has also long been recognized as a vital source for the proper construction of the claims. *Id.* at 980 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 33 (1966) and *Autogiro Co. v. United States*, 384 F.2d 391, 397 (Ct. Cl. 1967)); *see Teleflex*, 299 F.3d at 1326.

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4. The ordinary meaning of the words of a claim "is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc), *cert. denied*, __ U.S. __, 2006 WL 386393 (Feb. 21, 2006). "The ordinary and customary meaning of a claim term may be determined by reviewing a variety of sources, which may include the claims themselves; dictionaries and treatises; and the written description, the drawings, and the prosecution history." *Gemstar-TV Guide Int'l., Inc. v. Int'l. Trade Comm'n*, 383 F.3d 1352, 1364 (Fed. Cir. 2004) (citing *Ferguson Beauregard v. Mega Sys., LLC*, 350 F.3d 1327, 1338 (Fed. Cir. 2003)).

Thus, there is no "intracircuit split" to be resolved – it is widely agreed that "ordinary meaning" does not control a claim term's construction where, for example, the patentee sets forth a definition of the disputed claim term in either the specification or prosecution history; the specification or file history shows that the patentee limited the scope of the claims (by, for example, describing a particular embodiment as important to the invention); the claim term deprives the claim of meaning such that definite meaning can be determined only by reference to the specification and file history; or the claim is phrased in step- or means-plus-function format. *See CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366-67 (Fed. Cir. 2002). Indeed, there is no question that "the specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (en banc), *cert. denied*, __ U.S. __, 2006 WL 386393 (Feb. 21, 2006) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). *See also id.* at 1313 ("the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification"); *Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) ("We cannot look at the ordinary meaning of the term . . . in a vacuum. Rather, we must look at the ordinary meaning in the context of the written description and the prosecution history") (citation omitted). These principles are long-established.

Contrary to Izumi's contention (*see* Pet. at 21-22), these principles are in full accord with this Court's pronouncements on claim construction. It has long been established that "an

invention is construed not only in light of the claims, but also with reference to the file wrapper or prosecution history . . . Claims as allowed must be read and interpreted with reference to rejected ones and to the state of the prior art." *Graham v. John Deere Co.*, 383 U.S. 1, 33 (1966). This Court, in *Markman II*, holding that judges, not juries, should construe claims, relied critically on the settled principle that claim construction entails a "necessarily sophisticated analysis of the whole document," so that terms are defined to "comport [] with the instrument as a whole." 517 U.S. 370, 389 (1996). More recently, in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 731 (2002), the Court approved the context-specific principles of claim construction laid out in *Autogiro*, 384 F.2d at 397.

In short, there is no divide, whether in the Federal Circuit or this Court, about the importance of the specification in understanding the meaning of the claims in a patent. This case is a perfect example: even though Izumi attempts to characterize Judge Linn's dissent as evidence of a deep doctrinal divide, the dissent instead simply demonstrates the old aphorism that, even when confronted with the same facts and rules, reasonable people can disagree reasonably. Judge Linn does not even imply that the specification is irrelevant when determining the scope of the '749 Patent – rather, whereas the majority reads the specification requiring a cutout angle è of 90 degrees or less as "defining a critical aspect of the invention itself," Judge Linn believes that the cutout angle is not essential to the '749 Patent. *See* Pet. App. at 12a, 19a. This is not a matter of principle or policy. It is a matter of interpretation of the specification language, and nothing more.

B. The Federal Circuit recently directly addressed the issues raised by Petitioner, and this Court denied *certiorari* in that case.

To the extent that Izumi attempts to identify tensions or confusion in the law, such issues are best resolved by the Federal Circuit, and do not merit the intervention of this Court. Indeed, the Federal Circuit recently did address the issue of which Izumi complains. As Izumi acknowledges, the Federal Circuit, sitting *en banc*, explicitly addressed "the extent to which [the Federal Circuit] should resort to and rely on a patent's specification in seeking to ascertain the proper scope of its claims." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc), *cert. denied*, __ U.S. __, 2006 WL 386393 (Feb. 21, 2006). *See* Pet. at 15. This, of course, is precisely the question that Izumi asserts is at issue in this case. *Phillips*, moreover, resolved the question, reiterating and restating the principles described above and supported for generations by both this Court and the Federal Circuit. *See Phillips*, 415 F.3d at 1315 ("[t]he descriptive part of the specification aids in ascertaining the scope and meaning of the claims inasmuch as the words of the claims must be based on the description. The specification is, thus, the primary basis for construing the claims") (quoting *Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448, 452 (Fed. Cir. 1985)); *id.* at 1316 (collecting Supreme Court cases standing for the proposition that "[I]t is fundamental that claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention") (quoting *United States v. Adams*, 383 U.S. 39, 49 (1966)).

Izumi recognizes that *Phillips* provided, at the very least, what Izumi terms a "compromise." *See* Pet. at 15. Izumi,

however, complains that, rather than cementing the well-established jurisprudence regarding the interplay between a patent's claims and its specification, *Phillips* confused the issue.[5] *See id.* ("[i]n retaining elements of both approaches, *Phillips*' compromise solution carried little promise of bringing certainty to the field"). Izumi is wrong, and this Court has already so found: twenty-two days after Izumi filed its petition for *certiorari*, this Court denied *certiorari* in *Phillips*. *See AWH Corp. v. Phillips*, __ U.S. __, 2006 WL 386393 (Feb. 21, 2006). The Federal Circuit, moreover, has had no difficulty understanding the rule set out in *Phillips*. *See, e.g.*, *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1145 (Fed. Cir. 2005) ("What *Phillips* now counsels is that in the absence of something in the written description and/or prosecution history to provide explicit or implicit notice to the public – i.e., those of ordinary skill in the art–that the inventor intended a disputed term to cover more than the ordinary and customary meaning revealed by the context of the intrinsic record, it is improper to read the term to encompass a broader definition simply because it may be found in a dictionary, treatise, or other extrinsic source") (citing *Phillips*, 415 F.3d at 1321). Izumi offers no reason why this case – which incorporates, in a case-specific manner, the methodology approved in *Phillips* – merits this Court's review when *Phillips*, which addressed the issue directly, did not.

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5. Indeed, Izumi suggests that it should, at least, be granted *certiorari* in this Court as a companion case to *Phillips*. *See* Pet. at 2-3 n.1.

C. This case does not implicate any issues of significant interest to this Court.

This case is nothing more than a simple disagreement among judges about whether the specification in the '749 Patent helped to define the meaning of the term "recess" in the claims. It is not a case of policy, nor should it be elevated to one. As the *Phillips* court recognized:

> In the end, there will still remain some cases in which it will be hard to determine whether a person of skill in the art would understand the embodiments to define the outer limits of the claim term or merely to be exemplary in nature. While that task may present difficulties in some cases, we nonetheless believe that attempting to resolve that problem in the context of the particular patent is likely to capture the scope of the actual invention more accurately than either strictly limiting the scope of the claims to the embodiments disclosed in the specification or divorcing the claim language from the specification.

Phillips, 415 F.3d at 1323-24.

Izumi attempts to create an issue of national policy where there is none by asserting that reference to the specification diminishes or otherwise undercuts the claims language, thereby placing the entire United States patent system in jeopardy. *See* Pet. at 20-24. But this Court's decisions, as just noted, and the long line of decisions in the Federal Circuit and its predecessor courts, make clear that the claims are *not* undervalued when the specification and prosecution history

are examined in just the ways the Federal Circuit did in this case. As the Federal Circuit explained in *Eastman Kodak Co. v. Goodyear Tire & Rubber Co.*, "a construing court does not accord the specification, prosecution history, and other relevant evidence the same weight as the claims themselves," but refers to these sources to give the claim language its proper context. 114 F.3d 1547, 1552 (Fed. Cir. 1997); *see also Raytheon Co. v. Roper Corp.*, 724 F.2d 951, 957 (Fed. Cir. 1983) ("That claims are interpreted in light of the specification does not mean that everything in the specification must be read into all the claims."); *SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (the specification and file history are useful but the focus remains on the claims). Indeed, the Federal Circuit in this case did not attempt to read the entire specification as a limitation, but only that part that it determined "defin[ed] a critical aspect of the invention itself." Pet. App. at 12a.

Izumi additionally complains that "[t]his elevation of the enabling disclosure over the claims violates 35 U.S.C. § 112." Pet. at 21. As described throughout this brief, both this Court and the Federal Circuit have long agreed that, although the claims are the primary source of interpretation of patent, the claims *must* be read in the context of the patent as a whole. In order to marshal authority for its apparent position that the specification in a patent should have little, if any, impact under 35 U.S.C. § 112, Izumi relies on a statement of general principle by this Court in *Smith v. Snow*, 294 U.S. 1, 11 (1935). *See* Pet. at 22.

Izumi also reads this Court's statement of general principle in *Smith* without the context of the opinion as a whole. Immediately after the Court pronounced its general principle, however, it engaged in precisely the form of

analysis performed by the Federal Circuit in this case: determining whether the specification was essential to the claim in order to establish the scope of the claims. *See Smith*, 294 U.S. at 11 ("Here the specifications showed an arrangement of the eggs and a means of guiding the current of air so that it would reach the most advanced eggs first. *But neither the arrangement nor the means of guiding the current of air are requisite to the application of the principle which Smith discovered and claimed*") (emphasis added). Indeed, the Court continued to examine the prosecution history and prior art in order to determine if either limited the patent's claim. *See id.* at 14-16.

The enabling disclosure, moreover, is required by, rather than in conflict with, 35 U.S.C. § 112, which "makes the enabling disclosure operational as a limitation on claim validity." *Invitrogen Corp. v. Clontech Labs., Inc.*, 429 F.3d 1052, 1070 (Fed. Cir. 2005). *See also*, *Phillips*, 415 F.3d at 1316 ("In light of the statutory directive that the inventor provide a 'full' and 'exact' description of the claimed invention, the specification necessarily informs the proper construction of the claims").

Izumi's refusal – in the face of an abundance of caselaw to the contrary – to recognize virtually any role for the specification in claim construction may be why Izumi concludes that there is "unpredictability" in the Federal Circuit's application of its claim construction principles and that certain Federal Circuit opinions are "conflicting." Pet. at 14. However, the fact that particular specifications have greater or lesser weight in different cases is simply the result of the fact that the inquiry as to the meaning of claims is inevitably context-specific. The Federal Circuit has explained the unavoidable patent-specificity of the inquiry:

"Whether an invention is fairly claimed more broadly than the 'preferred embodiment' in the specification is a question specific to the content of the specification, the context in which the embodiment is described, the prosecution history, and if appropriate the prior art." *Teleflex*, 299 F.3d at 1327. *See also*, e.g., *Comark Communications, Inc. v. Harris Corp.*, 156 F.3d 1182, 1186 (Fed. Cir. 1998) ("there is sometimes a fine line between reading a claim in light of the specification, and reading a limitation into the claim from the specification"). While the particular application of the principles sometimes provokes disagreements, there is no need or warrant for this Court to review the principles of claim construction regularly being applied in the Federal Circuit.

II. The Federal Circuit's application of well-settled principles of law to the facts of this case was correct.

Izumi also attempts to cast the court of appeals' claim construction in this case – a necessarily context-specific inquiry – as an issue meriting review. Izumi's main argument is that the court below accorded too much weight to the specification. Pet. at 20. This argument fails because the majority properly applied correct principles of claim construction in reaching a decision.

The court below properly interpreted the claims, reviewing the specification in order to determine what the claim terms meant in context and, in particular, whether the inventors had limited the claims to make clear that a cutout angle θ of 90 degrees or less was required. *See* Pet. App. at 12a. The court concluded that the specification did "not describe[e] an embodiment of the disclosed invention, but rather defin[ed] a critical aspect of the invention itself." This

method of analysis is perfectly consistent with this Court's principles of claim construction. *See generally*, *Markman II*, 517 U.S. 370.

In sum, Izumi's efforts to fashion an issue deserving of review by challenging the Federal Circuit's analysis in this case is unsuccessful. The decision below was correct and resulted from proper application of well-established principles of claim construction. In any event, Izumi's complaints relate only to patent-specific interpretation issues and are not appropriate for review by this Court.

CONCLUSION

For the reasons set out above, the Petition should be denied.

Respectfully submitted,

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