



## **Importance of Patent Language**

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On July 25th, 2005, the U.S. Court of Appeals for the Federal Circuit, the highest patent court, issued an opinion that may change the way patents are written. The lawsuit, *Phillips v. AWH*, 03-1269, related to infringement of a patent for steel panels that are load-bearing, impact-resistant, and also insulated against fire and noise. The panels are designed to be linked together and used in prisons. Phillips, the inventor, agreed with AWH to manufacture and to sell the panels. AWH continued to market panels after the agreement ended.

However, what AWH was selling was not arguably covered by the patent. The issue in the lawsuit concerned the meaning of the word "baffle." The lower court was split\*the majority sided to use language within the patent that helped define the word. The minority of the lower court preferred to follow a line of previous cases using the dictionary definition of the word. Under the majority\*s interpretation, AWH would not infringe Phillips\* patent. Under the minority\*s definition, infringement existed.

Since 2002, courts have looked primarily to the dictionary definition of a phrase before looking within the patent application itself. Prior to 2002, courts looked to language within the patent application first. In *Phillips*, the Court of Appeals chose to uphold the lower court's pre-2002 method of interpretation. This ruling did away with the three-year line of cases that suggested a "dictionary first" approach to determining patents. While Phillips' case will likely be cited in future litigation, he will probably not be happy--the Court of Appeals still chose to find no infringement for other reasons.