Patents – Claim Interpretation

• “The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112, ¶ 2

• Crucial first step in any patent inquiry
  • Validity
  • Infringement
Patents – Claim Interpretation

- Methodology:
  *Intrinsic Evidence*

  **Claim Language**

  *Specification*

  *Prosecution History*

  *Testimony, Dictionaries*
Patents – Claim Interpretation

• **Phillips v. AWH**

1. Building modules adapted to fit together for construction of fire, sound and impact resistant security barriers and rooms for use in securing records and persons, comprising in combination, an outer shell of substantially parallelepiped shaped with two outer steel plate panel sections of greater surface area serving as inner and outer walls for a structure when a plurality of the modules are fitted together, sealant means spacing the two panel sections from steel to steel contact with each other by a thermal-acoustical barrier material, and further means disposed inside the shell for increasing its load bearing capacity comprising internal steel baffles extending inwardly from the steel shell walls.

• intrinsic evidence
• extrinsic evidence
Patents – *Literal Infringement*

- “[W]hoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.” 35 U.S.C. § 271(a)

- must have *every* element to infringe
- extra elements are irrelevant
  - if use “comprising” language
Patents – *Literal Infringement*

- *Larami v. Amron*

1. A toy comprising an elongated housing having a chamber therein for a liquid, a pump including a piston having an exposed rod end extending rearwardly of said toy facilitating manual operation for building up an appreciable amount of pressure in said chamber for ejecting a stream of liquid therefrom an appreciable distance substantially forwardly of said toy, and means for controlling the ejection.
## Patents – *Literal Infringement*

- **Larami v. Amron**

<table>
<thead>
<tr>
<th>Claim 1</th>
<th>Larami</th>
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<tbody>
<tr>
<td>[a] “an elongated housing having a chamber therein for a liquid”</td>
<td>?</td>
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<tr>
<td>[b] a pump including . . .</td>
<td>✔</td>
</tr>
<tr>
<td>[c] mean for controlling . . .</td>
<td>✔</td>
</tr>
</tbody>
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- “therein”?
- construe
- “chamber”?
- what about extra features in Super Soaker?
Patents – *Literal Infringement*

- *Larami v. Amron*
  - What impact from these changes?
    - “an elongated housing having a *conjoining* chamber [therein] for liquid”
    - specification explicitly defines “therein” to mean “in or on”
    - prosecution history disavows “in” definition
    - “an elongated housing having a chamber [therein] for a liquid”