

Let's Talk "About"... That Bird?

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Much ink has been spilled over the meaning of "about" when used to characterize an amount or a range recited in a patent claim. Sometimes the patent explicitly defines "about," sometimes "about" simply means "approximately," sometimes the scope of "about" is clarified based on arguments made during prosecution to gain allowance, and sometimes a skilled artisan might recognize the scope of "about" based on some constellation of the foregoing and knowledge in the art. But sometimes the meaning of "about" is not certain based on the unique facts of the case, and the patent claim is indefinite. Earlier today, the Federal Circuit addressed this last scenario.

In *Enviro Tech Chemical Services, Inc. v. Safe Foods Corp.*, No. 2024-2160 (May 4, 2026), the Federal Circuit affirmed a district court judgment finding the term "about" indefinite as used in the asserted poultry processing claims. The patent claims recited methods for treating poultry during processing with peracetic acid to increase poultry weight, with the independent claim requiring adjusting the peracetic acid-containing water to a "pH of about 7.6 to about 10."

Applying the *Nautilus* standard, the Federal Circuit panel agreed that "about" failed to inform a person of ordinary skill in the art of the scope with reasonable certainty when read considering the claims, specification, and prosecution history. More specifically, the claim language itself provided no guidance on the permissible deviation from the stated pH range of 7.6 to 10. Although courts have construed "about" to mean "approximately" in other cases, applying

“approximately” in this case would not add the necessary precision. The specification’s experiments were inconsistent on acceptable pH deviations—often proceeding only when the actual pH was within 0.3 of the target but sometimes continuing with deviations greater than 0.3—thus failing to define a reasonably certain range. In one large-scale example involving 5,800,000 chickens, the data disclosed in the patent showed deviations of between 0.35 and 0.5 from the target pH, which undermined any fixed 0.3-deviation rule.

The prosecution history also failed to clarify the term because Enviro Tech treated “about” inconsistently in its arguments and did not explain its meaning, including after amending the lower bound from “about 7.3” to “about 7.6.” The Federal Circuit explained that “[a]n important determinant in our decision here is the very fact that what is now claim 1 was amended in respect to pH to avoid prior art, which was as close as a pH of 7.0” and that “[w]hen the specification recites pHs of 6–10, and the prior art pH of 7.0 required the claims to be amended, the definiteness requirement of § 112 necessitates much more clarity than using the vague term ‘about.’” This is because “[t]he prior art is almost ‘about’ a pH of 7.6.”

Although it might be “about” a rare bird, this decision serves as a good reminder to carefully consider the claims, patent specification, and file history, even for claim terms we see each day across patents and fields.

Terms of degree, like “about” and “approximately,” are not inherently definite or indefinite. When a word of approximation is used, however, the parameter’s range must be reasonably certain based on the “technological facts of the particular case.”

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