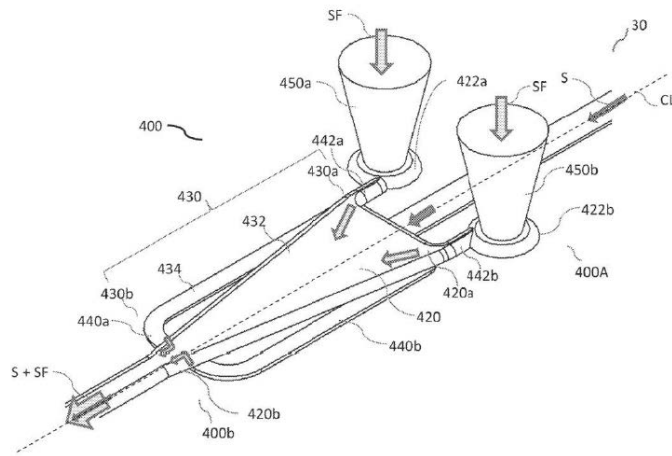


“A”/“An” Means “One or More,” Said the Federal Circuit...Again

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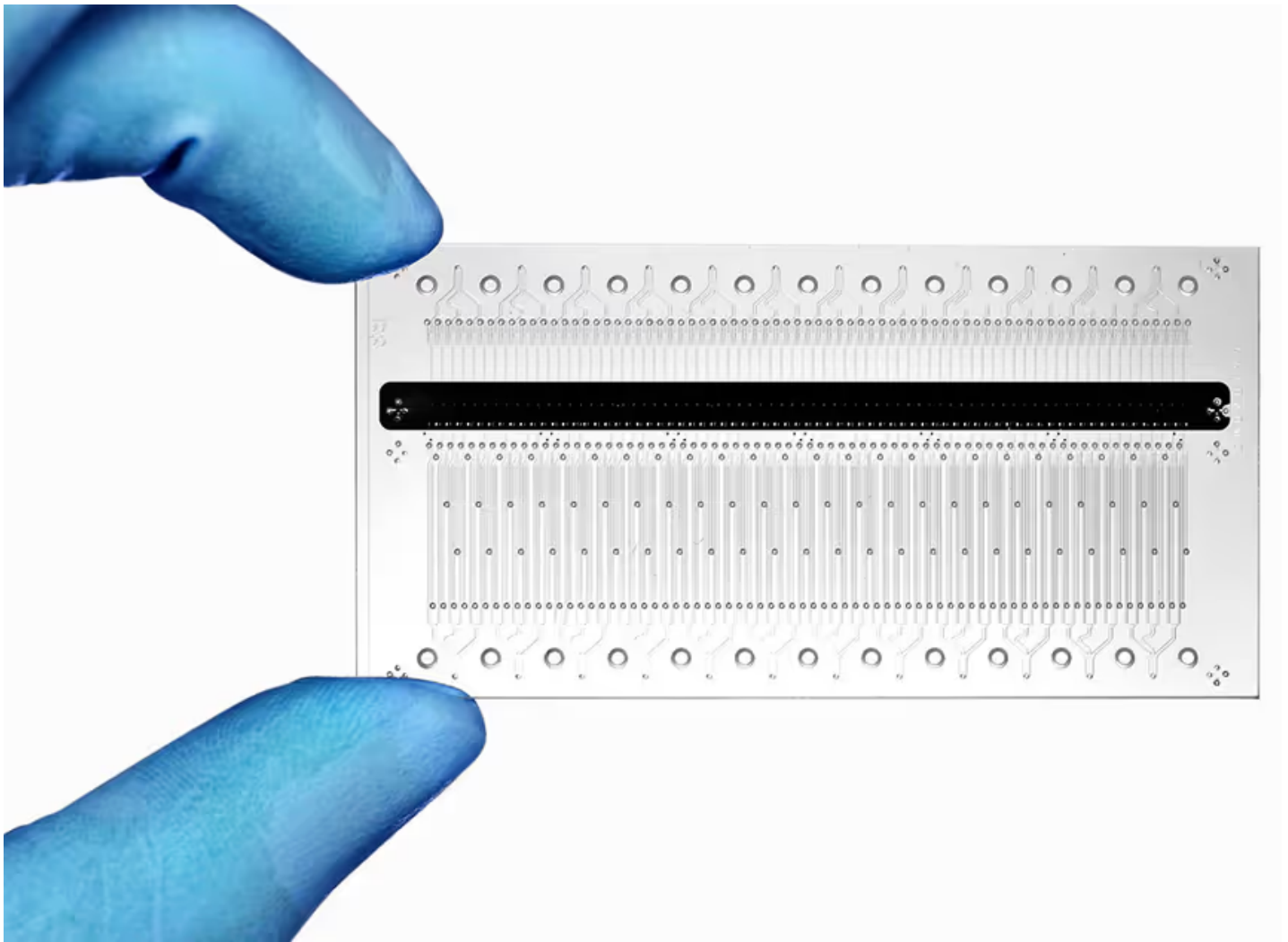
In *ABS Global, Inc. v. Cytonome/ST, LLC*, No. [2022-1761](#), 2023 WL 6885009 (Fed. Cir. Oct. 19, 2023), the Federal Circuit issued a precedential reminder that the use of “a” or “an” means “one or more” in an open-ended claim unless the claims, the specification, or the prosecution history necessitates a departure of this long-held general rule. See, e.g., *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1355 (Fed. Cir. 2000) (“This court has repeatedly emphasized that an indefinite article ‘a’ or ‘an’ in patent parlance carries the meaning of ‘one or more’ in open-ended claims containing the transitional phrase ‘comprising’”). This rule was articulated over thirty years ago, see *N. Am. Vaccine Inc. v. Am. Cyanamid Co.*, 7 F.3d 1571, 1576 (Fed. Cir. 1993) (“‘a’ can mean one or more”), and reiterated twenty years ago in *Scanner Techs. Corp. v. ICOS Vision Sys. Corp.*, 365 F.3d 1299, 1305-06 (Fed. Cir. 2004) (“the article ‘a’ or ‘an’...mean[s] one or more elements or steps, unless there is evidence of a clear intent to limit the claims”). The disputed claim term at issue in *ABS* was “a sample stream” directed to microfluidic devices. See *ABS*, 2023 WL 6885009, at *5 (“There is no sufficient basis for rejecting the plural-allowing meaning of ‘a sample stream’ here.”).



Even through the variations in claim construction principles over this time period, *cf. Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1203-04 (Fed. Cir. 2002) (“dictionaries...are objective resources that serve as reliable sources of information on the established meanings that would have been attributed to the terms of the claims”); *Teva Pharms. v. Sandoz, Inc.*, 574 U.S. 318 (2015) (“in patent construction, subsidiary factfinding is sometimes necessary [and] appellate courts [are required] to review all such subsidiary factual findings under the ‘clearly erroneous’ standard”), the standard regarding the meaning and scope of “a”/“an” has remained steady. The *ABS* decision is this decade’s confirmation of that long-standing principle.

First, “at least in an open-ended ‘comprising’ claim,” like claim 1 of the ‘439 patent, “use of ‘a’ or ‘an’ before a noun naming an object” requires that the phrase be construed to mean “‘one or more’ unless the context sufficiently indicates otherwise.” *Lite-Netics*, 60 F.4th at 1345; see *Salazar*, 64 F.4th at 1315; *Convolve, Inc. v. Compaq Computer Corp.*, 812 F.3d 1313, 1321 (Fed. Cir. 2016); *Baldwin*, 512 F.3d at 1342–43. The court has called this the “general rule,” adding that an exception “only arises where the language of the claims themselves, the specification, or the prosecution history necessitate a departure from the rule.” *Baldwin*, 512 F.3d at 1343.

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