

Fed. Circ. In Jan.: On The Validity Of Expert Testimony

By **Sean Murray and Jeremiah Helm** (February 20, 2026)

*This article is part of a [monthly column](#) that highlights an important recent patent appeal. In this installment, we examine the Federal Circuit's ruling in *Barry v. DePuy Syntheses Cos.**

In *Barry v. DePuy Syntheses Cos.* on Jan. 20, the [U.S. Court of Appeals for the Federal Circuit](#) **addressed** an important question: whether expert testimony is admissible even if it does not strictly adhere to the court's claim construction.



Sean Murray

Claim construction is a legal question and, under [U.S. Supreme Court](#) precedent, the meaning of a claim term must be resolved by the judge. During litigation, however, an expert will explain to the fact finder how an accused product meets the construed claim.



Jeremiah Helm

Such testimony can tread a fine line between properly explaining how an accused product meets the construed claim and improperly proposing a new construction of the claim so that the accused product falls within its scope.

The *Barry* case involved technology related to surgical techniques to help treat spinal deformities, such as scoliosis. The parties disputed the meaning of the term "handle means," and the [U.S. District Court for the Eastern District of Pennsylvania](#) construed that term to mean "a part that is designed especially to be grasped by the hand."

Before trial, DePuy filed a Daubert motion seeking to exclude testimony from Dr. Mark Barry's expert, Dr. Walid Yassir. DePuy argued that during his deposition, Yassir testified to an understanding of "handle means" that deviated from the district court's construction. The district court denied the motion.

During his trial testimony, Yassir explained that the district court had construed the term "handle means" and reiterated the court's construction for the jury. He then opined that the accused tools met the "handle means" limitation because they were intended to be used with your hand.

On cross-examination, Yassir testified that other parts of the accused tools also qualified

as "handle means," and further agreed with DePuy's counsel that "handle means" referred to parts that could not be assembled "without grasping them by the hand."

After Barry rested his case, DePuy renewed its Daubert motion. After hearing Yassir's trial testimony, the district court granted the motion. The court explained that Yassir's testimony about whether the accused tools included a "handle means" could not be admitted because it deviated from the court's claim construction.

Accordingly, the district court concluded that Yassir's testimony would not be helpful to the jury. Absent Yassir's testimony, Barry could not prove infringement. Accordingly, the court entered judgment of noninfringement as a matter of law.

On appeal, the Federal Circuit concluded that the district court abused its discretion by excluding Yassir's testimony. The Federal Circuit explained that Yassir repeatedly told the jury the correct construction and specifically indicated that he was applying that construction in his testimony.

DePuy did not object to Yassir's testimony on direct examination, nor did DePuy suggest that Yassir's testimony was inadmissible as it was proffered. This lack of objection was particularly telling because DePuy had previously obtained an in limine ruling that any evidence inconsistent with the court's construction would be inadmissible.

Thus, according to the court, the "lack of any effort to enforce this in limine order" demonstrated that Yassir's testimony did not contradict the claim construction.

The Federal Circuit also considered Yassir's testimony that the district court found to impermissibly conflict with the court's claim construction. The district court found that Yassir's testimony conflicted with its claim construction because, during cross-examination, Yassir testified that pieces of the tool that were grasped before assembly could be a "handle means."

The Federal Circuit disagreed because the claim construction did not distinguish between parts designed to be grasped during assembly and parts designed to be grasped during postassembly use.

Accordingly, the pre- and postassembly distinction did not demonstrate that Yassir's testimony deviated from the court's claim construction. Rather, Yassir's application of the court's construction to the accused product was a factual dispute for the fact finder to

resolve.

The Federal Circuit also contrasted Yassir's testimony to testimony that was properly excluded in other cases. For example, where a claim construction expressly included a screw within the claim term "mechanical link," an expert could not testify that a screw was not a mechanical link.

Likewise, where a court construed a claim to require one or more of a feature and the expert testified that more than one feature was required, the expert's testimony must be excluded.

Such direct conflicts between a claim construction and expert testimony implicate legal inconsistencies that prompt a jury to apply an incorrect legal understanding of the claim.

Yassir's testimony, in contrast, presented only the factual issue of whether the specific features in the accused tools met the court's construction of "handle means." That factual issue was appropriate for the jury.

The Federal Circuit observed that cross-examination will typically reveal tensions and ambiguities in an expert's testimony. But tensions and ambiguities alone cannot exclude the expert's testimony completely, because it would "undermine fair and orderly pretrial preparation and trial conduct."

In the Federal Circuit's view, ordinary evidentiary imperfections should not be the basis for excluding testimony under Daubert, particularly where the testimony already survived a pretrial Daubert challenge and was not subject to any objection during trial.

If there is a genuine conflict between the expert's testimony and the court's claim construction, then the testimony should be excluded. But mere tension, arguable inconsistency or lack of persuasiveness is not enough to justify exclusion.

The takeaway from Barry is three-fold.

First, Yassir's testimony was saved, at least in part, because he consistently reminded the jury of the court's claim construction. That reminder undermined the potential inconsistency that might have otherwise come from his later testimony during cross-examination.

Second, it was important that DePuy failed to object to Yassir's testimony as it occurred and attempted, during cross-examination, to elicit testimony from Yassir that conflicted with the district court's construction. Barry suggests that if a party does not object to the expert's testimony, it may be difficult to exclude that testimony after the fact.

Finally, Barry emphasizes that any attempt to exclude expert testimony for not following the court's claim construction must identify a clear and direct conflict between the testimony and the construction.

Some tension or arguable inconsistency, especially if elicited during cross-examination, is unlikely to justify exclusion of the expert's testimony as a whole.

The line between proper factual testimony applying a court's claim construction and improper testimony applying a different construction is often hazy. But Barry suggests exclusion of expert testimony under Daubert is appropriate only in cases where that line is clearly crossed.

[Sean Murray](#) and [Jeremiah Helm](#) are partners at [Knobbe Martens](#).

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