

## *Rhetorical Devices in Claim Construction*

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My project is about the intersection of law and language, with a particular focus on how rhetorical devices are used in legal fora to explain scientific and technical terms to non-scientist judges, juries, and lawyers. I have touched briefly on this issue before in exploring patent claim construction, but I intend to take a much closer look at this specific problem.

In patent law, among other areas of law, scientific concepts need to be described in lay person's terms. The scope of patent protection may turn on an understanding of science as explained via words. Most often, the interpreter of this scientific verbiage will be someone with little or no scientific background. Thus, rhetorical tools are crucial in explaining science in lay person's terms.

Explaining terms of art used in science and technology is difficult, particularly in conjunction with the overlaying legal jargon which is also new to the layperson. Successful explanation is more than simply the choice of words used (which is of course important) but also the use of rhetoric in providing the account – narrative, metaphor, metonymy, personification, and so on. Further, the socio/economic/linguistic backgrounds of a trial audience, including the judge, the attorneys, the parties, and the jury, will vary wildly, making the selection of an efficient rhetorical device difficult. When does the introduction of science in the law require the use of rhetorical devices? What tools have been used during trial and how successfully? Are there other uses of rhetoric in law that should be applied in the science context? If the information is not conveyed successfully to the layperson, is it because the science is too hard or because the tools were not effectively used?