

BARRY v. DEPUY SYNTHES COMPANIES, Appeals Nos. 2023-2226 and 2023-2234 (Fed. Cir. January 20, 2026). Before Prost, Taranto, and Stark. Appealed from E.D. Pa. (Judge Diamond).

Background:

Dr. Barry sued DePuy Synthes and asserted that DePuy induced surgeons to infringe on Dr. Barry's patents. In particular, the asserted patents cover surgical techniques and tools for treating spinal deformities by aiding a surgeon in adjusting misaligned vertebrae en masse. Thus, the claims in two of the patents require the tools used in these techniques to have one or more "handle means." The district court held that "handle means" is "a part that is designed especially to be grasped by the hand," and the district court also stated the term includes both a single handle and a linked handle array. The district court further stated that, under this construction, the device's "shaft and handle" need not be separate or distinct objects.

At trial, Dr. Barry introduced Dr. Yassir and Dr. Neal as expert witnesses. Dr. Yassir testified that the accused tools can be assembled and used in a manner that meets every limitation of the asserted claims. Dr. Neal testified how the survey he administered revealed at least 610,000 infringing surgeries had been performed.

DePuy contended that Dr. Yassir's testimony contradicted the court's claim construction of "handle means" and that Dr. Neal's survey methodology and results did not meet the standards of reliability required under the Federal Rules of Evidence. Thus, DePuy asked for both experts' testimonies to be stricken. The district court ruled in DuPuy's favor and further granted judgment as a matter of law finding no infringement.

Issues/Holdings:

Did the district court err in excluding the expert testimonies of Dr. Yassir and Dr. Neal? In answering yes, the Federal Circuit held the district court abused its discretion in excluding the experts' testimonies and reversed and remanded for a new trial.

Discussion:

The Federal Circuit held that Dr. Yassir did not contradict the court's claim construction for "handle means." For instance, the district court took issue with Dr. Yassir's statement that components of DePuy's instrument that had to be assembled qualified as "handle means." Yet, the Federal Circuit found that this is not inconsistent with the district court's claim construction. Rather, the Federal Circuit found that Dr. Yassir repeatedly stated to the jury what the court's claim construction was and that his opinions were rendered pursuant to that construction. Thus, the Federal Circuit concluded that Dr. Yassir's application of the court's claim construction goes towards the weight of the evidence rather than admissibility.

The Federal Circuit held that, once Dr. Barry established by preponderance of the evidence that Dr. Neal had "good grounds" for his methodology, the jury should have been allowed to hear Dr. Neal's testimony. The Federal Circuit once again concluded that the purported flaws the district court found in Dr. Neal's methodology go towards the weight the jury might give to that evidence instead of the admissibility of the evidence.