

Cantor Colburn Client Alert: Federal Circuit Finds Claims Indefinite Where “About” Lacked Objective Boundaries

Summary

On May 4, 2026, the United States Court of Appeals for the Federal Circuit issued a precedential decision in *Enviro Tech Chemical Services, Inc. v. Safe Foods Corp.* (No. 2024-2160, Fed. Cir. May 4, 2026) affirming a district court judgment that certain patent claims were invalid as indefinite under 35 U.S.C. § 112(b). The Court held that the use of the term “about” in a claimed numerical range, without sufficient guidance regarding its metes and bounds in the intrinsic record, failed to inform a person of ordinary skill in the art of the scope of the invention with reasonable certainty.

Although terms of approximation such as “about” are not inherently indefinite, the decision underscores that such terms must be supported by sufficiently clear and consistent boundaries or definitions in the specification and/or prosecution history. Absent such guidance, claims may be vulnerable to invalidation, particularly where the claimed range is close to the prior art.

Background

Enviro Tech Chemical Services, Inc. (“Enviro Tech”) asserted U.S. Patent No. 10,912,321 (the “’321 patent”), which is directed to methods for treating poultry during processing using peracetic acid solutions to increase carcass weight and processing yield. Representative claim 1 recites, among other steps, adjusting the solution to “a pH of about 7.6 to about 10 by adding an alkaline source.”

Enviro Tech filed suit against Safe Foods Corp. (“Safe Foods”) in the U.S. District Court for the Eastern District of Arkansas, alleging infringement of multiple claims of the ’321 patent. During claim construction, Safe Foods argued that the terms “about” and “an antimicrobial amount” were indefinite. The district court agreed and held the asserted claims invalid.

Enviro Tech appealed. The Federal Circuit affirmed the district court’s indefiniteness determination based on the term “about,” rendering the asserted claims invalid.

Federal Circuit Decision

The Federal Circuit reiterated that terms of approximation such as “about” or “approximately” may be used to avoid strict numerical boundaries. However, such terms must still provide reasonably certain claim scope when viewed in light of the claims, specification, and prosecution history.

The Court first examined the claim language, which recited a pH range of “about 7.6 to about 10.” The claims themselves provided no indication of how far the pH could deviate from those

endpoints while still falling within the scope of the claims. The Court further noted that substituting a similar term such as “approximately” would not determine the range covered by the claim.

The Court next considered the specification, which described multiple experimental examples. In many instances, experiments proceeded only when the measured pH was within approximately ± 0.3 units of the target value. However, several examples, and particularly a large-scale commercial trial, permitted deviations of between 0.35 to 0.5 pH units. These inconsistencies led the Court to conclude that the specification provided conflicting guidance regarding the acceptable degree of variation, preventing a person of ordinary skill in the art from determining the scope of “about” with reasonable certainty.

The prosecution history similarly failed to resolve the range covered by the claim. Enviro Tech used the term “about” inconsistently during prosecution, sometimes including the term in arguments and sometimes omitting it. Importantly, the prosecution history never explained what degree of variation the term was intended to encompass in the context of the claimed pH range.

Enviro Tech argued that its amendment of the lower bound of the range from “about 7.3” to “about 7.6” demonstrated that “about” permitted a deviation of no more than 0.3 pH units. The Court rejected this argument, explaining that such an interpretation would require repeated and consistent remarks during prosecution, which were absent here.

The Court further emphasized that the claimed range had been amended during prosecution to distinguish prior art disclosing a pH of 7.0. In circumstances where a claimed numerical range is close to the prior art, the Court explained that greater precision may be required to satisfy the definiteness requirement.

The Federal Circuit concluded, based on these reasons, that the intrinsic record failed to provide objective boundaries or definitions for the term “about” as used in the asserted claims. Accordingly, the Court held the claims indefinite under § 112(b). Because this determination was dispositive, the Court did not reach the alternative issue of whether “an antimicrobial amount” was also indefinite.

What This Means to You

The decision provides important guidance for patent drafting and prosecution involving numerical ranges and terms of approximation.

Terms such as “about,” “approximately,” and “substantially” remain permissible, but they should be supported by clear definitions or objective boundaries in the intrinsic record. For example, a specification may expressly state that “about” with respect to pH values refers to ± 0.2 pH units unless otherwise indicated. Patent applications should provide clear guidance regarding the intended scope of such terms, including, where appropriate, explicit tolerances, defined ranges, or consistent experimental methodologies.

The decision also highlights the importance of consistency within the specification and during prosecution. Experimental examples and data should support a coherent understanding of any claimed range or permissible variation. Inconsistent examples may undermine claim definiteness. Practitioners should also be mindful of using claim terms consistently throughout prosecution and making a clear record regarding the intended scope of terms of approximation to reduce uncertainty as to meaning.

For Further Information and Assistance

[Cantor Colburn LLP](#) brings decades of experience in patents and all areas of intellectual property law. If you have questions about this matter or any other IP-related issue, please contact [your Cantor Colburn attorney](#). This alert was prepared by Cantor Colburn Partners [Michael H. Brodowski, Ph.D.](#), [Todd E. Garabedian, Ph.D.](#), and [Jeffrey Waters](#), with contributions from [David Kincaid](#).

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