

2019-2314, 2020-1225

**United States Court of Appeals
for the Federal Circuit**

GREATBATCH LTD.,

Plaintiff-Cross-Appellant,

— v. —

AVX CORPORATION, AVX FILTERS CORPORATION,

Defendants-Appellants.

*On Appeal from the United States District Court for
the District of Delaware in No. 1:13-cv-00723-LPS,
Honorable Leonard P. Stark, Chief Judge*

**DEFENDANTS-APPELLANTS'
PETITION FOR REHEARING EN BANC**

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AUGUST 13, 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 19-2314, 20-1225

Short Case Caption Greatbatch Ltd. v. AVX Corp. & AVX Filters Corp.

Filing Party/Entity AVX Corporation & AVX Filters Corporation

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

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Date: 08/13/2020

Signature: /s/ Ronald E. Cahill

Name: Ronald E. Cahill

FORM 9. Certificate of Interest

Form 9 (p. 2)
July 2020

| 1. Represented Entities. Fed. Cir. R. 47.4(a)(1). | 2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2). | 3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3). |
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| Provide the full names of all entities represented by undersigned counsel in this case. | Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. | Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. |
| <input type="checkbox"/> None/Not Applicable | <input checked="" type="checkbox"/> None/Not Applicable | <input type="checkbox"/> None/Not Applicable |
| AVX Filters Corporation | | AVX Corp. and Kyocera Corp. |
| AVX Corporation | | Kyocera Corporation |
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☐ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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STATEMENT OF COUNSEL

Based on my professional judgment, I believe the panel’s Rule 36 affirmance raises precedent-setting questions of exceptional importance concerning the critical notice function patent claims serve and conflicts with decisions from this Court on the role that intrinsic evidence developed in post-issuance proceedings before the United States Patent and Trademark Office (“PTO”) plays in construing claims. This precedent includes *Info-Hold, Inc. v. Applied Media Techs. Corp.*, 783 F.3d 1262, 1266 (Fed. Cir. 2015), *CIAS, Inc. v. Alliance Gaming Corp.*, 504 F.3d 1356, 1362–63 (Fed. Cir. 2007), and *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1439 (Fed. Cir. 1988).

In addition, the panel’s affirmance is contrary to the decisions of this Court in *ArcelorMittal France v. AK Steel Corp.*, 700 F.3d 1314, 1325–26 (Fed. Cir. 2012) and *TI Group Auto. Sys., Inc. v. VDO North America, L.L.C.*, 375 F.3d 1126, 1139–40 (Fed. Cir. 2004), and consideration by the full court is necessary to secure and maintain uniformity of this Court’s decisions.

/s/ Ronald E. Cahill

Ronald E. Cahill

Attorney for Appellants

INTRODUCTION

After nearly seven years of litigation—including three jury trials and a bench trial—the parties sought relief from this Court on a limited set of issues. The principal question AVX Corporation and AVX Filters Corporation (collectively, “AVX”) present on appeal is whether the district court erred as a matter of law in its multiple and contradictory constructions of the term “asymmetrical” in claim 12 of U.S. Patent No. 6,905,627 (the “’627 patent”). Resolution of this question implicates consequential issues of patent law beyond the mere meaning of one claim term in the patent-in-suit.

Before the panel’s Rule 36 affirmance, this Court emphasized the important notice function that claims serve and faithfully applied a well-established rubric for ascribing meaning to claim terms. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (holding that claim interpretation is framed by the first two paragraphs of 35 U.S.C. § 112 and the understanding of a person of ordinary skill in the art); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (holding that among the many sources that a court may use to determine the proper claim construction, the “intrinsic evidence is the most significant”). Although the actual words of a claim are controlling, the “intrinsic evidence”—the context in which a term is used, the specification, and the prosecution history—provides critical guidance as to the meaning of any claim term as understood by a person of

ordinary skill in the art. *Phillips*, 415 F.3d at 1314; *see also Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) (“We cannot look at the ordinary meaning of the term . . . in a vacuum. Rather, we must look at the ordinary meaning in the context of the written description and the prosecution history.”).

Yet the panel’s disposition without opinion endorses two claim constructions that emanated from processes during which the district court never reviewed, no less examined, substantial intrinsic evidence. This evidence includes statements made by a named-inventor of the ’627 patent and the patentee’s own technical expert—an acknowledged POSITA—during an *ex parte* reexamination that proceeded in parallel with the litigation. Because the district court refused to consider this evidence, over time it gave “asymmetrical” two separate meanings that cannot be reconciled with each other or with the evidence and arguments that Greatbatch Ltd. (“Greatbatch”) presented to the PTO. Not only does the panel’s decision fail to provide the public notice as to which of these three conflicting meanings is operative today, it sponsors the district court’s neglect of intrinsic evidence from the reexamination proceedings in contravention of this Court’s precedent. *See, e.g., InTouch Techs., Inc. v. VGO Comm’ns, Inc.*, 751 F.3d 1327, 1341–42 (Fed. Cir. 2014).

The panel’s decision also left intact the 2016 jury’s verdict, finding claim 12 of the ’627 patent not invalid. That verdict is based exclusively on the district court’s

first construction of “asymmetrical.” When the district court later reconstrued the meaning of asymmetrical, it acknowledged that its second construction was broader. Accordingly, even if this Court did not disturb the district court’s claim constructions, AVX was entitled to a new trial on validity. Because the panel’s affirmance of the district court’s decision denying AVX a new trial on validity is at odds with other panel decisions and, to the extent that it creates new law, the denial of AVX’s request for a full and fair opportunity to challenge patent validity should be addressed by the full Court.

BACKGROUND

I. BACKGROUND TECHNOLOGY OF FILTERED FEEDTHROUGHS

This litigation concerns filtered feedthrough assemblies (“FFTs”). FFTs protect devices—such as cardiac pacemakers—from disruption or damage caused by high-frequency electromagnetic interference (“EMI”) (e.g., radio waves or microwaves). *See* Appx1033 (’095 patent, 1:23–2:37). As illustrated below from the ’627 patent, FFTs are generally comprised of two parts:

- (1) a feedthrough 38—including a conductive ferrule 34, at least one terminal pin or lead 32, an insulator 36 supporting the at least one terminal pin in the ferrule; and
- (2) a filter—namely, a multilayer ceramic capacitor 40.

The filter capacitor of Figure 1 is physically mounted and electrically coupled to the feedthrough of Figure 4 to form the FFT of Figure 5. Appx1041–1042, Appx1050–1051 (’627 patent, 6:36–67 and 7:26–8:9). *See also* Appx3691–3693, Appx4105.

In a FFT, as electrical signals travel down the terminal pins, undesirable EMI is diverted by the capacitor and then shunted to ground. *See* Appx3692.

II. THE '627 PATENT

The '627 patent claims a specific FFT design in which the capacitor is internally grounded. Appx1049 ('627 patent, 3:66–4:20). As shown by reference to Figure 5 above and Figure 6 right, active electrodes plates 42 in the capacitor are

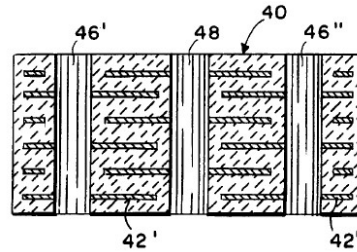


FIG. 6

electrically connected to the terminal pins in passageways 46 and ground electrode plates are electrically connected to the ground pin in passageway 48. Appx1051 ('627 patent, 7:26–8:8). As described by the patent, this internal-ground construction eliminates the need to make any electrical connection at the outside diameter of the capacitor. Appx1049 ('627 patent, 3:44–63). *See also* Appx1625–1628.

Relevant claims of the '627 patent include claims 11, 12, and 13. Independent claim 11 recites (adding reference numbers from the figures above):

11. A feedthrough filter capacitor assembly utilized in connection with a conductive substrate, comprising:

at least one conductive terminal pin 32;

means for mounting the terminal pin for passage through an opening formed in the conductive substrate with the terminal pin and the substrate in non-conductive relation 36;

a feed-through filter capacitor 40 having first 42 and second sets of electrode plates, *a first passageway* 46 through which the *terminal pin* extends in conductive relation with the first set of electrode plates, and a second passageway 48; and
a ground lead 50 conductively coupled to the conductive substrate, and extending into the *second passageway* 48 in conductive relation with the second set of electrode plates.

Appx1053 ('627 patent, 11:33–49) (emphasis added). Dependent Claims 12 and 13 provide additional details concerning the claimed feedthrough filter capacitor. Specifically, these claims recite:

12. The assembly of claim 11, wherein the feedthrough filter capacitor is *asymmetrical*.
13. The assembly of claim 11, wherein the feedthrough filter capacitor is *symmetrical* about the ground lead.

Id. ('627 patent, 11:50–53 (emphasis added)).

On February 9, 2017, this Court affirmed the invalidity of both independent claim 11 and dependent claim 13. Appx12441–12469, Appx12478–12479. Claim 12—which concerns an internally-grounded FFT with an asymmetrical capacitor—is the only claim of the '627 patent left in this case.

III. THE DISTRICT COURT'S CONSTRUCTIONS OF CLAIM 12

As a result of Greatbatch's shifting infringement contentions, the term "asymmetrical" was not included in the district court's March 2015 *Markman* Memorandum Opinion. AVX Br. at 17–18; *see also* Appx23–60, Appx61–66, Appx836. Instead, just weeks before the January 2016 jury trial on infringement and

validity began, the district court construed the term *sua sponte* in response to AVX's motion for summary judgment that claim 12 was indefinite.

In this initial construction, the district court construed "asymmetrical" to mean "not symmetrical." Appx90. Further, it gave two examples illustrating when a feedthrough filter capacitor is symmetric—that is, not asymmetric and thus not within the scope of claim 12. *Id.* AVX contested this construction because the examples of symmetric feedthrough filter capacitors relied on the relative placement of a "ground lead passageway" and "non-ground lead passageways," which are found nowhere in the claims or other intrinsic evidence. *See* AVX Br. at 30–38, Appx90, Appx21052. For example, the district court's first example of a symmetrical capacitor is one where:

[there is] a bisecting plane containing the line passing through the ***ground lead passageway***, [and] the bisecting plan creates a mirror image of ***non-ground lead passageways*** on either side of the bisecting plane.

Appx90 (emphasis added). AVX thus argued that the court's examples should instead include the terms "second passageway" and "first passageways," as defined by independent claim 11. Appx21052. The district court denied AVX's request for clarification and the court's construction stood. Appx170–171. Based on this construction, a January 2016 jury found claim 12 of the '627 patent both (i) infringed and (ii) not invalid. Appx1016–1017; *see also* AVX Br. at 38–43.

As a result of many procedural twists and turns, the litigation remained with

the district court through 2019. AVX Br. at 13–17. In late 2018, a dispute once again arose regarding the meaning of “asymmetrical” in claim 12. Preparing for a retrial of damages, AVX’s expert proposed a non-infringing alternative design that fell squarely within one of the district court’s two examples of an internally-grounded *symmetric* feedthrough filter capacitor. See Appx15113–15114. But Greatbatch argued that, despite meeting the earlier example of symmetry, the proposed alternative was “asymmetrical” and within the scope of claim 12. *Id.* In response, the district court abandoned its holding that symmetry and asymmetry are to be determined based on the relationship of passageways in the claimed capacitor. While admitting that it was a “close call,” the district court noted that the “measurement of symmetry or asymmetry is not necessarily the placement of the pins and the passageways. It is ultimately a measure of the overall capacitor itself.” Appx15135–15136. In fact, the district court commented that it would be possible for a feedthrough capacitor to be both symmetric and asymmetric at the same time: “if you just are looking at the placement and number of the pins, it is possible that that is symmetrical where at the same moment in time, the overall feedthrough filter capacitor is asymmetrical.” Appx15124. In other words, an internally-grounded feedthrough filter capacitor that meets the example of symmetry adopted earlier by the district court could still be asymmetric. Appx15135.

This broadening and reconstruction of the meaning of asymmetrical occurred

over AVX's objection. In the intervening years between the court's initial construction and its second construction, the PTO conducted an *ex parte* reexamination of claim 12 of the '627 patent. *See, e.g.*, Appx12535–13830. Having already secured an infringement and validity verdict based on the district court's initial claim construction, Greatbatch changed course before the PTO and argued in favor of the very interpretation supported by AVX before the trial. Appx23820; *see also* AVX Br. at 38. Indeed, the only evidence presented by Greatbatch during the reexamination on the meaning of asymmetrical supports AVX's position that symmetry and asymmetry must be defined based on the relative placement of "first passageways" and a "second passageway" in the capacitor. AVX Br. at 36–38. AVX expressly requested that this reexamination evidence—which it put into the record below—be considered if the district court were inclined to revisit the meaning of asymmetry. Appx24509 ("Any revisitation of the Court's construction must, therefore, entail a review of the positions Greatbatch took [during re-examination], . . .").¹ Nonetheless, the district court forged ahead with its "overall capacitor" definition and never reviewed the most recent and direct intrinsic evidence of the meaning of "asymmetrical." *See, e.g.*, Appx15137 (expressly denying AVX's

¹ An *ex parte* reexamination certificate issued on December 18, 2017. Appx1054–1055. This case, therefore, does not implicate the use of intrinsic evidence from a post-issuance proceeding that has not yet concluded. *Cf. F5 Networks, Inc. v. A10 Networks, Inc.*, 2011 WL 2681182 (W.D. Wash. July 8, 2011).

request for claim construction briefing).

IV. THE PANEL DECISION

On appeal, AVX challenged both of the claim construction decisions and argued, based on the original and intervening intrinsic evidence, that the construction AVX proposed before the 2016 trial was the only proper construction. AVX Br. at 30–41. AVX further argued that the failure to provide AVX with a new trial on invalidity was error. AVX Br. at 41–43.

On July 13, 2020, the panel affirmed the final judgment without opinion under this Court’s Rule of Practice 36.

ARGUMENT

I. THE PANEL’S RULE 36 AFFIRMANCE IS CONTRARY TO THIS COURT’S DECISIONS REGARDING THE ROLE OF PROSECUTION HISTORY IN CLAIM CONSTRUCTION.

The district court’s serial and contradictory claim constructions not only fail to provide clear notice of the scope of claim 12, but they violate long-standing precedent emphasizing the importance of intrinsic evidence in ascribing claim terms their plain and ordinary meaning. *Phillips*, 415 F.3d at 1313–1314 (emphasizing that a POSITA is deemed to read terms in the context of the claims, specification, and prosecution file history); *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1311 (Fed. Cir. 1999) (discussing the importance of the claims, the written description, and the prosecution history). The panel, nevertheless, affirmed. And in accepting the extempore constructions, it excused the district court’s failure to

consider prosecution history from the completed, co-pending proceeding before the PTO. Absent further review, the panel's Rule 36 affirmance stands, without explanation, alone. Moreover, AVX is unaware of any case from this Court addressing the effect of statements made during completed, co-pending PTO proceedings on a district court's interlocutory claim construction decision.

This Court has always considered statements during post-issuance proceedings before the PTO to be part of the intrinsic evidence. *See Info-Hold, Inc.*, 783 F.3d at 1266; *CIAS, Inc.*, 504 F.3d at 1362–63 (holding district court's reliance on positions taken during reexamination proper); *Nikken USA, Inc. v. Robinsons-May, Inc.*, 51 Fed. Appx. 874, 884 (Fed. Cir. 2002) (unpublished) (“[S]tatements made during the prosecution history, including reexamination proceedings, are relevant to determining claim scope.”). Indeed, this Court has found statements from reexamination to be of paramount importance in claim construction. *See InTouch Techs.*, 751 F.3d at 1341–42 (finding description presented during reexamination made clear the narrow scope of the claim term). District courts have followed suit. *See, e.g., Evolutionary Intelligence, LLC v. Sprint Nextel Corp.*, 2014 WL 4802426, at *4 (N.D. Cal. Sept. 26, 2014) (staying the case because statements in IPR proceeding will be part of the intrinsic record); *Beneficial Innovations, Inc. v. Blockdot, Inc.*, 2010 WL 2246291, at *3 (E.D. Tex. June 3, 2010) (holding that arguments made during reexamination must be considered in construing claim

terms). Moreover, statements during prosecution need not amount to a disclaimer to be relevant for claim construction purposes. *See Personalized Media Comm'ns, LLC v. Apple, Inc.*, 952 F.3d 1336, 1345 (Fed. Cir. 2020) (holding that the PTAB “erred by effectively requiring the prosecution history evidence to rise to the level of a disclaimer in order to inform the meaning of the disputed claim term”); *see also Genentech, Inc. v. Iancu*, 809 F. App’x 781, 784 (Fed. Cir. 2020) (“The public notice function of a patent and its prosecution history requires that a patentee be held to what he declares during the prosecution of his patent.”).

Nonetheless, the panel—which was required to undertake a *de novo* review²—rendered a decision which approves of the omission of numerous statements and arguments Greatbatch made during reexamination from the district court’s analysis. Greatbatch argued consistently during reexamination that symmetry and asymmetry are defined by the relative placement of the terminal pins and ground pin and, thus, the first passageways and second passageway in the capacitor through which these pins pass. *See also* Appx13331–13332, Appx13341, Appx13374; *see also* AVX Br. at 36–38. For example, Greatbatch asserted that:

to determine whether a filter capacitor is *asymmetrical* there has to be an internal ground pin, and the *active terminal pins must not be symmetrical with respect to the internal ground pin*.

² Because this Court’s review is *de novo*, *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 331 (2015), AVX put before the panel the reexamination evidence that the district court did not consider. *See* AVX Br. at 36–38.

Appx23820 (emphasis added). This interpretation of “asymmetrical” is inconsistent with the (1) the district court’s initial construction which depends on the placement of “non-ground lead passageways”³ and the “ground lead passageway” as well as (2) the second construction that concerns the “overall capacitor.”⁴

Not only did the district court fail to review Greatbatch’s arguments before the PTO, it never reviewed the *only evidence* of what a POSITA understands “asymmetrical” to mean in the context of claim 12.⁵ During the reexamination, Greatbatch submitted declarations from two POSITAs. Mr. Robert Stevenson, the ’627 patent’s first-named inventor, detailed in over eight pages how the arrangement of *conductive terminal pins with respect to the ground pin* in an asymmetric embodiment results in reduced performance, “[t]herefore, asymmetrical internally grounded capacitors were even more nonobvious.” Appx13412–13419 (¶¶ 44–54).

³ The phrase “non-ground lead passageways” is broader than “first passageways” because it includes passageways that do not require any electrical connection to the first set of electrode plates. Greatbatch took advantage of this breadth and secured an infringement verdict based on a communications line passing through an empty hole in the capacitor. That hole was the “non-ground lead passageway” that created asymmetry in the accused product. *See* AVX Br. at 38–41.

⁴ Greatbatch argued to the PTO that asymmetry could only be based on the terminal pins and ground pin and could not, for example, be based on the shape or layout of electrodes in the capacitor. *See* Appx13367.

⁵ At oral argument, one of the only questions posed by the panel was whether AVX asked the district court to consider the reexamination evidence. *See* 2020-07-09 Argument (19-2314.mp3) at 5:50. Counsel confirmed AVX made this request, which the district court declined. *Id.* at 6:10; *see also* Appx24509.

And Greatbatch expert, Prof. Steven Pilgrim, further reviewed the claims and specification and concluded that no POSITA would find the claimed asymmetrical design obvious given the poor filtering performance resulting from the placement of conductive terminal pins with respect to the ground pin. Appx13102–13114 (¶¶ 56, 61, 63, 68, 75, and 83).⁶ The panel, nonetheless, affirmed the district court’s claim constructions—which are divorced from the filtering performance of the capacitor and, thus, the meaning as understood by a POSITA—without any explanation as to why the district court’s abject failure to consider the reexamination evidence does not constitute an error of law. *Cf. E.I. du Pont de Nemours & Co.*, 849 F.2d at 1439 (reversing and remanding because district court “seemed to ignore arguments made during the reissue/reexamination proceeding”).

⁶ Prof. Pilgrim also took positions in the reexamination that are incongruous with those taken by Greatbatch before the district court. For example, in the reexamination Prof. Pilgrim explained:

The ’627 patent describes that “the feedthrough filter capacitor may be asymmetrical as well as symmetrical about the ground lead.” (’627 patent at 4:28–31). The ’627 makes clear that ***asymmetry is determined “about the ground lead”*** that internally grounds the capacitor

Appx13081–13082 (emphasis added). Before the district court, however, Greatbatch argued that this very same language suggests two separate concepts—(1) symmetry/asymmetry of the capacitor as a whole ***and*** (2) symmetry about the ground lead. *See* Appx15127. Because it did not review the intrinsic evidence, the district court did not know or appreciate that Greatbatch was taking different positions in the different fora.

II. A WRITTEN OPINION WOULD HAVE PRECEDENTIAL VALUE.

At a minimum, a written opinion is necessary. The Court's Rules of Practice allow for an affirmance without opinion when "an opinion would have no precedential value." Fed. Cir. R. Prac. 36. Here, however, a written opinion from the panel will necessarily have precedential value with respect to how reexamination evidence developed simultaneously with district court litigation impacts claim construction. While many procedural aspects of this case are unique, it is not unusual for intrinsic evidence to arise before, during, and after claim construction. Given both (i) the discretionary nature of the decision to stay litigation and (ii) the increase in the number of challenges to patent validity in parallel proceedings at the PTO, district courts commonly construe claim terms while new intrinsic evidence is being created. This Court should now address the role of evidence from a completed, co-pending PTO proceeding.

III. THE PANEL'S DECISION CONFLICTS WITH PRECEDENT THAT MANDATES A NEW TRIAL ON CLAIM 12 VALIDITY.

The district court's broadening of the scope of claim 12 after a jury already decided validity worked a substantial prejudice to AVX. The panel's Rule 36 affirmance fails to address this prejudice and ignores decisions from this Court holding that AVX is entitled to a new trial on validity. *See ArcelorMittal France*, 700 F.3d at 1325–26 (granting new validity trial because of change in claim construction); *TI Group Auto. Sys.*, 375 F.3d at 1139–40 ("Because the jury could

only have compared the prior art to the erroneously narrowed construed claims, we vacate . . . and remand the invalidity question.”).

As outlined above, twice the district court fabricated a construction for “asymmetrical.” In its second construction, the district court held that asymmetry is based on a nebulous “overall capacitor” design that is much broader than the court’s original definition. Appx15136. For example, the district court acknowledged that this new construction would allow Greatbatch’s “expert to explain why the meaning of asymmetry is not limited to passageway placement, but requires a ‘*broad perspective*’ as to the overall capacitor.” Appx15128 (emphasis added). The court further conceded that a product that meets the literal language of symmetrical in the court’s 2015 examples, could still be asymmetrical under an “overall capacitor” analysis. Appx15135–15136.

This broadening of claim 12 after a validity determination deprived AVX of the ability to fully and fairly present its invalidity defenses. For example, under the second, broader claim construction, the mere fact that prior art meets the example of symmetry does not mean that it is not asymmetrical for purposes of claim 12. If the original claim construction had been as broad as the court’s later construction, AVX could have presented its prior art in a different light or would have selected different prior art that had a capacitor with *any* asymmetric feature. AVX never had this opportunity and this deprivation constitutes a miscarriage of justice that should be

remedied by this Court. *See Marine Polymer Techs., Inc. v. HemCon, Inc.*, 672 F.3d 1350, 1369 (Fed. Cir. 2012) (en banc) (Dyk, J., dissenting) (noting that defendant should be permitted to defend itself under a proper claim construction). AVX Br. at 41–43.

CONCLUSION

For the foregoing reasons, this Court should grant rehearing en banc.

August 13, 2020

Respectfully submitted,

/s/ Ronald E. Cahill

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ADDENDUM

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

GREATBATCH LTD.,
Plaintiff-Cross-Appellant

v.

**AVX CORPORATION, AVX FILTERS
CORPORATION,**
Defendants-Appellants

2019-2314, 2020-1225

Appeals from the United States District Court for the
District of Delaware in No. 1:13-cv-00723-LPS, Chief Judge
Leonard P. Stark.

JUDGMENT

JAMES RAYMOND MULDOON, Harris Beach PLLC, Syracuse, NY, argued for plaintiff-cross-appellant. Also represented by NEAL SLIFKIN, LAURA SMALLEY, Pittsford, NY.

HEATHER B. REPICKY, Nutter McClennen & Fish LLP, Boston, MA, argued for defendants-appellants. Also represented by RONALD E. CAHILL.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (PROST, *Chief Judge*, REYNA and
HUGHES, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

July 14, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

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Name: Ronald E. Cahill