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## Federal Circuit Reconsidering Claim Construction Standard of Review

2013-03-15

The U.S. Court of Appeals for the Federal Circuit held in *Cybor Corp. v. FAS Technologies, Inc.*, 138 F.3d 1448, 1451 (Fed. Cir. 1998), that “claim construction, as a purely legal issue, is subject to *de novo* review on appeal.” The Federal Circuit announced today that the full court will consider whether to overrule *Cybor*.

The order granting the petition for rehearing en banc in *Lighting Ballast Control LLC v. Universal Lighting Technologies, Inc.*, Nos. 2012-1014, -1015, directs the parties to address three questions:

- a. Should this court overrule *Cybor Corp. v. FAS Technologies, Inc.*, 138 F.3d 1448 (Fed. Cir. 1998)?
- b. Should this court afford deference to any aspect of a district court’s claim construction?
- c. If so, which aspects should be afforded deference?

Universal Lighting’s opening brief is due 45 days from the date of the court’s order. The Federal Circuit invited the views of the United States Patent and Trademark Office as amicus curiae and stated that other amici curiae briefs may be filed without seeking consent or leave of court. The date for oral argument has not yet been set.

The full text of the court’s order can be found [here](#).

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