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## Limits to Certificates of Correction

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A certificate of correction can be used to correct some errors in issued patents that were caused either by the applicant or by the Patent and Trademark Office (PTO). Typical errors by the PTO include printing errors and textual omissions “clearly disclosed by the records of the” PTO. See [35 U.S.C. § 254](#) . Errors by the applicant that can be corrected by a certificate of correction are those of a “clerical or typographical nature, or of minor character.” See [35 U.S.C. § 255](#) .

In a recent case of first impression, [Superior Fireplace Co. v. Majestic Products Co.](#), the Federal Circuit was faced with the question of the limits on “certificates of correction” to correct mistakes caused by the applicant. The Superior Fireplace decision demonstrates the importance of a patentee carefully checking the claims of its patent during prosecution of the application to insure that they are accurate.

The dispute in Superior Fireplace emanated from the term “rear walls” in the main claim of a patent granted to Superior for gas fireplace technology. As initially filed, the claim recited a “rear wall.” The Patent Office, through an examiner’s amendment after a telephone interview between Superior and the examiner, amended the claim to recite “rear walls.” Prior to issuance, Superior submitted an amendment making at least forty separate changes to the patent specification but did not amend the term “rear walls.” After the patent issued, Superior pointed out nine errors in a “Make of Record Letter” to the PTO. Again, Superior did not indicate that the claim term “rear walls” was an error.

Shortly after being sued by Superior, Majestic pointed out that their product had only one rear wall, and could not infringe a claim that required a plurality of rear walls. Recognizing the

problem, Superior then sought a certificate of correction from the PTO to change the claim term “rear walls” to “rear wall.” It first unsuccessfully sought to correct the claim term on the basis that it resulted from a PTO error. Superior then successfully convinced the PTO to correct the “error” claiming it was caused by Superior’s error.

The district court found, and the Federal Circuit later agreed, that the certificate of correction was invalid and, therefore, that Majestic did not infringe. The Federal Circuit interpreted 35 U.S.C. § 255 to allow broadening corrections, but only of clear clerical or typographical errors. Relying on two related sections of the patent statute (sections [251](#) and [252](#), which deal with reissue patents), the Court noted a Congressional concern for protecting the public against the unanticipated broadening of a claim after issuance. It held that a broadening correction of a clerical or typographical error in a claim is permissible if both the error and how it should be corrected are clearly evident from the patent specification, drawings and prosecution history. Finding no clear evidence in Superior’s favor, the Federal Circuit found that the certificate of correction was invalid.

This decision highlights that patent holders should carefully review claims during the course of prosecution and particularly at the end of prosecution and before the patent issues, and should act swiftly to correct errors. Claims are easier to correct before the patent issues. If a certificate of correction is not possible, then to amend a mistake discovered within two years of the issuance of the patent and which will broaden a claim, a patent holder may want to consider filing a broadening reissue application. Filing a reissue application will reopen examination, but a reissue application can be used to correct more substantive errors in addition to just errors “of a clerical or typographical nature, or of minor character.”

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