

When is a Penguin a Bird? or What We Can Learn About Claim Construction from Cognitive Linguistics

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This article continues a project that examines patent claim construction through a linguistics lens. Often in claim construction, the words being interpreted are not scientific or technical terms, but rather ordinary language used in its common manner. Naturally, in determining what these everyday words mean, judges will resort to knowledge of the word that they already possess, at least subconsciously. For this reason, it makes sense to look at how judges (and everyone else) acquire their knowledge of language and how that acquisition then shapes the claim construction process.

In particular, this article considers the prototype theory involved in language acquisition – rather than acquiring knowledge based on definition, this theory instead measures how closely the new object resembles the prototype for a known category. For example, rather than understanding a “bird” as a flying animal with feathers and a beak, we consider whether it matches our categorical ideal of bird. Thus, a robin is very prototypical of a bird, a penguin not so much. The prototypical ideal can either be our first exposure to that object or an object that we consider most central to the category.

So what does this have to do with claim construction? A lot, actually. When judges are confronted with words that they have already been exposed to, it is natural that they would have a categorical prototype in mind when defining the term. Whether or not the accused infringing devices match will depend on how close those devices are to the judges’ prototypical ideals. By thinking about claim construction through this alternate framework, we might be better able to explain and possibly even improve the much maligned process.