This new release to *Patent Claim Construction and Markman Hearings* updates your guide with an analysis of a new, important Supreme Court decision as well as providing additional case and practice coverage throughout the book. This revised version reflects the most current guidance for this important patent practice area.

Examples of the new coverage included with this release are:

**Standard of Review of a Claim Construction:** For almost twenty years after the Markman case was decided, the Court of Appeals for the Federal Circuit refused to give any deference to a district court’s claim construction and reviewed all claim constructions on a de novo basis. This has now changed after the Supreme Court’s decision in *Teva Pharmaceuticals USA v. Sandoz, Inc.*, which held that while the ultimate claim construction is a matter of law to be determined de novo, findings on extrinsic evidence are to be reviewed for clear error. See §§ 1:3, 3:1 and 11:2.

**Collateral Estoppel:** A number of decisions have been handed down by the Federal Circuit on when collateral estoppel is applicable in claim construction cases. See § 3:4.1.

**Expert Testimony:** Expert testimony, formerly disfavored by the Federal Circuit, will become more important in trial court claim constructions, as under the new Supreme Court’s new *Teva Pharmaceuticals USA v. Sandoz, Inc.* decision (see above), such testimony will be reviewed under a “clear error” standard and will be less likely to be overturned on appeal. See §§ 6:8.2 and 8:3.4.

**District Court Local Patent Rules:** The local rules for two additional federal courts have been added to chapter 5: the rules for the District of Delaware (see § 5:4) and the District of Utah (see § 5:30).

**Sample Claim Construction:** A new appendix provides an additional claim construction illustration. See Appendix K, “Hypothetical Claim Construction Presentation on the Wright Brothers’ Aeroplane Patent.”
## FILING INSTRUCTIONS

**Patent Claim Construction and Markman Hearings**

**Release #2**  
**July 2015**

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