
JUSTICE BREYER delivered the opinion of the Court

In *Markman v. Westview Instruments, Inc.*, 517 U. S. 370 (1996), we explained that a patent claim is that “portion of the patent document that defines the scope of the patentee’s rights.” We held that “the construction of a patent, including terms of art within its claim,” is not for a jury but “exclusively” for “the court” to determine. That is so even where the construction of a term of art has “evidentiary underpinnings.”

Today’s case involves claim construction with “evidentiary underpinnings.” And, it requires us to determine what standard the Court of Appeals should use when it reviews a trial judge’s resolution of an underlying factual dispute. Should the Court of Appeals review the district court’s factfinding de novo as it would review a question of law? Or, should it review that factfinding as it would review a trial judge’s factfinding in other cases, namely by taking them as correct “unless clearly erroneous?” See Fed. Rule Civ. Proc. 52(a)(6). We hold that the appellate court must apply a “clear error,” not a de novo, standard of review.

I

The basic dispute in this case concerns the meaning of the words “molecular weight” as those words appear in a patent claim. The petitioners, Teva Pharmaceuticals (along with related firms), own the relevant patent. The patent covers a manufacturing method for Copaxone, a drug used to treat multiple sclerosis. The drug’s active ingredient, called “copolymer-1,” is made up of molecules of varying sizes. And the relevant claim describes that ingredient as having “a molecular weight of 5 to 9 kilodaltons.”

The respondents, Sandoz, Inc. (and several other firms), tried to market a generic version of Copaxone. Teva sued Sandoz for patent infringement. Sandoz defended the suit by arguing that the patent was invalid. The Patent Act requires that a claim “particularly poin[t] out and distinctly clai[m] the subject matter which the applicant regards as his invention.” 35 U. S. C. §112 ¶2 (2006 ed.); see *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U. S. ___, ___, n. 1 (2014). The phrase “molecular weight of 5 to 9 kilodaltons,” said Sandoz, did not satisfy this requirement.

The reason that the phrase is fatally indefinite, Sandoz argued, is that, in the context of this patent claim, the term “molecular weight” might mean any one of three different things. The phrase might refer (1) to molecular weight as calculated by the weight of the molecule that is most prevalent in the mix that makes up copolymer-1. (The scientific term for molecular weight so calculated is, we are told, “peak average molecular weight.”) The phrase might refer (2) to molecular weight as calculated by taking all the different-sized molecules in the mix that makes up copolymer-1 and calculating the average weight, i.e., adding up the weight of each molecule and dividing by the number of molecules. (The scientific term for molecular weight so calculated is, we are told, “number average molecular weight.”) Or, the phrase might refer (3) to molecular weight as calculated by taking all the different-sized molecules in the mix that makes up copolymer-1 and calculating their average weight while giving heavier molecules a weight-related bonus when doing so. (The scientific term for molecular weight so calculated, we are told, is “weight average molecular weight.”) In Sandoz’s view, since Teva’s patent claim does not say which method of calculation should be used, the claim’s phrase “molecular weight” is indefinite, and the claim fails to satisfy the critical patent law requirement.

The District Court, after taking evidence from experts, concluded that the patent claim was sufficiently definite. Among other things, it found that in context a skilled artisan would understand that the term “molecular weight” referred to molecular weight as calculated by the first method, i.e., “peak average molecular weight.” *See [also] Nautilus* (“[T]he definiteness inquiry trains on the understanding of a skilled artisan at the time of the patent application”). In part for this reason, the District Court held the patent valid.

On appeal, the Federal Circuit held to the contrary. It found that the term “molecular weight” was indefinite. And it consequently held the patent invalid. In reaching this conclusion, the Federal Circuit reviewed de novo all aspects of the District Court’s claim construction, including the District Court’s determination of subsidiary facts. *[S]ee also Lighting Ballast Control LLC v. Philips Electronics North Am. Corp.*, 744 F. 3d 1272, 1276-1277 (CA Fed. 2014) (en banc) (reaffirming de novo review of district court claim construction).

Teva filed a petition for certiorari. And we granted that petition. The Federal Circuit reviews the claim construction decisions of federal district courts throughout the Nation, and we consequently believe it important to clarify the standard of review that it must apply when doing so.

II

A

Federal Rule of Civil Procedure 52(a)(6) states that a court of appeals “must not . . . set aside” a district court’s “[f]indings of fact” unless they are “clearly erroneous.” In our view, this rule and the standard it sets forth must apply when a court of appeals reviews a district court’s resolution of subsidiary factual matters made in the course of its construction of a patent claim. We have made clear that the Rule sets forth a “clear command.” *Anderson v. Bessemer City*, 470 U. S. 564, 574 (1985). “It does not make exceptions or purport to exclude certain categories of factual findings from the obligation of a court of appeals to accept a district court’s findings unless clearly erroneous.” *Pullman-Standard v. Swint*, 456 U. S. 273, 287 (1982). Accordingly, the Rule applies to both subsidiary and ultimate facts. And we have said that, when reviewing the findings of a “district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues de novo.”

Even if exceptions to the Rule were permissible, we cannot find any convincing ground for creating an exception to that Rule here. The Rules Advisory Committee pointed out that, in general, exceptions “would tend to undermine the legitimacy of the district courts . . ., multiply appeals . . ., and needlessly reallocate judicial authority.”

Our opinion in *Markman* neither created, nor argued for, an exception to Rule 52(a). The question presented in that case was a Seventh Amendment question: Should a jury or a judge construe patent claims? We pointed out that history provides no clear answer. The task primarily involves the construction of written instruments. And that task is better matched to a judge’s skills. (“The construction of written instruments is one of those things that judges often do and are likely to do better than jurors unburdened by training in exegesis”). We consequently held that claim construction falls “exclusively within the province of the court,” not that of the jury.

When describing claim construction we concluded that it was proper to treat the ultimate question of the proper construction of the patent as a question of law in the way that we treat document construction as a question of law. But this does not imply an exception to Rule 52(a)

for underlying factual disputes. We used the term “question of law” while pointing out that a judge, in construing a patent claim, is engaged in much the same task as the judge would be in construing other written instruments, such as deeds, contracts, or tariffs. Construction of written instruments often presents a “question solely of law,” at least when the words in those instruments are “used in their ordinary meaning.” But sometimes, say when a written instrument uses “technical words or phrases not commonly understood,” those words may give rise to a factual dispute. If so, extrinsic evidence may help to “establish a usage of trade or locality.” And in that circumstance, the “determination of the matter of fact” will “preced[e]” the “function of construction.” This factual determination, like all other factual determinations, must be reviewed for clear error. *See Pullman-Standard*, (The Rule does not “exclude certain categories of factual findings” and applies to both “subsidiary” and “ultimate” facts (internal quotation marks omitted)).

Accordingly, when we held in *Markman* that the ultimate question of claim construction is for the judge and not the jury, we did not create an exception from the ordinary rule governing appellate review of factual matters. *Markman* no more creates an exception to Rule 52(a) than would a holding that judges, not juries, determine equitable claims, such as requests for injunctions. A conclusion that an issue is for the judge does not indicate that Rule 52(a) is inapplicable.

While we held in *Markman* that the ultimate issue of the proper construction of a claim should be treated as a question of law, we also recognized that in patent construction, subsidiary factfinding is sometimes necessary. Indeed, we referred to claim construction as a practice with “evidentiary underpinnings,” a practice that “falls somewhere between a pristine legal standard and a simple historical fact.” We added that sometimes courts may have to make “credibility judgments” about witnesses. In other words, we recognized that courts may have to resolve subsidiary factual disputes. And, as explained above, the Rule requires appellate courts to review all such subsidiary factual findings under the “clearly erroneous” standard.

Precedent further supports application of the “clearly erroneous” standard. Before the creation of the Federal Circuit, the Second Circuit explained that in claim construction, the subsidiary “question . . . of how the art understood the term . . . was plainly a question of fact; and unless the [district court’s] finding was ‘clearly erroneous,’ we are to take” it “as controlling.” *Harries v. Air King Products, Co.*, 183 F. 2d 158, 164 (2d Cir. 1950) (L. Hand, C. J.). We have said the same as to subsidiary factual findings concerning other patent law inquiries, including “obviousness.” *Dennison Mfg. Co. v. Panduit Corp.*, 475 U. S. 809, 811 (1986) (per curiam) (“subsidiary determinations of the District Court” subject to Rule 52(a)’s clear error standard).

Finally, practical considerations favor clear error review. We have previously pointed out that clear error review is “particularly” important where patent law is at issue because patent law is “a field where so much depends upon familiarity with specific scientific problems and principles not usually contained in the general storehouse of knowledge and experience.” A district court judge who has presided over, and listened to, the entirety of a proceeding has a comparatively greater opportunity to gain that familiarity than an appeals court judge who must read a written transcript or perhaps just those portions to which the parties have referred. Cf. *Lighting Ballast*, 744 F. 3d, at 1311 (O’Malley, J., dissenting) (Federal Circuit judges “lack the tools that district courts have available to resolve factual disputes fairly and accurately,” such as questioning the experts, examining the invention in operation, or appointing a court-appointed

expert); *Anderson*, 470 U. S., at 574 (“The trial judge’s major role is the determination of fact, and with experience in fulfilling that role comes expertise”).

B

Sandoz argues that claim construction mostly consists of construing a set of written documents that do not give rise to subsidiary factual disputes. It adds that separating “factual” from “legal” questions is often difficult. And Sandoz, like the Federal Circuit itself, argues that it is simpler for that appellate court to review the entirety of the district court’s claim construction de novo rather than to apply two separate standards. [*S*]ee also *Lighting Ballast*, supra, at 1284 (criticizing clear error review in part because of the purportedly difficult task of “disentangling” fact from law).

But even were we free to ignore the Federal Rule (which we are not), we would not find this argument convincing. Courts of appeals have long found it possible to separate factual from legal matters. At the same time, the Federal Circuit’s efforts to treat factual findings and legal conclusions similarly have brought with them their own complexities. See e.g., *Cybor Corp. v. FAS Technologies, Inc.*, 138 F. 3d 1448, 1454 (Fed. Cir. 1998) (en banc) (claim construction does not involve “factual evidentiary findings” (citation and internal quotation marks omitted)).

Finally, the Circuit feared that “clear error” review would bring about less uniformity. Neither the Circuit nor Sandoz, however, has shown that (or explained why) divergent claim construction stemming from divergent findings of fact (on subsidiary matters) should occur more than occasionally. After all, the Federal Circuit will continue to review de novo the district court’s ultimate interpretation of the patent claims. And the attorneys will no doubt bring cases construing the same claim to the attention of the trial judge; those prior cases will sometimes be binding because of issue preclusion, and sometimes will serve as persuasive authority. Moreover, it is always possible to consolidate for discovery different cases that involve construction of the same claims. And, as we said in *Markman*, subsidiary factfinding is unlikely to loom large in the universe of litigated claim construction.

C

The dissent argues that claim construction does not involve any “factfinding,” or, if it does, claim construction factfinding is akin to the factfinding that underlies our interpretation of statutes. Its first, broader contention runs contrary to our recognition in *Markman* that claim construction has “evidentiary underpinnings” and that courts construing patent claims must sometimes make “credibility judgments” about witnesses. Indeed, this case provides a perfect example of the factfinding that sometimes underlies claim construction: The parties here presented the District Court with competing fact-related claims by different experts, and the District Court resolved the issues of fact that divided those experts.

The dissent’s contention also runs contrary to Sandoz’s concession at oral argument that claim construction will sometimes require subsidiary factfinding. It is in tension with our interpretation of related areas of patent law, such as the interpretation of “obviousness,” which we have said involves subsidiary factfinding subject to Rule 52(a)’s clear error review. And it fights the question presented in this case, which assumes the existence of such factfinding. See Pet. for Cert. i (whether “a district court’s factual finding in support of its construction of a patent claim term may be reviewed de novo, . . . or only for clear error”).

Neither do we find factfinding in this context sufficiently similar to the factfinding that underlies statutory interpretation. Statutes, in general, address themselves to the general public; patent claims concern a small portion of that public. Statutes typically (though not always) rest upon congressional consideration of general facts related to a reasonably broad set of social circumstances; patents typically (though not always) rest upon consideration by a few private parties, experts, and administrators of more narrowly circumscribed facts related to specific technical matters. The public, and often an adversarial public, typically considers and discusses the relevant general facts before Congress enacts a statute; only private parties, experts, and administrators likely consider the relevant technical facts before the award of a patent. Given these differences, it is not surprising that this Court has never previously compared patent claim construction in any here relevant way to statutory construction. As discussed, however, the Court has repeatedly compared patent claim construction to the construction of other written instruments such as deeds and contracts.

D

Now that we have set forth why the Federal Circuit must apply clear error review when reviewing subsidiary factfinding in patent claim construction, it is necessary to explain how the rule must be applied in that context. We recognize that a district court's construction of a patent claim, like a district court's interpretation of a written instrument, often requires the judge only to examine and to construe the document's words without requiring the judge to resolve any underlying factual disputes. As all parties agree, when the district court reviews only evidence intrinsic to the patent (the patent claims and specifications, along with the patent's prosecution history), the judge's determination will amount solely to a determination of law, and the Court of Appeals will review that construction *de novo*.

In some cases, however, the district court will need to look beyond the patent's intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period. In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factual findings about that extrinsic evidence. These are the "evidentiary underpinnings" of claim construction that we discussed in *Markman*, and this subsidiary factfinding must be reviewed for clear error on appeal.

For example, if a district court resolves a dispute between experts and makes a factual finding that, in general, a certain term of art had a particular meaning to a person of ordinary skill in the art at the time of the invention, the district court must then conduct a legal analysis: whether a skilled artisan would ascribe that same meaning to that term in the context of the specific patent claim under review. That is because "[e]xperts may be examined to explain terms of art, and the state of the art, at any given time," but they cannot be used to prove "the proper or legal construction of any instrument of writing." *Winans v. New York & Erie R. Co.*, 21 How. 88, 100-101 (1859); *see also Markman*, at 388 ("Where technical terms are used, or where the qualities of substances . . . or any similar data necessary to the comprehension of the language of the patent are unknown to the judge, the testimony of witnesses may be received upon these subjects, and any other means of information be employed. But in the actual interpretation of the patent the court proceeds upon its own responsibility, as an arbiter of the law, giving to the patent its true and final character and force" (quoting 2 W. Robinson, *Law of Patents* §732, pp. 482-483 (1890); emphasis in original)).

Accordingly, the question we have answered here concerns review of the district court's resolution of a subsidiary factual dispute that helps that court determine the proper interpretation of the written patent claim. The district judge, after deciding the factual dispute, will then interpret the patent claim in light of the facts as he has found them. This ultimate interpretation is a legal conclusion. The appellate court can still review the district court's ultimate construction of the claim *de novo*. But, to overturn the judge's resolution of an underlying factual dispute, the Court of Appeals must find that the judge, in respect to those factual findings, has made a clear error. Fed. Rule Civ. Proc. 52(a)(6).

In some instances, a factual finding will play only a small role in a judge's ultimate legal conclusion about the meaning of the patent term. But in some instances, a factual finding may be close to dispositive of the ultimate legal question of the proper meaning of the term in the context of the patent. Nonetheless, the ultimate question of construction will remain a legal question. Simply because a factual finding may be nearly dispositive does not render the subsidiary question a legal one. "[A]n issue does not lose its factual character merely because its resolution is dispositive of the ultimate" legal question. It is analogous to a judge (sitting without a jury) deciding whether a defendant gave a confession voluntarily. The answer to the legal question about the voluntariness of the confession may turn upon the answer to a subsidiary factual question, say "whether in fact the police engaged in the intimidation tactics alleged by the defendant." An appellate court will review the trial judge's factual determination about the alleged intimidation deferentially (though, after reviewing the factual findings, it will review a judge's ultimate determination of voluntariness *de novo*). An appellate court similarly should review for clear error those factual findings that underlie a district court's claim construction.

III

We can illustrate our holding by considering an instance in which Teva, with the support of the Solicitor General, argues that the Federal Circuit wrongly reviewed the District Court's factual finding *de novo*. Recall that Teva's patent claim specifies an active ingredient with a "molecular weight of about 5 to 9 kilodaltons." Recall Sandoz's basic argument, namely that the term "molecular weight" is indefinite or ambiguous. The term might refer to the weight of the most numerous molecule, it might refer to weight as calculated by the average weight of all molecules, or it might refer to weight as calculated by an average in which heavier molecules count for more. The claim, Sandoz argues, does not tell us which way we should calculate weight.

To illustrate, imagine we have a sample of copolymer-1 (the active ingredient) made up of 10 molecules: 4 weigh 6 kilodaltons each, 3 weigh 8 kilodaltons each, and 3 weigh 9 kilodaltons each. Using the first method of calculation, the "molecular weight" would be 6 kilodaltons, the weight of the most prevalent molecule. Using the second method, the molecular weight would be 7.5 (total weight, 75, divided by the number of molecules, 10). Using the third method, [*27] the molecular weight would be more than 8, depending upon how much extra weight we gave to the heavier molecules.

Teva argued in the District Court that the term "molecular weight" in the patent meant molecular weight calculated in the first way (the weight of the most prevalent molecule, or peak average molecular weight). Sandoz, however, argued that figure 1 of the patent showed that Teva could not be right. (We have set forth figure 1 in the Appendix, *infra*). That figure, said Sandoz, helped to show that the patent term did not refer to the first method of calculation. Figure 1

shows how the weights of a sample's molecules were distributed in three different samples. The curves indicate the number of molecules of each weight that were present in each of the three. For example, the figure's legend says that the first sample's "molecular weight" is 7.7. According to Teva, that should mean that molecules weighing 7.7 kilodaltons were the most prevalent molecules in the sample. But, look at the curve, said Sandoz. It shows that the most prevalent molecule weighed, not 7.7 kilodaltons, but slightly less than 7.7 (about 6.8) kilodaltons. After all, the peak of the first molecular weight distribution curve (the solid curve in the figure) is not at precisely 7.7 kilodaltons, but at a point just before 7.7. Thus, argued Sandoz, the figure shows that the patent claim term "molecular weight" did not mean molecular weight calculated by the first method. It must mean something else. It is indefinite.

The District Court did not accept Sandoz's argument. Teva's expert testified that a skilled artisan would understand that converting data from a chromatogram to molecular weight distribution curves like those in figure 1 would cause the peak on each curve to shift slightly; this could explain the difference between the value indicated by the peak of the curve (about 6.8) and the value in the figure's legend (7.7). Sandoz's expert testified that no such shift would occur. App. 375a-376a. The District Court credited Teva's expert's account, thereby rejecting Sandoz's expert's explanation. The District Court's finding about this matter was a factual finding—about how a skilled artisan would understand the way in which a curve created from chromatogram data reflects molecular weights. Based on that factual finding, the District Court reached the legal conclusion that figure 1 did not undermine Teva's argument that molecular weight referred to the first method of calculation (peak average molecular weight).

When the Federal Circuit reviewed the District Court's decision, it recognized that the peak of the curve did not match the 7.7 kilodaltons listed in the legend of figure 1. But the Federal Circuit did not accept Teva's expert's explanation as to how a skilled artisan would expect the peaks of the curves to shift. And it failed to accept that explanation without finding that the District Court's contrary determination was "clearly erroneous." See *ibid.* The Federal Circuit should have accepted the District Court's finding unless it was "clearly erroneous." Our holding today makes clear that, in failing to do so, the Federal Circuit was wrong.

Teva claims that there are two additional instances in which the Federal Circuit rejected the District Court's factual findings without concluding that they were clearly erroneous. We leave these matters for the Federal Circuit to consider on remand in light of today's opinion.

We vacate the Federal Circuit's judgment, and we remand the case for further proceedings consistent with this opinion.

It is so ordered.

APPENDIX

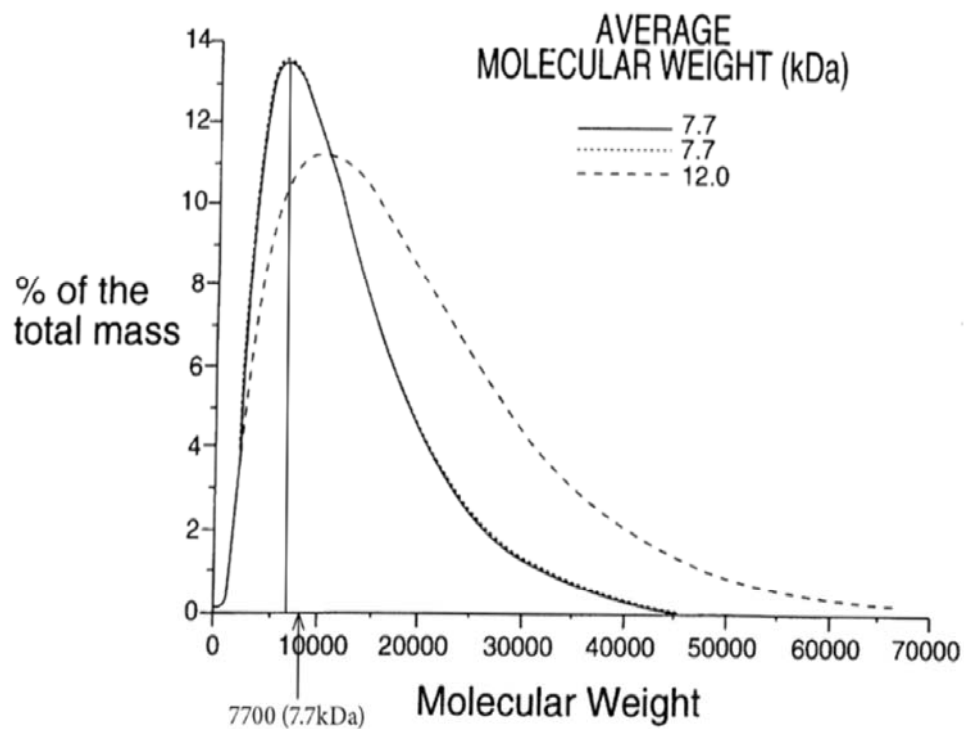


FIG. 1 (with minor additions to emphasize that the peak of the solid curve does not correspond precisely to 7.7kDa)

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting

I agree with the Court’s conclusion that there is no special exception to Federal Rule of Civil Procedure 52(a)(6) for claim construction. But that is not the question in this case. Because Rule 52(a)(6) provides for clear error review only of “findings of fact” and “does not apply to conclusions of law,” the question here is whether claim construction involves findings of fact. Because it does not, Rule 52(a)(6) does not apply, and the Court of Appeals properly applied a *de novo* standard of review.

I

In reaching the contrary conclusion, the majority fails to engage the “vexing . . . distinction between questions of fact and questions of law.” Unfortunately, “Rule 52(a) does not furnish particular guidance with respect to distinguishing law from fact,” and we have found it difficult to discern “any other rule or principle that will unerringly” differentiate the two. That inquiry is thus not as simple as pointing out the undeniable “evidentiary underpinnings” of claim construction.

Instead, we must consider how “findings of fact” and “conclusions of law” were understood at the time Rule 52 was adopted. Unfortunately, the pre-1937 evidence of this Court’s treatment of evidentiary determinations underlying claim construction is inconclusive. In several decisions, the Court considered extrinsic evidence related to claim construction with no apparent deference to the District Courts’ findings based on that evidence. None of those decisions, however, expressly turned on a disagreement over a subsidiary evidentiary determination.

Absent specific evidence of the treatment of a particular issue at the time Rule 52 was adopted, we have drawn analogies to the treatment of other issues under Rule 52(a)(6). In general, we have treated district-court determinations as “analytically more akin to a fact” the more they pertain to a simple historical fact of the case, and as “analytically more akin to . . . a legal conclusion” the more they define rules applicable beyond the parties’ dispute. Under this approach, determinations underlying claim construction fall on the law side of the dividing line.

A

Patents are written instruments, so other written instruments supply the logical analogy. And as the majority recognizes, the construction of written instruments is generally a question of law. But in certain contexts, a court construing a written instrument makes subsidiary determinations that the law treats as findings of fact.

The classic case of a written instrument whose construction does not involve subsidiary findings of fact is a statute. Our treatment of subsidiary evidentiary findings underlying statutory construction as conclusions of law makes sense for two reasons.

First, although statutory construction may demand some inquiry into legislative “intent,” that inquiry is analytically legal: The meaning of a statute does not turn on what an individual lawmaker intended as a matter of fact, but only on what intent has been enacted into law through the constitutionally defined channels of bicameralism and presentment. . . .

Second, statutes govern the rights and duties of the public as a whole, so subsidiary evidentiary findings shape legal rules that apply far beyond the boundaries of the dispute involved. . . .

The construction of contracts and deeds, by contrast, sometimes involves subsidiary findings of fact. . . .

Of course, not all subsidiary inquiries that a court makes in the course of construing contracts amount to findings of fact. For example, when a court searches for the meaning that a hypothetical person “conversant with the subject-matter with which the contract is dealing” would give to the words of the contract, its conclusion often remains one of law.

The question we must ask, then, is whether the subsidiary findings underlying claim construction more closely resemble the subsidiary findings underlying the construction of statutes or those underlying the construction of contracts and deeds that are treated as findings of fact. This, in turn, depends on whether patent claims are more like statutes or more like contracts and deeds.

B

A patent, generally speaking, is “an official document reflecting a grant by a sovereign that is made public, or ‘patent.’” They could be issued and revoked only by the Crown, which sometimes used the patent to delegate governmental power to regulate an industry. . . .

Like the royal prerogatives that were their historical antecedents, patents have a regulatory effect: They “restrain others from manufacturing, using or selling that which [the patent holder] has invented” for a specified period of time. And because the regulatory scope of a patent is determined by the claims in the patent, the subsidiary findings that a court makes during claim construction contribute to rules that limit conduct by the public at large.

Because they are governmental dispositions and provide rules that bind the public at large, patent claims resemble statutes. . . .

Moreover, because the ultimate meaning of a patent claim, like the ultimate meaning of a statute, binds the public at large, it should not depend on the specific evidence presented in a particular infringement case. Although the party presentations shape even statutory construction, *de novo* review on appeal helps to ensure that the construction is not skewed by the specific evidence presented in a given case.

C

For purposes of construction, contracts and deeds are less natural analogies for patents. In particular, patents lack the characteristics of those instruments that have justified departing from the usual practice of treating document construction as a wholly legal inquiry, not subject to subsidiary findings of fact.

. . .

Because the skilled artisan inquiry in claim construction more closely resembles determinations categorized as “conclusions of law” than determinations categorized as “findings of fact,” I would hold that it falls outside the scope of Rule 52(a)(6) and is subject to *de novo* review.

II

A

The majority makes little effort to justify its assertion that the subsidiary determinations a district court makes in the course of claim construction are findings of fact. And the few analogies that it attempts to draw either lack support or prove too much.

...

The need for uniformity in claim construction also weighs heavily in favor of *de novo* review of subsidiary evidentiary determinations. Uniformity is a critical feature of our patent system because “[t]he limits of a patent must be known for the protection of the patentee, the encouragement of the inventive genius of others and the assurance that the subject of the patent will be dedicated ultimately to the public.” If the boundaries of the patent right could shift from case to case, then the result would be “a ‘zone of uncertainty which enterprise and experimentation may enter only at the risk of infringement.’” So damaging is this unpredictability that we identified uniformity as an “independent” reason justifying our allocation of claim construction to the court.

The majority attempts to downplay the effect its decision will have on uniformity by pointing out that “prior cases [construing the same claim] will sometimes be binding because of issue preclusion, and sometimes will serve as persuasive authority.” But we have already rejected the notion that issue preclusion adequately safeguards the uniformity that our patent system requires.

Perhaps the majority is correct that “subsidiary factfinding is unlikely to loom large in the universe of litigated claim construction.” But I doubt it. If this case proves anything, it is that the line between fact and law is an uncertain one—made all the more uncertain by the majority’s failure to identify sound principles for the lines it draws. The majority’s rule provides litigants who prevail in district court a significant opportunity and incentive to take advantage of this uncertainty by arguing on appeal that the district court’s claim construction involved subsidiary findings of fact. At best, today’s holding will spawn costly—and, if the majority is correct about the frequency with which these evidentiary determinations make a difference, meritless—collateral litigation over the line between law and fact. We generally avoid any rule of judicial administration that “results in a substantial expenditure of scarce judicial resources on difficult questions that have no effect on the outcome of the case,” and there is no reason to embrace one here. But I fear worse: that today’s decision will result in fewer claim construction decisions receiving precedential effect, thereby injecting uncertainty into the world of invention and innovation.

In short, the majority’s rule finds no support in either the historical understanding of “findings of fact” or considerations of policy that have served as our guide when we have been confronted with a difficult question of fact-law classification. I would not adopt it.