

Underdeveloped Constructions: A Leg-Up for Your Patent Rival

***Boston Scientific Corp. v. Stryker Corp.*, No. 26-1171 (Fed. Cir. June 17, 2026)**

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A preliminary injunction is one of the most powerful tools available to a patent holder, but also one of the hardest to obtain. Boston Scientific, a multi-billion-dollar medical-device maker, learned the latter when it tried to stop a competitor's product launch on the strength of a single claim word—"reaches"—and the Federal Circuit affirmed that, on the record it had built, the company could not show it was likely to win.



The dispute concerned the basivertebral nerve, a known source of chronic low back pain. The nerve sits within the spongy interior of the vertebral body and close to the spinal cord; reaching it safely is difficult. Boston Scientific's '166 patent claims a method for doing so: a radiofrequency probe is threaded through a straight introducer (the "trocar"), past the dense cortical shell and into the cancellous interior, where a deflectable instrument forms a curved path to the nerve and ablates it. The asserted claims require that the introducer's tip "reaches a cancellous portion of the vertebral body" (the phrase that later decided the case).

Stryker developed a competing device, the OptaBlate BVN, to treat the same condition, obtaining FDA clearance using Boston Scientific's product as a predicate. Boston Scientific sued and moved to enjoin the launch, arguing that Stryker would induce infringement by instructing physicians to advance its "access cannula" far enough to reach the cancellous bone. Stryker responded that it instructs physicians to stop short of it. However, neither side had meaningfully construed the term "reaches"—which proved decisive.

The district court tentatively read "reaches" to require that the tip "touch[] or extend[] to" the cancellous bone, and denied the injunction. Reviewing only for abuse of discretion, the Federal Circuit declined to construe the term itself, observing that the parties had "barely address[ed]" it below, identified no intrinsic evidence, and offered no expert testimony that "reaches" carried a special meaning. The dictionaries were inconclusive. The specification leaned toward Stryker, describing the trocar passing "into the cancellous interior" without ever using "reaches." Boston Scientific's new arguments on appeal could not cure a record it had left undeveloped, and tentatively adopting Stryker's construction was not an abuse of discretion.

The infringement showing was equally thin. Stryker's training slides depicted the cannula near, but not clearly touching, the cancellous bone, and references to a "final position" just inside the vertebral body could describe the stylet tip extending ahead of the cannula rather than the cannula itself. One internal document placed the cannula "within the cancellous bone," but nothing showed it reached physicians. Boston Scientific's doctrine-of-equivalents theory was raised below only in a footnote and a single expert paragraph, which the court was free to treat as forfeited. As the panel noted, equivalents infringement "rarely comes clear on a premature record," and here it did not.

The denial stood, and Stryker's launch proceeded. The case serves as a reminder of the high bar for emergency relief: a movant who leaves claim construction undeveloped, offers no intrinsic or expert support for the disputed term, and relegates its equivalents theory to a footnote invites both an adverse construction below and deferential review on appeal. Counsel weighing a launch-stopping injunction should build the construction and equivalents record fully and early, because the compressed record of a preliminary-injunction motion leaves little room to make up the difference later.