

## Jason Whitney in Intellectual Property & Technology Law Journal: Section 112 Indefiniteness is Still a 'Lofty' Invalidity Attack

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After the U.S. Supreme Court tightened the requirements of 35 U.S.C. § 112 in *Nautilus, Inc. v. Biosig Instruments, Inc.*, by holding that claims must describe “the scope of the invention with reasonable certainty,” some envisioned the possibility of a reinvigorated indefiniteness standard standing as a bulwark against overly broad or vaguely drafted patent claims. Indeed, just months after *Nautilus*, the U.S. Court of Appeals for the Federal Circuit hinted at such a future with *Interval Licensing LLC v. AOL, Inc.*, which established the rule that terms of degree “must provide objective boundaries” for claimed inventions.

But as the Federal Circuit has continued to define the contours of *Nautilus* over the following years, indefiniteness attacks have met uneven success and produced inconsistent application of Section 112. The Federal Circuit’s recent opinion in *Guangdong Alison Hi-Tech Co. v. ITC*, 3 which examined the term of degree “lofty,” represents one such case. Although Alison found that “lofty” satisfied Section 112, the decision illustrates the current paradigm for indefiniteness attacks: unpredictability with a gradual shift in the “delicate balance” back towards tolerating more uncertainty in patent claim.

Excerpted from *Intellectual Property & Technology Law Journal*. To read the full article, click on the PDF below.

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