
Klarquist
Tips For U.S. Patent Prosecution and Litigation Based on Recent Court Decisions
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WSPLA
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PATENT DEFENSES

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current through Nov. 15, 2015

Coverage and Caveats

Substantive defenses to assertions of infringement of a U.S. utility patent. Hyperlinks to 100s of S. Ct., Fed. Cir. (mostly since 2004), CCPA, and BPAI/PTAB decisions.... This training document is a patent litigator's running commentary since 2004 on new decisions as they issue, with limited later editing. It is not designed to be complete, balanced, or even fully reliable. ("REDACTED" replaces internal training tips.) Feedback to patentdefenses@klarquist.com.

Prosecution

Why Have More Diversity In Your Patent Claims?

- "There's no chance that the iPhone is going to get any significant market share. No chance."

  Steve Ballmer, USA Today, April 30, 2007.

Claim Diversity

Standard Types of Claim Diversity:

- Type variation (method, manufacture, machine, composition)
- Terminology variation
- Actor variation
- Sec. 112(f) variation
- Breadth variation
  - Some claims limited to commercial embodiment
  - Genus vs. species
  - Range vs. point
  - Vary distance from known prior art

Claim Commercial Embodiment:

MobileMedia (Fed. Cir. 03/17/15) (rev'g verdict of non-obviousness where patent owner expert testimony limited to specific application (cellphone) not required by the claim).

23. [The communicating method according to claim **17**] *A communicating method for controlling a connecting state of a call into a desired connecting state upon a predetermined operation by a user, comprising the steps of:*

displaying processing items available to the user relative to the call on a display;

selecting and determining a desired processing item out of

QUIZ 1: Claim-Diversity Diversity (1)

- What other kinds of claim diversity?

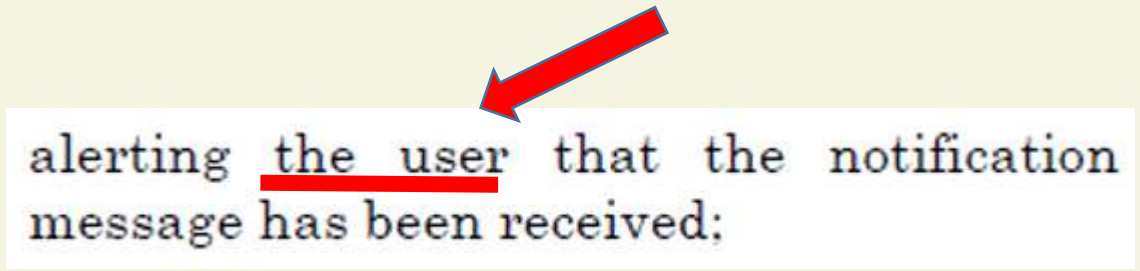
Less Conventional:

- Vary reciting feature as claim element vs. claim environment
  - Vary claiming characteristic of information vs. method step
- Vary claiming results/functions vs. way/how
- Vary stage from raw material to end product (Sec. 271(g))

Claim Element vs. Environment:

Helferich (Fed. Cir. 02/10/15) ("where a defendant's practice of a claimed invention presupposes that other persons engage in additional conduct, we have said that the additional conduct is part of 'the environment' in which the claim is practiced, and not something the *defendant* need engage in for infringement to be found.") Handset users using handset is part of the environment.

7. A method of operating a wireless communication device in a communication system that includes a plurality of information storage systems, and a mobile radiotelephone network comprising:



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Claim Element vs. Environment; Why Care?

Side-steps single-entity rule

"Direct infringement under § 271(a) occurs where all steps of a claimed method are performed by or attributable to a single entity."

A party is liable for another's performance of method step if (1) "it acts through an agent (applying traditional agency principles)," (2) "contracts with another to perform one or more steps of a claimed method," (3) "the actors form a joint enterprise," or (4) "conditions participation in an activity or receipt of a benefit upon performance of a step or steps of a patented method and establishes the manner or timing of that performance."

Akamai Tech. IV (Fed. Cir. 08/13/15) (en banc).

Characteristic of Information vs. Method Step:

b. pre-processing said digital content at said client device in accordance with one or more pre-processing parameters, said one or more pre-processing parameters being provided to said client device from a device separate from said client device, said one or more pre-processing parameters controlling said client device in a placement of said digital content into a specified form in preparation for publication to one or more devices that are remote from a server device and said client device; and

Not a step of the method requiring ongoing activity but rather a characteristic of the parameters. Summit 6 (Fed. Cir. 09/21/15) (aff'g $15 Million jury verdict).

Some Method Claims Recite Finishing Steps:

"Whoever without authority imports into the United States or offers to sell, sells, or uses within the United States a product which is made by a process patented in the United States shall be liable as an infringer, if the importation, offer to sell, sale, or use of the product occurs during the term of such process patent. In an action for infringement of a process patent, no remedy may be granted for infringement on account of the noncommercial use or retail sale of a product unless there is no adequate remedy under this title for infringement on account of the importation or other use, offer to sell, or sale of that product. A product which is made by a patented process will, for purposes of this title, not be considered to be so made after: (1) it is materially changed by subsequent processes; or (2) it becomes a trivial and nonessential component of another product." 35 U.S.C. § 271(g).

QUIZ 1: Claim-Diversity Diversity (2)

Less Conventional:

- Vary operation of commercial device vs. operations in testing / simulating device during development

Computer Simulation Directly Infringed:

Marvell mischaracterizes the claimed invention. As used in the claims, the word "detector" does not refer to a component for sensing the magnetic forces from the hard disk, as Marvell suggests, a function performed by certain electro-magnetic components in a "read head" in a hard-disk drive—shown as a separate unit from the "detector" in Figure 1 of the patents. The "detector" processes the signal samples produced by the read head from its sensing of the magnetic regions on a disk. The detector thus indirectly detects the most likely orientations of the magnetic regions (which encode data) given the signal samples. The jury could find that Marvell was using just such a "detector" in its "simulations" using a computer more general than special-purpose chips.

Carnegie Mellon (Fed. Cir. 08/04/15) ($278 MM and remand).

QUIZ 1: Claim-Diversity Diversity (3)

Less Conventional:

- Variations to shield against *Alice*

Claim Diversity: A Shield Against *Alice*

Some:

- ❖ product-by-process claims
- ❖ put concept in environment
- ❖ trigger Sec. 112(6/f) at point of novelty
- ❖ require specific physical implementation that plainly does not preempt the field
- ❖ recite data structural elements in a memory
  - Variety shields against *Alice* motion at pleadings stage.

Claim Diversity: Questions?

QUIZ 2

Which of these words in a specification is risky?

- "standard"; "conventional"
- "principle"
- "i.e."
- "prior art"
- "so that" [purpose of element]

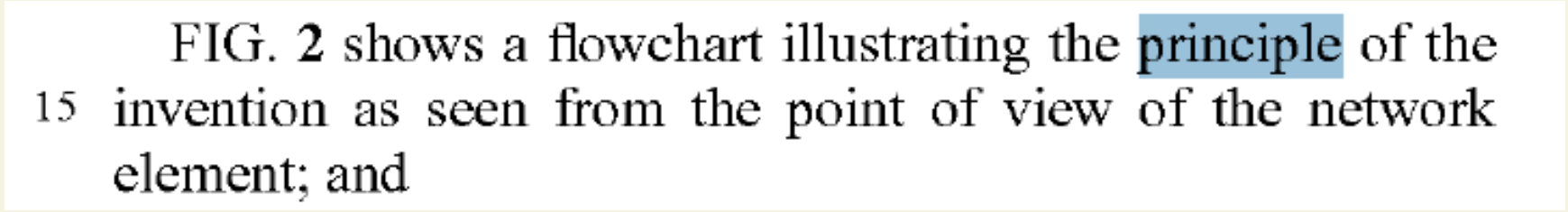
FIG. 2 shows a flowchart illustrating the principle of the
15 invention as seen from the point of view of the network
element; and

QUIZ 2

They all are.

- "standard"; "conventional" – *Mayo/Alice* second step
- "principle" – reverse doctrine of equivalents (*Graver Tank*)
- "i.e." – definition fixing claim scope
- "prior art" – admitted art
- "so that" – narrowing scope of invention

Linking Element to Purpose May Narrow Claim Scope:

Interdigital (Fed. Cir. 02/18/15) (non-precedential) (narrow construction based on description expressly tied to purpose of the invention, despite "no data" limitation not in summary of the invention).

The preferred embodiment of the present invention utilizes "short codes" and a two-stage communication link establishment procedure to achieve fast power ramp-up without large power overshoots. The spreading code transmitted by the subscriber unit **16** is much shorter than the rest of the spreading codes (hence the term short code), so that the number of phases is limited and the base station **14** can quickly search through the code. The short code used for this purpose carries no data.

Specification: What Treasures Do Defendants Hope To Find?

Well-known Treasures:

- "Present invention" narrowing scope of disclosed "invention" and/or claim scope
- Lack of linked "structure" for Sec. 112(f) claim element
- Failure to enable or describe "full scope" of claim

QUIZ 3: Specification:
What Other Treasures Do Defendants Hope To Find?

- Supporting obviousness (Sec. 103)
  - Failing to describe how to implement a feature (= admission that PHOSITA already knew how to do that)

  Trustees of Columbia (Fed. Cir. 07/17/15) (non-precedential)

Application Used To Show Knowledge of PHOSITA:

In re Morsa II (Fed. Cir. 10/19/15) (2-1)

- PTAB properly relied on application's representations about what skilled artisans knew, in determining that prior art reference was enabling.
- "There is a crucial difference between using the patent's specification for filling in gaps in the prior art, and using it to determine the knowledge of a person of ordinary skill in the art."

QUIZ 3: Specification:
What Other Treasures Do Defendants Hope To Find?

- Supporting patent ineligibility (Sec. 101)
  - Describing invention as one would describe a principle
  - Saying any hardware could be used
  - Saying invention has wide range of applications
    - Strengthens early motion to dismiss

Specification: Questions?

2020 … What's Next For Particular And Distinct Claiming?

"(b) CONCLUSION.--The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention."

"(f) ELEMENT IN CLAIM FOR A COMBINATION.--An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."

What's Next For Particular And Distinct Claiming?

1. Purely functional claim elements will be prohibited (at least at point of novelty).

2. Sec. 112(f) will be given its plain meaning.

3. Claim construction might be untangled from "indefiniteness."

Prohibiting Purely Functional Claim Elements

- Must recite a particular "way," namely, how the function is performed or the result is achieved.
  - Halliburton (U.S. 11/18/1946) ("The language of the claim . . . describes this most crucial element in the 'new' combination in terms of what it will do rather than in terms of its own physical characteristics or its arrangement in the new combination apparatus. We have held that a claim with such a description of a product is invalid.")
  - In re Miyazaki (BPAI 11/19/08) (precedential) ("the claimed 'sheet feeding area operable to feed …' is a purely functional recitation with no limitation of structure" and thus the claimed invention is unpatentable.)
  - Williamson (Fed. Cir. 06/16/15) (J. Reyna concurrence) (Halliburton's arguable rejection of functional claiming generally "merits attention.")

Prohibiting Purely Functional Claim Elements

- Congress "struck a balance in allowing patentees to express a claim limitation by reciting a function to be performed rather than by reciting structure for performing that function, while placing specific constraints on how such a limitation is to be construed, namely, by restricting the scope of coverage to only the structure, materials, or acts described in the specification as corresponding to the claimed function and equivalents thereof." Williamson (Fed. Cir. 06/16/15) (en banc portion).
- Eon (Fed. Cir. 05/06/15) ("the disclosure of a general purpose computer or a microprocessor as corresponding structure for a software function does nothing to limit the scope of the claim and "avoid pure functional claiming.")

Tip: Don’t Tow Adversary’s Ship to Safe Harbor

- 112(6/f) is a provisional safe harbor
  - Defendants: do not automatically give this provisional safe harbor to all functional and results language in a claim.

Giving Sec. 112(f) Its Plain Meaning (1)

"An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."

1. "for performing a specified function" is not the same as "for reaching a specified result." Results claiming is not safe.

Claiming Result Is Not Claiming Function:

1. A method of providing an intelligent user interface to an on-line application comprising the steps of:

furnishing a plurality of icons on a web page displayed to a user of a web browser, wherein each of said icons is a hyperlink to a dynamically generated on-line application form set, and wherein said web browser comprises Back and Forward navigation functionalities;

displaying said dynamically generated on-line application form set in response to the activation of said hyperlink, wherein said dynamically generated on-line application form set comprises a state determined by at least one user input; and

maintaining said state upon the activation of another of said icons, wherein said maintaining allows use of said Back and Forward navigation functionalities without loss of said state.

Claiming Result Is Not Claiming Function:

maintaining said state upon the activation of another of said icons, wherein said maintaining allows use of said Back and Forward navigation functionalities without loss of said state.

IPC's proposed interpretation of "maintaining state" describes the effect or result dissociated from any method by which maintaining the state is accomplished upon the activation of an icon. Thus we affirm that claim 1 is not directed to patent-eligible subject matter.

Internet Patents (Fed. Cir. 06/23/15) (J. Newman).

Giving Sec. 112(f) Its Plain Meaning (2)

"An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."

2. Information is not a "means" or a "step."

   - "Terms that represent only non-structural elements such as information, data, instructions, and software *per se* would not serve as substitutes for 'means', because the terms do not serve as placeholders for structure or material." (USPTO Legal Training Module guidance, slide 7 (08/02/13))

REPEAT: Don't Tow Opponent's Ship to Safe Harbor

- 112(6/f) is a provisional safe harbor
  - Defendants: do not automatically give this provisional safe harbor to "information for" elements.
  - E.g., a "module" stored in memory is information and therefore not a placeholder for structure, material or acts.

Giving Sec. 112(f) Its Plain Meaning (3)

"An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or **acts** described in the specification and equivalents thereof."

3. An algorithm ≠ structure. An algorithm = acts.

Untangling Claim Construction From "Indefiniteness"

- "Reasonable certainty" needed in public record day patent issues.
  - Would-be innovators have no crystal ball.
  - Patent owners otherwise could benefit from zone of uncertainty for years and later "clarify" claim.
    - Cf. G.D. Searle (Fed. Cir. 06/23/15) (in reissue, patent owner cannot "retroactively relinquish the new matter [in an] application, after having enjoyed years of patent protection for it.")

Untangling Claim Construction From "Indefiniteness"

	Claim Construction
Hindsight OK?	Yes
Post-issuance intrinsic evidence?	Yes
Facts for jury?	No
Clear-error review (of extrinsic facts)?	Yes

Untangling Claim Construction From "Indefiniteness"

	Claim Construction	"Indefiniteness"
Hindsight OK?	Yes	No
Post-issuance intrinsic evidence?	Yes	No
Facts for jury?	No	Rare
Clear-error review (of extrinsic facts)?	Yes	No (if sum. jud.)

Particular and Distinct Claiming: Questions?

Litigation

Tip: Do More in *Markman*

Consider Four Forms Of Construction: Where helpful to a defense, inform court that claim constructions may take any of the following forms:

MUST	BE
NEED NOT	INCLUDE
MUST NOT	HAVE
MAY	

Tip: Do More in *Markman*

"Must Not" Construction:

Sought "Must Not" Construction: Augme Tech. (Fed. Cir. 06/20/14) (linked code in Web page cannot be substantially same as "embedded code" because construction of "embedded code" specifically excludes linked code; aff'g SJ of no DOE).

Did **Not** Seek "Must Not" Construction: Belden (Fed. Cir. 11/05/15) (aff'g PTAB IPR obviousness decision; patent owner did not seek construction of "cable" to exclude cable component (quad) which is subject of prior art reference).

Tip: Do More in *Markman*

Would you interpret a statute by defining isolated words and quitting there?

Or a contract?

But OK for a patent claim?

Tip: Do More in *Markman*

Contend…

- "claim as a whole" is directed to abstract idea, Bilski v. Kappos (U.S. 06/28/2010) (101);
- claim covers multiple techniques (where Spec. enables or adequately describes only one), Eli Lilly (Fed. Cir. 09/01/10) (112(1/a));
- claim language limits claimed method, etc. not just claimed environment, Advanced Software (Fed. Cir. 06/02/11) (271);
- claim language has no "patentable weight," Astrazeneca (Fed. Cir. 11/01/10) (102/103);
- claim language is "indefinite," Interval (Fed. Cir. 09/10/14) (112(2/b)).

Tip: Uncertain Triggering Of Sec. 112(6/f) = Indefinite

- Both trial court and appellate court in Lighting Ballast III (Fed. Cir. 06/23/15) changed its position on whether "voltage source means" did or did not trigger Sec. 112(6/f) provisional safe harbor.
- This uncertainty reflects uncertainty in POSA when patent issued, which defeats public notice function of patent claims.
- Same: whether preamble is limiting.

Tips Related to AIA

1. FITF TIP: Don't Miss 9-Month-From-Issuance Deadline To File PGR Against FITF Patent: Petition for PGR of a FITF patent (e.g., child of asserted patent) must be filed within 9 months of issuance/re-issuance. 35 U.S.C. § 321(c). Any patent filed after March 15, 2013, might be an FITF patent.

2. TIP: Do Not Assume "Continuation" Or Non-Provisional Claims Can Be Backdated: Do not assume that claims can be backdated to filing date of parent or provisional app. under Secs. 119/120, Research Corp. Tech. (Fed. Cir. 12/08/10), e.g., when conducting FITF analysis.

3. TIP: Limit DJ Complaint To Non-Infringement: Asserting invalidity in DJ complaint bars DJ plaintiff from filing for AIA *inter partes* or post grant review, see 35 U.S.C. § 315(a)(1), 325(a)(1); GTNX (Fed. Cir. 06/16/15), but raising invalidity as defense to infringement counterclaim in the DJ action does not.

Extra-Credit Defenses (1)

- "Failure to mitigate damages":
  - E.g., patent owner's failure to mark, laying in wait to allow damages to increase, failing to take a clear position on scope of claims or changing one's position, keeping secret an already licensed supplier of the patented technology, failure to offer a FRAND license when obligated to do so, etc.

Extra-Credit Defenses (2)

- Another Patent's Expiration Dedicates Claimed Invention to Public:
  - "Congress had made a judgment: that the day after a patent lapses, the formerly protected invention must be available to all for free"

    Kimble (U.S. 06/22/2015) (6-3).

CROSS-REFERENCES TO RELATED APPLICATIONS

This application is a continuation of U.S. patent application Ser. No. 14/479,338, filed Sep. 7, 2014, which is a continuation of U.S. patent application Ser. No. 14/201,857, filed Mar. 8, 2014, now U.S. Pat. No. 8,832,186, which is a continuation of U.S. patent application Ser. No. 14/016,112, filed Sep. 1, 2013, now U.S. Pat. No. 8,671,140, which is a continuation of U.S. patent application Ser. No. 13/862,444, filed Apr. 14, 2013, now U.S. Pat. No. 8,527,587, which is a continuation of U.S. patent application Ser. No. 13/691,964, filed Dec. 3, 2012, now U.S. Pat. No. 8,423,611, which is a continuation of U.S. patent application Ser. No. 13/564,392, filed Aug. 1, 2012, now U.S. Pat. No. 8,326,924, which is a continuation of U.S. patent application Ser. No. 13/436,957, filed Apr. 1, 2012, now U.S. Pat. No. 8,239,451, which is a continuation of U.S. patent application Ser. No. 13/299,011, filed Nov. 17, 2011, now U.S. Pat. No. 8,171,079, which is a continuation of U.S. patent application Ser. No. 13/170,125, filed Jun. 27, 2011, now U.S. Pat. No. 8,073,904, which is a continuation of U.S. patent application Ser. No. 12/767,751, filed Apr. 26, 2010, now U.S. Pat. No. 7,970,825, which is a continuation of U.S. patent application Ser. No. 12/368,258, filed Feb. 9, 2009, now U.S. Pat. No. 7,707,245, which is a continuation-in-part of U.S. patent application Ser. No. 12/202,430, filed Sep. 1, 2008, now U.S. Pat. No. 7,490,091, which is a continuation-in-part of U.S. patent application Ser. No. 11/930,023, filed Oct. 30, 2007, now U.S. Pat. No. 7,421,428, which is a continuation-in-part of U.S. patent application Ser. No. 11/866,207, filed Oct. 2, 2007, now U.S. Pat. No. 7,421,468, which is a continuation-in-part of U.S. patent application Ser. No. 11/623,737, filed Jan. 16, 2007, now U.S. Pat. No. 7,277,918, which is a continuation of U.S. patent application Ser. No. 11/023,809, filed Dec. 28, 2004, now U.S. Pat. No. 7,165,091, which is a continuation of U.S. patent application Ser. No. 09/791,264, filed Feb. 22, 2001, now U.S. Pat. No. 6,836,769, which is a continuation-in-part of U.S. patent application Ser. No. 09/510,749, filed Feb. 22, 2000, now U.S. Pat. No. 6,789,073

Join Balanced *Amici* Brief in S. Ct. on Willfulness / Increased Damages?

- Willfulness is not required for trial judge to award patent owner more than "actual damages."
- No Seventh Amendment right to jury trial of willfulness.
- Trial judge should balance behavior of both parties in view of totality of circumstances and core public policies of Patent Act.
- Trial judge should consider both post-Complaint and pre-Complaint behaviors of both parties.

Litigation Questions?

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- Finding "Indefiniteness" Post Nautilus: Dow Chem. II (Fed. Cir. 08/28/15) (on appeal of supplemental damages award, holding claims indefinite under *Nautilus—despite* having held them definite on earlier appeal in same case—because intrinsic evidence provided no guidance as to which of four possible ways of measuring slope of a curve (with possibly different results) governs the claim's slope limitation ("a slope of strain hardening coefficient greater than or equal to 1.3") despite expert testimony that skilled artisan could determine a technique to use);
  ….

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Thank you.

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Giving Sec. 112(f) Its Plain Meaning (4)

"An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."

4. Reciting step for performing a function without structure, material or acts sufficient to perform that function ►triggers Sec. 112(6/f).

Component/Ingredient vs. End Product:

Westerngeco (Fed. Cir. 07/02/15) (2-1) (rev'g award of lost profits based on foreign uses of system combined and used abroad from components exported from U.S., in view of the "presumption against extraterritoriality").

Astrazeneca (Fed. Cir. 04/07/15) ("entire market value rule" not applicable where patents cover the infringing pharmaceutical as a whole, even though earlier patents on the active ingredient had expired).

Information Content vs. Physical Embodiment:

cations. Specifically, Myriad argues that the specifications show that the claim term "sequence" refers not to information, but rather to a physical DNA molecule, whose sequence must be determined before it can be compared. That may be true, but the claims only recite mental steps, not the structure of physical DNA molecules.

Ass'n for Molecular II (Fed. Cir. 08/16/12), rev'd in part on other grounds, Ass'n for Molecular (Myriad) (U.S. 06/13/2013)

Extra-Credit Defenses (3)

❖ "Section 135 Repose":

- "(b)(1) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted." 35 USC 135(b) (not for AIA FITF claim).
- Sec. 135(b) may apply even if patents owned by same party and have same inventors?

Extra-Credit Defenses (4)

❖ "Reverse Doctrine of Equivalents":

- Graver Tank (U.S. 05/29/1950) ("where a device is so far changed in principle from a patented article that it performs the same or a similar function in a substantially different way, but nevertheless falls within the literal words of the claim, the doctrine of equivalents may be used to restrict the claim and defeat the patentee's action for infringement.")
- Protects against summary judgment of infringement. SRI Int'l (Fed. Cir. 10/16/85) (en banc) (rev'g SJ of no infringement under RDOE, ivo genuine disputes of fact, where undisputed that apparatus claim "reads directly, unequivocally, and word-for-word on [accused] structure.")

QUIZ 4

- When reviewing potential prior art, what possible litigation-defense uses should you consider?

QUIZ 4

- Conventional uses:
  - Sec. 102 or 103 invalidity;
  - Restricts scope of equivalents;
  - Affects claim construction;
  - Evidences level of skill in the art; and
  - Inequitable conduct.

QUIZ 4: Less Conventional Uses

- Simultaneous invention? (Sec. 103)
- Evidence "conventional"? (Sec. 101)
- Not clearly distinguished by claim? (Sec. 112(b))
- Rebuts invention advantages over old modes? (reasonable royalty)
- Provide non-infringing alternative? (lost profits)

QUIZ 5

- What type of timely, reliable, no-liability patent clearance opinions are:
  a. Likely to be offered into evidence to defeat an allegation of willful patent infringement, if it reaches trial?
  b. Most likely to be offered into evidence to defeat an allegation of indirect infringement, if it reaches trial?

QUIZ 5: Clearance Opinions

a. Likely to be offered into evidence to defeat willfulness?
   - ❖ **None.**
   - ❖ **Will turn on objective prong.**

Cert. Pending

Carnegie Mellon (Fed. Cir. 08/04/15) (rev'g willfulness, on de novo review of objective reasonableness prong, despite "blatant and prolonged copying of" the inventions and despite invalidity defense being developed only post complaint and presented only at summary judgment and not at trial);

Innovention Toys II (Fed. Cir. 04/29/15) (rev'g willfulness judgment based on "substantial, objectively reasonable, though ultimately rejected, defense" of obviousness, "no matter how irresponsible it was in actually considering the scope or validity of patent rights that it knew" the patent owner was seeking and later knew it had gained).

QUIZ 5: Clearance Opinions

b. Most likely to be offered into evidence to defeat indirect infringement?

- **No direct infringement.**
- **Other "defenses" irrelevant to knowledge element.**

"[B]elief in invalidity is no defense to a claim of induced infringement."

"[I]nvalidity is not a defense to infringement, it is a defense to liability. And because of that fact, a belief as to invalidity cannot negate the scienter required for induced infringement."

"contributory infringement requires knowledge of the patent in suit and knowledge of patent infringement."

Commil USA (U.S. 05/26/2015) (6-2).