



Patent Analysis and Infringement Determination

One purpose of the patent system is to promote and reward innovative and useful inventions and discoveries. The incentive for the considerable investment and disclosure for the future benefit of others is a patent. A patent is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office for a limited term (generally 20 years from the application date), effective within the United States, U.S. territories, and U.S. possessions. The right conferred by the patent grant is, “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States.

The patent owner has the responsibility to enforce the patent (without the aid of the USPTO) and may take legal actions to stop alleged infringing acts and recover damages. The claims, and the specific language used therein, of the patent define the scope of the patent owner’s exclusive rights. Patent infringement implies an encroachment upon the domain belonging to a patent owner that is described by the claims of the patent and it is the patent owner who has the burden to prove infringement.

A patent analysis and infringement determination involves a two-step process. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The claim construction is a matter of law with specific, well-defined language used to define each element or method step. The second analysis step is a factual inquiry comparing the properly construed claims to the device or method accused of infringing. Patent infringement may be of the form: direct, indirect, or contributory infringement. The direct infringement may be literal, including each and every element or method step in a patent claim, or established by the “doctrine of equivalents,” performing substantially the same function, in substantially the same way, to obtain the same result.

The analysis of a patent requires understanding of patent claims, prior art, anticipation, obviousness, public knowledge and use, as well as a level of ordinary skill or determination thereof. Whether you are concerned that a proposed product or method might infringe existing patents or you are enforcing your patent rights, Florida Forensic Engineering, Inc. has the unique experience required to assist you. Remember, good faith or ignorance is not a defense for direct infringement.

The engineers at FFEI have education and experience in a broad range of processes, machines, articles and methods of manufacture. As engineers we can provide insight into the technical and design elements, means-plus-function, and equivalence. FFEI engineers perform patent searches, review “file wrappers,” as well as existing products and methods including product brochures, promotional materials, web site pages, instructions or directions for use, advertisements, and product packaging. In the claims analysis, careful consideration of the limitations and scope is maintained to provide properly broad or narrow interpretation and to avoid extending the coverage of the patent to include inventions that were already in prior art. Always consult the appropriate legal council when seeking legal opinions or representation and contact FFEI for engineering related consultation.

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