

QUESTION 60

Interpretation of patent claims

Yearbook 1980/I, page 115

Q60

Executive Committee and Council of Presidents of Toronto, September 23 - 29, 1979

Question Q60

Interpretation of Patent Claims

Resolution

The IAPIP

approves the choice of a "middle way" in the determination of the scope of protection provided by a patent, and refers the study of the interpretation of the scope of protection back to the Congress of Buenos Aires.

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31st Congress of Buenos Aires, November 16 - 21, 1980

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Resolution

The IAPIP considers that:

1. The scope of protection provided by a patent for an invention is determined by the claims. However, the description and the drawings serve to interpret the claims.

2. The interpretation of the claims comprises:

- understanding the invention;

- understanding the wording of the claims and, if necessary, defining the technical meaning of the terms employed and clarifying any ambiguities;

- understanding the claims which, if necessary, shall be interpreted in the light of the general knowledge of the man skilled in the art at the date to which the claims are entitled and of the examination file of the patent, if any.

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3. The claims so interpreted shall serve as the basis for consideration equally concerning infringement and validity.

4. The claims so interpreted shall protect the patentee against any use of the invention provided that the claimed essential features of the invention have been taken either by way of identical means or by way of substitute means. The essential features of the invention are those which are sufficient and necessary for the realization of the invention.

Substitute means for a feature or a combination of features in a claim shall be taken to include that which functions with respect to the invention as claimed in substantially the same manner and produces substantially the same results, provided that no statement by the applicant in the specification or the examination file of the patent, if any, excludes the substitute means from protection.

5. Subject to the stipulations of paragraph 4 above:

- a claim to a combination shall not provide independent protection for separate features of the combination, and

- a claim expressly referring to another claim shall not provide protection for the features it contains independently of the features of the claim to which it refers. However, this does not prevent the application of the doctrines of imperfect use, of indirect or contributory infringement, or of active inducement of infringement.

6. The use of a protected invention together with an additional feature shall come within the scope of the claims provided that the additional feature does not substantially change the form and function of the claimed essential features of the invention.

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