
YOUR QUERIES

Legal Aspects of Patents

What is the difference between a 'patentee' and an 'assignee'?

The owner of a patent as entered in the Register of Patents is called the patentee, whereas an assignee is the inventor or inventors who legally transfer their rights (in part or whole) to the invention to another person or organization.

How 'claim' is defined in the context of patents?

'Claim' of a patent is the monopoly claimed in the patent and is used to decide infringement. What is not claimed is open to others.

How patent is opposed?

After a patent application is examined by the Patent Office it is accepted if the Controller is satisfied that it has cleared all the tests of patentability under the Act. This is published and is open to "interested persons" to challenge its grant. The opposition proceedings that may follow are held in the Patent Office by the Controller.

India follows the system of pre-grant opposition, while Europe, USA and Japan follow the

post-grant opposition system. In the latter system, if the opposition is successful, the patent retroactively loses its effect.

Who is this 'person interested' or 'interested persons'?

'Interested person' is a person or organization engaged in or having business stakes in the field or doing/funding R&D work in a specified field. The "interested person" has to establish "his" bonafides (*locus standi*) while opposing a patent application.

How revocation is defined?

A patent is granted by the Patent Office after examining it within the framework of the Patents Act. This, however, does not guarantee the validity of a patent. Its validity can be challenged under prescribed grounds. If the challenge is upheld by the High Court the patent becomes "invalid" and is "revoked". The entire process is called revocation.

What is the term 'wrongful obtaining'?

A term used when the invention is obtained (fully or partially) by someone by wrong or unfair means from the inventors/assignees.

How 'priority' is defined in the context of patent filing?

When a patent application is filed at the Patent Office it gets a priority as of that date. Convention countries can claim the priority of the first filing of the patent in any of the member countries within 12 months. In all countries except the USA "first to file" gets the priority.

What does 'anticipation' mean?

Unpatentability of the invention due to existence of prior art is called anticipation.

What does a patent infringement constitute?

Infringement of a patent would constitute any action by which patent rights are violated or interfered with.

What are doctrine of equivalents?

An accused product or process will infringe, though it is outside the literal terms of the claims, if it does the same work in substantially the same way to accomplish substantially the same result as the patented product or process. Such cases are called limiting equivalents or doctrine of equipments.

What are reverse doctrine of equivalents?

Even where an accused product falls within the literal terms of a patent, if the accused product is so far changed in principle from the patented product, that it performs the

same function in a substantially different way, infringement liability is unwarranted. Such cases fall under non-limiting equivalent or reverse doctrine of equivalents.

Who is a 'defendant'?

The person(s) being sued for infringement constitutes the "defendant".

What constitutes the 'plaintiff'?

The patentee or his assignee can file a suit in the High Court for infringement of his patent. They constitute the "plaintiff".

What is called 'case law' in patent law?

Generally, the patent statutes describe in written form the principles of the patent law. At times principles are also derived from the decisions of courts of law in particular cases. These cases are called as case law.

What is the difference between an interlocutory injunction and a final injunction?

As a part of an infringement proceeding the plaintiff may pray for "interim relief" to restrain the defendant from continuing the act of infringement till the case is completely heard and disposed of. This is called an interlocutory injunction.

After the trial of the suit, orders may be passed by the court to stop the "defendant" from continuing the act(s) of infringement. This is called final injunction.

How mosaicing of publication is defined?

An invention may be a judicious combination of various components or features, where

each of the aspects is probably known. Mosaicing is a process by which an attempt is made to combine bits and pieces of the information from diverse sources to show that the alleged invention in a patent is not novel but is obvious to any unimaginative person.

What is a licence in the context of transfer of patented technology?

It is a legal permit given by a patentee to other(s) to make, use or exercise the invention. The legal document needs to be registered with the Patent Office.

To Our Readers

Queries regarding Legal Aspects of Patents should be addressed to the Editor, *Journal of Intellectual Property Rights*.