Interpreting Claims in a Patent Specification

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Interpretation of claims has to be done by different people at various stages of a patent document. This article looks at these stages and tries to offer general guidelines which can be followed. However, the most important point is that every case is unique and has to be interpreted independently. A sample case has been presented and discussed.

A patent specification is a document published by the patent office to inform the public about the details of the invention submitted by an applicant to the office. This entitles the applicant, subject to the grant of a patent to the invention, to prohibit the use of the patented invention as defined in the claims by others without his/her consent for a specified period of time i.e the term of a patent. The grant of patent is in exchange of the disclosure of the invention to the public. This is beneficial for the patentee as he/she gets to prohibit the use of the invention without his/her permission by others, and also the society which gets to know about the advancement in a particular field of technology which otherwise would have been kept as a secret by the inventor for the fear of being copied by others.

Structure of Patent Specification

A patent specification can be broadly divided into three parts: (i) Title, (ii) Description / body, and (iii) Claims.

The title is sufficiently indicative of the subject matter to which the invention relates. It is also published at the time of filing of a patent application, so that interested parties can keep a track of the fate of the application. The title is followed by a formal introduction of the invention or an abstract of the specification.

The description is also called the body of the specification and is directed to an average person skilled in the art. An average person skilled in the art means a person having average knowledge and understanding of the technology to which the invention re-
lates. The function of the description is to give necessary information to enable such a person to perform the invention after the expiry of the term of the patent. The description should also include the best method of performing the invention known to the inventor.

The claims are directed to the competitors of the patent holder and their function is to define the scope of the invention claimed, during the term of a patent, and tell the competitor as to what exactly should be refrained from doing as that act could lead to an infringement of the patent.

Interpreting Claims

The patent specification is known as complete specification at the time of filing the patent application by an applicant in the patent office. It has a title, description and the claims which is examined by the examiner to ascertain the validity of the claims. The first stage of interpreting/construing of claims arises when the examiner examines the specification, but his/her term of reference is limited to the disclosure in the specification and the prior art available on the date of application.

The examiner has to see whether there is an inventive feature in the claims, and they are fairly based on the disclosure and relate to a single invention.

After the acceptance and publication of the patent, in the second stage it is the turn of the "person interested" to interpret the claims and some more term of references get added like prior public use, prior public knowledge or unfair acquisition by the applicant, for the person interested to consider for filing an opposition or avoid infringement in addition to those considered by the examiner.

At the third stage if there are infringement and/or revocation proceedings in the court, then the court has to ascertain the nature of the invention which is alleged to be infringed and/or sought to be revoked. Suitable guidelines can be followed while interpreting the claims which have evolved with practice in the courts and can be summarized as:

- The words of the claims (when themselves correctly construed) provides prima facie boundary of protection. There is no principle which will justify one in departing from the unambiguous and grammatical meaning of a claim and narrowing or extending the scope by reading into it words which are not in it; the primary aim of a claim is to limit and not extend the monopoly. What is not claimed is disclaimed.

- The boundary of protection must be determined in the first place by the patent alone, without an eye to the alleged infringement or alleged anticipation.

- In interpreting/construing the claims, the court is entitled within certain limits to look at the specification as a whole in order to determine how the claims would be understood, thereby the necessary background is obtained and in some cases the meaning of the words may be affected or defined by what is said in the body of the specification. The body of the specification may therefore be referred to ascertain the meaning of words and phrases used in the claims and for the purpose of resolving difficulties of construction occasioned by the claims when read by themselves. But if the claims have a plain meaning in themselves, then advantage cannot be taken of the language used in the body of the specification to make them mean something different. Thus it is the function of the claim to define the monopoly which is claimed.
therefore not legitimate if the meaning of the claim when read by itself is plain to diminish the ambit of monopoly merely because in the body of the specification the patentee has described his invention in more restricted terms.

—A claim must be given a purposive construction rather a purely literal one derived from applying to it the kind of meticulous verbal analysis in which the lawyers are tempted to indulge, the question in each case is whether persons with practical knowledge and experience in the kind of field which the invention was intended to be used would understand its meaning.

—The court is entitled to distinguish between the essential and unessential features of an invention as claimed and to regard the scope of protection as being circumscribed by the essential features alone. To constitute infringement the article must take each and everyone of the essential integers of the claim. Nonessential integers may be omitted or replaced by mechanical equivalents, there will still be infringement.

—The mere fact that the defendants’ product or process represents an improvement or conversely a worsening over the patented product or process does not in itself necessarily enable infringement to be avoided. What matters is that whether or not it comes within the terms of claims when correctly constucted.

—A claim will be only capable to include a variant (of some given feature or features specified in the claim) which is itself of obviously equivalent function to the claimed feature at the date of publication of patent.

—The court can receive expert evidence as to the meaning of technical terms (individual or composite) in the claims, but must not surrender its role to expert witnesses. The eventual ascertainment of the boundary of the claim is a task of the court alone.

Example

As an example a case has been presented to interpret its claims keeping in mind the above guidelines to give an idea of the scope defined by the claims of a patent specification. The case is Indian patent number 169275 dated 14 August 1986, and published on 21 September 1991. The applicant is Colgate-Palmolive company, a Delaware Corporation of New York, United States of America. There are following six claims in the specification:

1. A packaged dental cream wherein said dental cream is in direct contact with a low or medium density polyethylene or polypropylene surface, wherein no syneresis occurs in said dental cream due to said direct contact when said dental cream comprises as ingredients an aqueous vehicle comprising 10 to 15% by weight (wt) of water and glycerine and sorbitol together in amount of 15 to 50% by wt, the weight ratio of glycerine to sorbitol being from 0.25:1 to 3:1, a dental cream solid vehicle comprising 0.05-10% by wt of a dental cream gelling agent and 20 to 75% by wt of a dentally acceptable water insoluble polishing material at least 50% by wt of which is alpha-alumina trihydrate, and a water soluble inorganic phosphate compound in amount which reduces the pH of the dental cream in the range of 6 to 8; said dental cream comprising said ingredients and 0.5 to 2% by wt of polyethylene glycol of average molecular weight of 200 to 1000, the weight ratio of the total amount of glycerine and sorbitol to...
said polyethylene glycol being from 60:1 to 6:1.

2. A packaged dental cream as claimed in claim 1 where in said inorganic compound which reduces the pH is an orthophosphate.

3. A packaged dental cream as claimed in claim 2 where in said compound containing orthophosphate ion is selected from the group consisting of orthophosphoric acid, alkali metal monacid orthophosphate and ammonium monoacid orthophosphate.

4. A packaged dental cream as claimed in claim 3 where in said material containing orthophosphate ion is a sodium diacid orthophosphate.

5. A packaged dental cream as claimed in claim 4 where in said sodium diacid orthophosphate is sodium diacid orthophosphate monohydrate.

6. A packaged dental cream substantially as here in described with reference to the foregoing examples.

A look at the wordings of the above claims barring claim no. 6 shows that they are sufficiently indicative of the scope of the invention and a reference to the description does not seem to be necessary.

The claim 1 also known as principal claim defines a dental cream of a range of desired compositions packaged and in direct contact with low or medium density polyethylene or polypropylene. This claim does not define the shape of the package nor does it define the material of which it is made, it simply states the dental cream is in direct contact with low or medium density polyethylene or polypropylene. The inference is that the scope of the claim defines a package which may be a tube or of any shape possible made of any suitable material lined with a polyethylene or polypropylene layer which is in contact with the dental cream or made up of polyethylene or polypropylene alone. The desired range of the components in the composition, which will be packaged is also defined which is said to serve a specific purpose as defined in claim 1 of inhibiting syneresis of the dental cream when it is in contact with the said film. Thus the scope is quite clear by the wordings of claim 1.

The claims 2 to 6 also known as subsidiary claims further define the invention. The claim 2 further specifies the phosphate defined in claim 1 to reduce the pH as orthophosphate the other parameters being the same as in claim 1. The claim 3 further specifies the orthophosphate of claim 2 giving the general names of the orthophosphate compounds and claim 4 specifies the compound as a sodium diacid orthophosphate, claim 5 finally gives the name of the compound as sodium diacid orthophosphate monohydrate. The claim 6 is called the omnibus claim and is restricted to the description of the invention in the specification with reference to the examples.

A look at the claims shows that claim 1 is the widest claim and as we refer to the claims 2 to 6 they keep on narrowing down the scope of the invention as we move from 2 to 6. This shows that the applicant has tried to protect the maximum possibilities attained by the invention by claim 1 but at the same time kept in mind the possibility of anticipation of a wide claim and restricted the scope in subsequent claims in case a wide claim is cited. The narrower a claim the slimmer are its chances of being anticipated. An omnibus claim can be called the precaution taken by an applicant to protect the invention even if by some quirk of circumstances all the other claims are knocked down then what is given
in the description and is not anticipated has to be taken as the scope of the invention.

**Conclusion**

Thus it is clear that the “statement of claims” is of particular interest to the patentees as it is the statement of property rights of the patentee. The function of the claims as already stated above is to inform the public and potential infringers/competitors to keep away from the scope defined therein. The need to scrutinize the claims arises if patent rights licensing is to be negotiated or an action against an infringer is to be enforced, or when an industry based on a patented technology is to be established. It should also be kept in mind that the right granted by a patent is basically a negative right which gives the patentee the right to stop others from performing his/her invention rather than a right to exclusively perform the invention. It is suggested that the claims should not be made unduly complex with reference to the technology to which they relate so that the real meaning does not get lost in the jugglery of words, which is not going to serve their purpose as such claims may mislead their competitors leading to unnecessary litigations wasting time and money.

**References**
