

Analysis of the Principles of Judging Patent Infringement

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Abstract: The key to the protection of patent rights lies in how to determine infringement. The scope of patent rights is defined by the principles of determination of patent infringement, so as to make a more accurate judgment on patent infringement. However, the determination of patent infringement is relatively difficult, and the extent to which it constitutes patent infringement has been the focus of people's attention. The purpose of this article is to analyze and put forward suggestions from the scope of protection of patent rights, the main content of patent infringement, and so on, hoping to make better use of the positive role of the patent infringement determination principle.

1. Introduction

The patent right is an important intangible property right. To realize its protection, it is necessary to accurately determine the infringement. However, in the judgment of patent infringement, the accused product is inconsistent with the claims in most cases, which makes the judgment of patent infringement a difficult problem in judicial practice.

2. Scope of patent protection

Patent rights are an important part of intellectual property. Clarify the scope of patent protection, let the public know the boundaries of the law, regulate their own behavior according to specific legal requirements, and create a good social environment for the protection of patent rights.

(1) Center-limited system and peripheral limited system

Taking a comprehensive look at the implementation of patent laws in various countries, most countries adopt the "central limitation" and "peripheral limitation" systems to stipulate claims.

The central limitation system means that the scope of protection of a patent right is not limited to the literal meaning of the claims, but focuses on the basic core of the claims, and expands and interprets appropriately according to the actual situation. This system protects the interests of patentees well, but there is a problem that the scope of rights is ambiguous, which may damage the rights of other relevant technical personnel.

The peripheral limitation system means that the scope of protection of a claim must be understood strictly in accordance with the literal meaning of the claims, and the interpretation cannot be expanded beyond the basic scope. Although this system clarifies the scope of protection, this provision is relatively rigid, and requires a high level of ability to write the claims of the right holders, and everyone has their own understanding of the wording. When the understanding is inconsistent, it is not conducive to giving technical solutions. With full protection.

(2) The compromise system

Up to now, there are almost no countries in the world that have only adopted the "centrally limited system" or "peripheral limited system". Most countries, including China, have adopted a compromise system, absorbing the advantages of the two limited systems.

The compromise system not only considers the literal meaning of the claims, but also extends the claims appropriately with reference to the description and drawings according to the actual situation, and can be more flexibly used in specific practice.

3. Judgment of Patent Infringement

Judging whether an act constitutes a patent infringement can be analyzed according to the following ideas:

Take a technical solution as an example. First, we must clarify the scope of protection of patent rights. Secondly, the technical scheme of the alleged infringement shall be compared with all the technical features of the claims in the patent scheme and the technical features of the scheme shall be analyzed. Again, determine whether all the same technical features obtained in the comparison have the same function or form as the scheme protected by the patent right, and whether the interrelationships between all the features of the two are the same. Finally, determine whether the combination of all the characteristics of the two has the same effect. If the above conditions are met, the infringement is determined to be valid.

4. Principles for determining patent infringement

(1) The principle of comprehensive coverage

The principle of comprehensive coverage is the most basic principle in the determination of patent infringement. This principle means that all technical features of the alleged infringing substance or method are exactly the same as each feature in the patent claims.

The principle of comprehensive coverage includes three cases: literal infringement, the structure of the alleged object disclosure is a subordinate concept of the superior concept in patent infringement requirements, and the technical characteristics of the object are more than the necessary technical characteristics of the patent ^[1]. In real life, because the principle of comprehensive coverage is simple and clear and easy to judge, most infringers will not use this method to infringe.

(2) The principle of equality

The principle of equivalence refers to the fact that the technical features of the alleged infringement are different from the technical features protected by the independent claims of the patent. Substantially the same effect. At this time, it should be determined that the alleged infringing material falls into the protection scope of the patent right.

The principle of equivalence is a supplement to the principle of comprehensive coverage. It considers possible situations more comprehensively, and to a certain extent makes up for its shortcomings in written expression, and is generally applicable in judicial practice. Not only is it beneficial to fully protect the interests of patentees, but also effectively punishes speculators who circumvent legal sanctions.

(3) The principle of estoppel

The principle of estoppel usually refers to that during the patent examination and approval process, the patent applicant or patentee has restricted or partially waived the scope of protection of the claims in order to obtain legal authorization. Content is included in the scope of protection.

This principle prevents the patentee from going through the substantive examination of the Patent Office. The use of the principle of equivalence in lawsuits to expand the scope of protection of his rights and adversely affect the rights of others is a restrictive requirement for the principle of equivalence.

(4) The principle of donation

The principle of donation means that if the patentee discloses an implementation in the patent specification and does not include it in the scope of protection of the patent application, it is considered to have been donated to the public, and the patentee shall not claim this content thereafter patent.

The application of this principle is a defense against the scope of patent protection. When the plaintiff claims that the alleged infringement method has fallen into the scope of patent protection, the defendant argues that the technical solution is not protected by the patent right, because it is only recorded in the description and not in the claims. The publicity can be regarded as a kind of donation by the patentee to the public, so the defendant does not constitute infringement [1].

5. Problems and Improvements in the Principles of Patent Infringement Determination

(1) Problems

1) Imperfect legislation

There are some problems with imperfect legal regulations on some issues, and some simply explain the concept of the patent infringement determination principle. There is no clearer measure of some existing infringements, which gives judges greater discretion. Faced with the same case, different judges may approach from different angles. Because there is no unified standard, the final judgments are also different, which will not be conducive to the stable development of patent law.

2) The claims are not well written

When writing a claim, the patentee may be limited to words and cannot fully express his meaning. The writing of claims not only involves a certain degree of professional knowledge, but also requires the writer to ponder and consider again and again, fully consider possible infringement situations, and circumvent the claims. This demanding writing puts pressure on the patentees and gives the criminals a chance.

(2) Improve recommendations

1) Improve relevant laws and regulations

As far as possible, the specific standards and applicable conditions in the tort principle should be uniformly stipulated, the judgment standards should be clearly defined, the discretionary power should be set within an objective range, the public should be properly guided, and the criminals should be alerted.

2) Clarify the application of the determination principles and their relationships

In the face of different infringement situations, they need to be judged. When applying the principles of judgment, a certain order must be followed. The interrelationship between the principles should be clearly defined in the legislation. Which principle should be considered first and which principle should be selected next, so that there will be rules to follow when the corresponding agency handles the case and the procedures will be more complete.

3) Determine the writing format of the claims and provide guidance

Examining agencies must strictly check the writing of claims. Regardless of whether the claims are written by the patentee itself or on their behalf, the national authorities must provide corresponding guidance to standardize and improve their content, which may lead to infringements. Stop at the source.

6. Conclusion

The purpose of the patent system is to protect the legitimate interests of right holders and stimulate public innovation. Clarifying the scope of protection of patent rights, revising the system for determining patent infringement, and gradually improving China's patent protection system will further promote China's scientific and technological development and social progress.

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Citations noted in the article:

Callout1: Liu Youhua, Chen Yan. Research on the Principles of Patent Infringement Determination in China and Its Application [J]. Journal of Hunan University of Science and Technology (Social Science Edition), 2014, 17 (01): 52-59.

Callout2: Fu Dong. On the Principles of Judging Patent Infringement on Inventions and Utility Models [J]. Legal Expo, 2020 (04): 1-4 + 62.

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