

Class 10: Copyright Introduction And Originality

Administrative

Next Time: 402-05; 411-421; Problems 4-3 to 4-5

Claim Construction

- Intrinsic Evidence
 - Claims
 - Specification
 - Prosecution History
- Extrinsic Evidence
 - Experts
 - Dictionaries
- Effect of Philips

- All-Elements Rule
 - Break claim into elements
 - Does alleged infringing device contain every element?

Literal Infringement

Hypo #1

You have a Patent with Two Claims

Independent Claim 1: The doohicky comprising A, B, and C
 Dependent Claim 2: The doohicky described in claim 1, further comprising D and E

A B C D E

All of these questions are about LITERAL infringement only.

Which of the following competitor's doohicky's infringe?

- #1: A, B
- #2: A, B, C, G
- #3: A, B, D, E
- #4: A, B, C, D, E, F

You have a Patent with One Claim

Independent Claim 1: The doohicky comprising A, B, and C

Your competitor has a Patent with One Claim

Independent Claim 1: The doohicky comprising A, B, C, X and Y

Hypo #2

Which of the following acts are non-infringing acts?

- #5: YOU sell doohickys with A, B, and C
- #6: Your competitor sells doohickys with A, B, and C.
- #7: YOU sell doohickys with A, B, C, and X
- #8: Your competitor sells doohickys with A, B, C, and X
- #9: YOU sell doohickys with A, B, C, X, and Y
- #10: Your competitor sells doohickys with A, B, C, X, and Y

#11: Nobody wants to buy doohickys that just have A, B, and C (even if you add only X or only Y). The market demands all five elements. What do you do?

Blocking Patents
 Patent Thicket
 Patent Pool

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Last Time

Doctrine of Equivalents

All-Elements Test (Warner-Jenkinson)

"Does the accused product or process contain elements identical to or equivalent to each claimed element of the patented invention?"

Subtests

Triple-Identity Test (Graver Tank)

Does it "perform[] substantially the same function in substantially the same way to obtain substantially the same result?"

Insubstantial Differences Test (Festo)

Is each element insubstantially different from each claimed element?

History and Policy Justification

History

1976 Act is Focus of this class

And amendments since such as Sonny Bono Copr. Extension Act

Policy Justification

Brief Overview

What is Protectable?

Subject Matter

Four classes

- Originality
- Fixation
- Idea-Expression
- Statutory Subject Matter

Formalities

Won't really cover in this class. Since 1976 Act, not very important.

Authorship/Ownership

One class

Duration

Life + 70 Years (or 95 years for entity authors)

Registration

Won't talk more about it in this class.

What Rights are Conferred?

Section 106 Rights

- Copying
- Derivative Works
- Distribution
- Performance
- Display

Other Rights

- Anticircumvention - Not really in this class
- Moral Rights - Not in this class

Third-party liability

Contributory / Vicarious / Grokster

Limits on these Rights

Fair Use

Two Classes

Compulsory Licensing

A little attention

Originality

Basic Rule

Feist

Some examples / Problems

- 1 Change We Can Believe In
What's the Difference Between a Pitbull and a Hockey Mom? Lipstick.
It was a creed written into the founding documents that declared the destiny of a nation. Yes we can.
- 2+
- 3+
- 4+
- 4a+
- 5+
- 6+
- 7+
- 8+
- 9+