David O'Dell, Jay Yin in Intellectual Property Magazine: 'Risk Alert'

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Patent claims can be divided into two major categories: device claims and method claims. While functional limitations work well with method claims, they can introduce uncertainty with device claims unless used as a means-plus-function limitation according to 35 U.S.C. § 112(f). That is, a functional limitation in a device claim can be considered a claim limitation, can be ignored, or can render the claim invalid. The latter can happen when a functional limitation in a device claim is unintentionally deemed to be a means-plus-function limitation, even when it does not use the word "means." In those situations, the patent needs to have been drafted with specific disclosure to support this type of claim, or else the claim may be found invalid. This article discusses the use of means-plus-function language in claims and prosecution pointers to reduce the risks associated with unintentional means-plus-function claim limitations.

Analysis Framework for Means-Plus-Function Limitations

Under *Williamson v. Citrix Online, LLC*, construing a means-plus-function claim term is a two-step process.[ii] The court must first identify the claimed function and then determine what structure, if any, disclosed in the specification corresponds to the claimed function.[iii] Where there are multiple claimed functions, the patent must disclose adequate corresponding structure to perform all of the claimed functions.[iv] If the patent fails to disclose adequate corresponding structure, the claim is indefinite.[v] To assess whether a limitation is a means-plus-function term, the essential inquiry is whether the words of the claim are understood by persons of ordinary skill in the art to recite sufficiently definite structure.[vi]

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