



Drafting Patents for Litigation and Licensing, Second Edition

By ABA Section of Intellectual Property Law

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Drafting Patents for Litigation and Licensing, Second Edition By ABA Section of Intellectual Property Law

A guide through the minefield of court decisions that have systematically eroded the scope and validity of patents. Main Volume Information. Drafting Patents for Litigation and Licensing helps practitioners draft the broadest possible patent that can sustain a validity challenge by synthesizing and applying lessons from the case law. Nearly every day, the courts provide patent practitioners with practical guidance on how to best comply with the requirements of the patent statute. Drafting Patents for Litigation and Licensing provides an organized review of these lessons and guidance for applying them. This treatise not only benefits the patent practitioner, but it also aids and advances the patent system: better, stronger patent applications can result in higher-quality patents of value both to their owners and to the public. The treatise contains in-depth discussions on pitfalls in claim drafting; dangers of means-plus function clauses in claims; strategies to target direct infringers; recent trends regarding the scope of enablement; instructions on how to Festo-Proof a patent application; pitfalls with provisional patent applications; strategies for continued prosecution of patents; statutory subject matter problems affecting software, business method and biotechnology patents; creative claim drafting to avoid common problems in chemical and pharmaceutical patents; and strategies for maximizing design patent protection. The new Second Edition has been extensively revised to address passage of the Leahy-Smith America Invents Act (AIA), including supplemental examination of patents under AIA. The treatise examines patenting strategies in view of the Biologics Price Competition and Innovation Act of 2009, looking at effective reexamination strategies in view of concurrent litigation. It also features a new chapter on Validity Trials at the Patent Trial and Appeal Board, including trial procedures, inter partes review, post-grant review and transitional program for covered business method patents (part of the AIA). In addition, strategies are offered for dealing with obviousness problems. The Second Edition focuses on real-life examples taken from court decisions, especially those from the Federal Circuit in which patents were interpreted, enforced or licensed in a way that was either beneficial or detrimental to the patent owner. New cases discussed include: Association for Molecular Pathology v. Myriad Genetics, on the patentability of isolated DNA; Akamai Technologies v. Limelight Networks, on risks of divided infringement claiming strategies.

Boehringer Ingelheim v. Barr Labs, on propriety of filing a divisional of a divisional during continuing prosecution Halliburton Energy Services v. M-I LLC, on risks of using functional terminology to define claim scope Mayo Collaborative Services v. Prometheus Labs, on patentability of claims directed to medical diagnosis and treatment Aristocrat Technologies Australia v. International Game Technology, on problems when using means-plus-function clauses in computer software-related inventions Bilski v. Kappos, on unpatentability of abstract ideas Ariad Pharmaceuticals v. Eli Lilly, on distinctness of written description requirement from enablement requirement Egyptian Goddess Inc. v. Swisa, on guidelines for drafting design patents and test for infringing a design patent Abbott Labs v. Sandoz, on infringement of a product-by-process claim

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Editorial Review

About the Author

About the Editor-in-Chief Bradley C. Wright is a senior partner at Banner & Witcoff, Ltd., Washington, D.C. He concentrates his practice in patent prosecution, litigation, and counseling, especially in the electrical and computer-related areas, including internet and e-commerce. ABA Section of Intellectual Property Law

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