

Patent Quality and Claim Clarity

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A strong patent system helps foster innovation, which in turn fosters economic growth. Patents are the key product of the patent system, where the system includes several stages including identification of patentable subject matter, acquiring patents via the United States Patent & Trademark Office (“USPTO”) and the enforcing patents in U.S. federal court.

In February of 2015, the USPTO launched a new patent quality initiative. The three goals of the initiative are (1) build more confidence in the patent system by enhancing patent quality; (2) make the system understandable and usable by all inventors; and (3) ensure each of the USPTO’s customers is treated fairly and professionally throughout the patent application process.

In addition, to these goals, the USPTO also identified three patent quality pillars. Of those pillars, two are most interesting from a research perspective. The first has to do with issuing quality patents and the second pillar concerns itself with how to measure patent quality. The USPTO defines a quality patent as one with clearly defined scope, adheres to all statutory requirements and is valid.

Accordingly, a direct driver of patent quality are the patent claims, i.e., the language used to define the metes and bounds of the invention. This paper will explore how to enhance the clarity of patent claims and how patent quality, more specifically the quality of patent claims might be measured. The USPTO’s existing quality efforts with respect to claim clarity include providing legal training to patent examiners and a program that encourages patentees to define complex claim terms in their application.

I argue that another consideration should be whether a patent can be enforced against a party that misappropriates the invention described in the patent. In other words, what lessons can we learn about patent quality from patent litigation? Everyday, patentees (who have invested time and money in pursuing a patent on advanced technologies) discover that their patents cannot be enforced. Several commentators have suggested that patentees can avoid this fate by drafting better claims. Unfortunately, given today’s advances in technology and the limited ability of the English language to define complex inventions, even expert claim drafting cannot entirely protect a patentee from an unauthorized use of their invention.

What can be done to increase the quality of claim drafting? Should the patentee bear the entire cost of drafting ill-conceived claims or should the USPTO take some of the responsibility for issuing unenforceable patents? Will better claims lead to better patent rights enforcement?

Relying on several recent and upcoming court decisions, this paper will attempt to establish a meaningful link between patent quality and patent enforcement.