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AGIS v. Life360 – “Murky Means”

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In Claim drafting you can recite an element in “means for” form under 35 USC 112 paragraph 6. What this allows you to do is to insert whatever you describe in the spec (and its equivalents) into the claim.

So if I said, “a *means for* preparing an omelette” and disclosed an egg beater in the spec, then it would (roughly) be the same as saying “an egg beater and its equivalents”.

Why on earth do we have this? Well, often, especially in some biochem contexts, it’s REALLY tedious, and possibly even unnecessarily limiting, to enumerate all the species in a genus (“isomer A, isomer B, isomer C . . . geez, really, any isomer that achieves function X”). “Means for” drafting provides a specific method, with well-understood case law, for handling such a situation.

However, a claim doesn’t have to necessarily recite the actual words “means for” for this analysis to come into effect. If the claim recites an abstract term coupled with a function, that can also precipitate a 112.6 analysis. If the spec doesn’t provide a corresponding structure, then the claim is indefinite and consequently invalid. So in litigation you can imagine a common pattern: 1) argue that a term is indefinite in isolation or alternatively that it is an abstract functional recitation in a manner invoking 112.6; 2) if it invokes 112.6, argue there’s no corresponding structure in the spec.

In [AGIS v. Life360](#), that’s roughly what happened for the term “symbol generator”.

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“Our analysis proceeds in two steps. First, we address whether “symbol generator” in the asserted claims is in means-plus-function form pursuant to 35 U.S.C. §112, ¶ 6 . . . If we find that the relevant claim terms recite a means-plus-function limitation, we proceed to our second inquiry and ‘attempt to construe the disputed claim term by identifying the corresponding structure, material, or acts described in the specification to which the term will be limited.’ . . . ‘The price that must be paid for use of [a means-plus-function claim] is limitation of the claim to the means specified in the written description and equivalents thereof.’). However, ‘[i]f the specification is not clear as to the structure that the patentee intends to correspond to the claimed function, then the patentee has not paid that price but is . . . attempting to claim in functional terms unbounded by any reference to structure in the specification.’”

As “[t]he function of generating symbols must be performed by some component of the patents-in-suit; however, the patents-in-suit do not describe this component” CAFC agreed that the claim was indefinite and therefore invalid.

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