Strategies for Avoiding "Means-Plus-Function" Interpretation

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For JIPA
Regional Division's monthly meeting

November 2019

Why Avoid Means-Plus Function Interpretation

- Means-plus-function interpretation is ***limited*** to the structure disclosed in the patent which is associated with the functions recited in the claim (and their equivalents).

Why Avoid Means-Plus-Function Interpretation

- Means-plus-function limitations require the patent specification clearly indicate what is and is not covered under the means-plus-function limitation.

Why Avoid Means-Plus Function Interpretation

- If no structure is defined in the specification to perform the claimed function, then the means-plus-function limitation may be deemed indefinite and the claim invalid.

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Why Avoid Means-Plus Function Interpretation

- Within the specification, each of the functions recited in the means-plus-function limitation must be identified and all the structure associated with that function must be linked to that function.

Prior Interpretation

- Previously, there was a "strong" presumption that claim limitations that do not use the term "means" <u>are not</u> means-plus-function limitations absent "a showing that the limitation essentially is devoid of anything that can be construed of structure."

Prior Interpretation

For example, under the prior interpretation, the limitation:

"a first end *support portion* supporting a first end of a columnar work piece in an axis direction"

Would not likely be interpreted as a "means-plus-function" limitation, since the term "means" is not used.

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Prior Interpretation

Other limitations likely <u>not</u> considered "means-plus-function" limitations under the prior interpretation:

- Tracking unit
- Processing device

New Interpretation

- In *Williamson v. Citrix Online*, 792 F.3d 1339 (Fed. Cir. 2015), the CAFC specifically overruled the prior interpretation.

- The CAFC thus promulgated a new standard that is to be based on means-plus-function law that existed before the "strong" presumption interpretation.

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The USPTO reaction

- The USPTO has taken numerous steps to improve claim clarity and scrutinize functional limitations, including training examiners on handling functional claims.

- The USPTO has implemented a training program for all examiners that focuses on evaluating functional claiming and improving the clarity of the examination record.

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The USPTO reaction

(A) terms used as a substitute for "means" include:

- "mechanism for," "module for," "device for," "unit for," "component for," "element for," "member for," "apparatus for," "machine for," or "system for."

The USPTO reaction

(B) terms used as a substitute for the linking transition word "for" include:

- "configured to" or "so that"

Practical tips

- Do not use "means-plus-function" language, or language which may be considered such language.

- For example:
    - Tracking unit → Tracker
    - Processing device → Processor
    - Support portion → Support

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Practical tips

- Consider adding dependent claims that define the potentially vague term or add structure for performing the claimed function so that one need not rely upon the disclosure or the specification to save the claim from inadvertently being construed as a "means-plus-function" limitation

Practical tips

- The written description should be clear in describing the components of the structure that perform the claimed function and how they are linked or associated with the function.

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Thank you!
Questions?

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