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Infringement Analysis under Doctrine of Equivalents- Pros and Cons of Elemental-by- Element Test

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Abstract

To constitute patent infringement under doctrine of equivalents, it dictates that there must present insubstantial difference between claimed invention and accusation. In *Graver Tank*, U.S. Supreme Court utilized the so-called function-way-result tripartite test to characterize the equivalency. There are two approaches before CAFC: one is by element-by-element test, the other is by invention as a whole. The outcomes of infringement analysis will hinge upon what accused counterpart should be the subject of comparison. Elemental approach reveals advantages when focusing counterpart on the component basis. However, we found that this approach shows incompletely and adversely result during analysis after reviewed the rationales underlying cases before CAFC. Via technical discussion to the application of doctrine of equivalents, this article shows the incomprehensive perspective of elemental approach and explores the entirety approach as a necessity under certain circumstance.

Keywords: doctrine of equivalents, insubstantial difference, element-by-element test, invention as a whole, hypothetical patent claim