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Interpretation and Infringement Analysis of Means Plus Function Claimed Elements

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Abstract

The Paragraph 8 of Article 18 of the amended Implementing Regulations of Taiwan Patent Law, effective on July 1, 2004, introduces a new claim-drafting rule, which allows patentees to describe a claim by the function of claimed element without the recital of structure, material, or acts in support thereof. Such kind of the claimed element, which is the so-called “means plus function element” or “step plus function element”, is construed to cover the corresponding structure, material, or acts disclosed in the specification and equivalents thereof. United States is the first country that enacted the means plus function provision in the patent law and has operated this system for more than fifty years with numerous cases being decided. The means plus function provision in the Implementing Regulations of Taiwan Patent Law is added by reference to U.S. Patent Law. Taiwan Intellectual Property Office has issued patents having claims with means plus function elements, however, courts in Taiwan have not decided cases regarding how to construe and justify infringement for such kinds of claims. This paper analyzes the recent patent infringement cases in United States that are relevant to means plus function claims, to obtain the guidelines for determining and interpreting means plus function elements as well as for justifying infringement. The differences between the literal equivalents included in means-

plus-function claims and equivalents under doctrine of equivalents are also compared and discussed.

Keywords: means plus function, step plus function, doctrine of equivalents, prosecution estoppel