Kluwer Patent Blog

Is there a theory of equivalence in Poland ?

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The extent of protection conferred by a patent in Poland has its legal basis in the Polish Act on Industrial Property Law of 30 June 2000. According to Article 63 section 2 of the Industrial Property Law, the extent of protection conferred by a patent shall be determined by the scope of the patent claims. The description and drawings may be used to aid the interpretation of the patent claims. Since the Polish Industrial Property Law does not contain any regulation relating to Article 69 of the European Patent Convention which refers directly to the doctrine of equivalence, there is no general consensus on the extent of patent protection in Poland among scholars.

Currently, Polish civil courts are examining some cases to determine the “scope of protection” of Polish patents and European patents granted for Poland. It appears that judges in infringement proceedings focus on the scope of the claims to determine whether a violation of a patent has occurred. The question of whether the extent of patent protection is limited to the literal wording of the patent claims remains open. However, Polish courts traditionally tend to have a relatively strict, literal interpretation.

As already mentioned, there is no consensus among Polish scholars and practitioners on how to interpret patent claims. Some scholars argue that only a literal interpretation of patent claims ensures the certainty of law because it provides a clear scope of the patented invention with no ambiguity. Others claim that a literal interpretation provides a too narrow legal protection for patented inventions and that a broader interpretation safeguards the rights of patent owners by providing the true scope of the protection for the invention. Some scholars and practitioners dispute the approach that patent claims should be interpreted like any legal act. Opponents argue that every inventor makes a declaration of will by making patent claims, which determines the boundaries of those claims. Under Polish law, every declaration of will needs to be interpreted within a given context, such classified patent claims should also be interpreted within the given context, even if their literal formulation appears to be unequivocal (otherwise, one would not be able to understand them).

Last, but not least, some scholars claim that there are two parallel legal regimes in Poland which deal with the interpretation of patent claims. For Polish patents one should apply Polish national patent law, namely Article 63 section 2 of the Industrial Property Law, and therefore one may only additionally use the description and drawings in order to aid the interpretation of the patent claims. For those European patents granted for Poland, one should apply Article 69 of the European Patent Convention. Therefore, the scope of protection of European patents granted for Poland is not limited to the literal wording of the patent claims.

In conclusion, some ongoing cases may be of a precedential value in terms of future practice by providing basic principles for either extended or literal patent claim interpretations. Such ongoing cases give the impression that one will eventually be able to understand the meaning of how (or whether) the doctrine of equivalence is applied in Polish patent law. Once these cases give us a consensus on the extent of patent protection in Poland, we will post a summary of a decision here on the patent blog.

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This entry was posted on Friday, December 23rd, 2011 at 3:09 pm and is filed under literally fulfil all features of the claim. The purpose of the doctrine is to prevent an infringer from stealing the benefit of an invention by changing minor or insubstantial details while retaining the same functionality. Internationally, the criteria for determining equivalents vary. For example, German courts apply a three-step test known as Schneidmesser's questions. In the UK, the equivalence doctrine was most

recently discussed in Eli Lilly v Actavis UK in July 2017. In the US, the function-way-result test is used.”>Equivalents, Extent of Protection, Poland, Scope of protection

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