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BREAKING DOWN PATENTS

BY: ERIC ESTADT
Carlile Patchen & Murphy

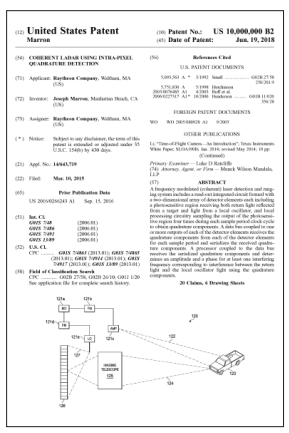
Many myths and misconceptions exist about what a patent is and how it works. Although billion-dollar patent lawsuits often make flashy headlines, the reality is that most patents will never be the subject of litigation. Patents can undoubtedly be lucrative investments but are also very expensive to obtain and enforce. Ensure you get the most out of your investment by obtaining experienced patent counsel to help you navigate common and complex issues.

WHAT IS IN A PATENT?

First, it is essential to know that there are three types of patents: utility, design and plant. Utility patents cover structural and functional aspects of inventions, including machines, materials, pharmaceutical compositions, software, business processes, etc. Design patents cover new, original, and ornamental designs for an article of manufacture. Plant patents are used for novel plant breeds. Most patent applications filed with the U.S. Patent & Trademark Office are for utility patents.

WHAT ARE THE COMPONENTS OF A PATENT?

The image below is the first page of patent no. 10,000,000, issued in 2018 (yes, the U.S. has really issued over ten million patents). This is representative of the layout of most utility patents.



United States Patent
Marron

(12) Patent No.: US 10,000,000 B2
(45) Date of Patent: Jun. 19, 2018

(54) CORRELATED LADAR USING INTRA-PIXEL QUADRATURE DETECTION

(56) References Cited
U.S. PATENT DOCUMENTS

(71) Applicant: Raytheon Company, Waltham, MA (US)

(72) Inventor: Joseph Marron, Manhattan Beach, CA (US)

(73) Assignee: Raytheon Company, Waltham, MA (US)

FOREIGN PATENT DOCUMENTS

OTHER PUBLICATIONS

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 430 days.

(21) Appl. No.: 14/643,719

(22) Filed: Mar. 10, 2015

(65) Prior Publication Data

US 2016/0266243 A1 Sep. 15, 2016

(51) Int. Cl.
G01S 7/48 (2006.01)
G01S 7/484 (2006.01)
G01S 7/491 (2006.01)
G01S 17/10 (2006.01)

(52) U.S. Cl.
CPC G01S 7/4865 (2013.01); G01S 7/4917 (2013.01); G01S 17/107 (2013.01); G01S 3/809 (2013.01)

(58) Field of Classification Search
CPC G02B 27/58; G02B 26/10; G01J 1/20
See application file for complete search history.

ABSTRACT

20 Claims, 6 Drawing Sheets

The first page includes all of the relevant bibliographical information, including the inventor(s), patent number and type code, grant date, title, applicant (if not the inventor), assignee (if applicable), any reductions or extensions of the term, application number, filing date, technology classifications, related applications, documents cited by the examiner, an abstract of the invention, and a representative drawing of the invention.

Invention Specification

The next section of the patent, called the "specification," describes the invention in detail. The first part of the specification will include one or more pages of drawings. Most utility patents will consist of at least one drawing, even if it is just a flowchart representing steps in a procedure.

Following the drawings will be several pages of text, including background on the field of technology, a summary of the invention, a listing of the various drawings, and a detailed description of the invention. These elements together explain how the invention is made and used.

Patent Claims

The patent's final and most crucial section is the "claims" section. The claims are what actually define the scope of legal protection your patent provides, and every patent must include at least one claim. A patent will only be granted if the claims are new and not publicly known information when the application was filed. However, a claim is only infringed if somebody's product or actions match every part of that claim. Accordingly, striking the right balance between a claim that is narrow enough to be granted but broad enough to protect against infringers is critical to a strong patent.

Design patents have very different requirements from utility patents. Since design patents focus only on the ornamental features of a physical article, there is only a single claim which covers the design as shown in the drawings. In other words, in design patents, the drawings are the claims.

Now that you have a better understanding of the components of a patent, it's time to decide whether a patent would suit your situation.

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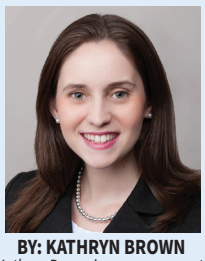

BY: KATHRYN BROWN
Kathryn Brown is a management-side employment attorney with Duane Morris LLP

In a groundbreaking ruling on May 19, 2023, the Sixth Circuit Court of Appeals in Clark v. A&L Homecare and Training Center, LLC announced a new standard for determining whether plaintiffs bringing claims under the Fair Labor Standards Act (FLSA) may issue notice of their lawsuit to others who may wish to join it. Federal courts in Ohio, Michigan, Tennessee and Kentucky may now authorize notice of an FLSA lawsuit only after the plaintiff demonstrates a "strong likelihood" that the prospective recipients of the notice are "similarly situated" to them. By raising the evidentiary burden to facilitate notice of the lawsuit, the Sixth Circuit's ruling shifts the leverage in FLSA cases in favor of defendants. The decision is big news for all Ohio employers.

By way of background, the FLSA is the federal statute that governs the payment of wages owed to employees for time worked. Plaintiffs often assert claims for unpaid minimum or overtime wages on the basis of alleged "off the clock" work, automatic non-payment of meal breaks, and misclassification of employees as "exempt" from overtime pay, for example. The statute gives plaintiffs in FLSA cases the ability to expand their lawsuit by issuing notice to individuals who are "similarly situated" to them and who may choose to join the lawsuit as additional plaintiffs.

Courts' determination of who is "similarly situated" with respect to claims of unpaid wages pursuant to the FLSA usually turns on whether the individuals performed the same tasks and were subject to the same timekeeping and pay policies as the original plaintiff. The Sixth Circuit in Clark made clear the determination should also include whether there is a basis to differentiate an individual from the original plaintiff, such as the fact an individual signed an agreement with the employer to arbitrate any claims for unpaid wages.

Under the prior framework, courts routinely granted plaintiffs' motions to issue notice to dozens, hundreds or even thousands of others, based on a "modest" showing of "similarly situated" status. Because the issuance of notice may expand the scope of an FLSA lawsuit exponentially, the old standard drove many employers to settle solely to avoid the massive costs and headaches of multi-plaintiff litigation. The Sixth Circuit roundly rejected the prior standard, suggesting it was tantamount to soliciting litigation.

The Sixth Circuit anticipates that parties to an FLSA lawsuit will engage in discovery to determine who is "similarly situated" to the original plaintiff under the strong-likelihood standard. However, the court did not flesh out what that discovery should encompass. Time will tell how district courts apply the standard in Clark to determine whether a plaintiff has presented enough evidence to warrant notice.

Companies with employees in Ohio may want to use the Sixth Circuit ruling as an opportunity to evaluate their pay practices and policies for compliance with the FLSA. Ultimately, the best way to "win" an FLSA lawsuit it so avoid one in the first place.