

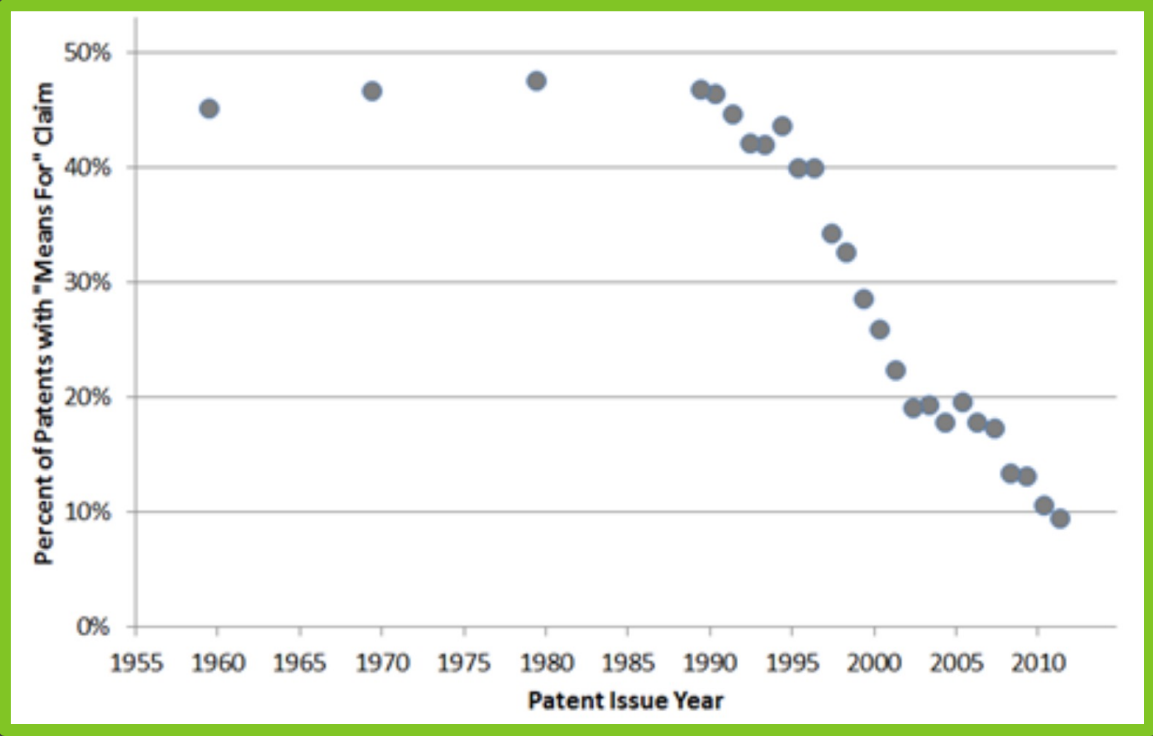


Patently Strategic Musings

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% of Patents that include at least one “means for” claim limitation, grouped by patent issue date



Section 112(6) – Means plus Function

- **Applicable.** Recite a function without reciting structure for performing the function and limit the claims to the structure, materials, or acts disclosed in the specification
- **Inapplicable.** Recite both a function and the structure for performing that function in the claim

How is “claim construction” carried out?

1. Determine the claimed function
2. Identify the corresponding structure in the written description of the patent that performs the function

Applied Med. Res. Corp. v. U.S. Surgical Corp., 448 F.3d 1324, 1332 (Fed.Cir.2006)

Getting around MPF

- If "means" is not used, must be shown that persons of ordinary skill in the art would not have understood the term limitations to connote structure view of the whole claim
- If MPF not desired, Applicant needs to show that a particular claim element would be understood as connoting "structure"

Halliburton Oil Well Cementing Co. v. Walker, 329 U.S. 1 (1946)

- Invention added mechanical acoustical resonator to prior art device for measuring distance to fluid surface in deep oil wells
- Claims recite: "means associated with said pressure responsive device for tuning said receiving means to the frequency of echoes from the tubing collars of said tubing sections to clearly distinguish the echoes from said couplings from each other."

Williamson v. Citrix Online, LLC, 792 F.3d 1339 (Fed. Cir. 2015) - Indefinite

- (1) moved away from a strong presumption against MPF interpretation absent “means” language and (2) established the “nonce word” doctrine
- Focus must be appropriately placed on “whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.”
- Claim is indefinite (112(b)) - "if a person of ordinary skill in the art would be unable to recognize the structure in the specification and associate it with the corresponding function in the claim"

Nonce Words

- Mechanism
- Module
- Device
- Unit
- Component
- Element
- Member
- Apparatus
- Machine
- System

**Non-structural modifier +
nonstructural term**

Non-Nonce Words

- Circuit
- Detent mechanism
- Digital detector
- Reciprocating member
- Connector assembly
- Perforation
- Sealingly connected joints
- Eyeglass hanger member

**Structural modifier +
nonstructural term**

Gregory Baran v. Medical Device Technologies (Fed. Cir. 2010) - Indefinite

- a “release **means** for retaining the guide in the charged position”
- Construction: two functions – retaining the guide in the charged position and releasing the guide from the charged position
- Literal infringement: device performs the recited function through structure that is the same as or equivalent to the corresponding structure set forth in the specification

Tech. Licensing Corp. v. Videotek, Inc., 545 F.3d 1316, 1338 (Fed. Cir. 2008) - **Definite**

- “The question is not whether one of skill in the art would be capable of implementing a structure to perform the function, but whether that person would understand the written description itself to disclose such a structure.”
- “Monitoring **means**”: spec describes node-to-node communication system
 - Expert testified that controllers + circuitry were corresponding structure
 - No circuit diagram, but it’s dep. on level of ordinary skill in the art

Tools For Checking Whether 112f Applies

- Description in spec denotes structure
- Dictionaries provide evidence word is understood to be a noun denoting structure
- Evidence of structure for the term in the Prior art

Software MPF

- **Dyfan LLC v. Target (Fed. Cir. 2022) - Definite**
 - Code
 - Application
 - System
- **VDPP LLC, v. Vizio, Inc. (Fed. Cir. 2022) - Definite**
 - Storage
 - Processor
- **Blackboard v. Desire2Learn (Fed. Cir. 2009) - Indefinite**
 - Access Control Manager

Media Rights Capital v. Capital One Financial Corporation (Fed. Circ. 2015) - Indefinite

- “Compliance Mechanism” and “Custom Media Device”
- Spec describes “how the ‘compliance Mechanism’ is connected to and interacts with the other components of the system, what processes the ‘compliance mechanism’ performs, and what structural subcomponents might comprise the ‘compliance mechanism’
- Mechanism was tied to general computer – but no corresponding algorithm was disclosed for all 4 functions of the mechanism

**TecSec, Inc. v. Int'l Bus. Machs. Corp., 731 F.3d 1336,
1347 (Fed. Cir. 2013) - Definite**

- “system memory means” and “digital logic means”
- “a system memory is a specific structure that stores data”
- “digital logic means” was specifically disclosed in the specification to be “comprised of structural elements, including a system memory and specific modules and subsystems”

Noah Sys., Inc. v. Intuit Inc. (Fed. Cir. 2012) – Indefinite

- “access means” and “communication means”
 - No algorithm disclosed for one of two functions
- ‘To avoid purely functional claiming in cases involving computer-implemented inventions, we have “consistently required that the structure disclosed in the specification be more than simply a general purpose computer or microprocessor.”
- Consequently, a means-plus-function claim element for which the only disclosed structure is a general purpose computer is invalid if the specification fails to disclose an algorithm for performing the claimed function.

Drafting Tips

- MPF can be one of many claims types but not the only claim type
- Assume that terms will be construed as MPF, and draft accordingly
- Even structures known in the art should be given structure in the description
- For software, include “algorithms” for all functions of the MPF term