

B.2 Claim Construction

2.3a SECTION 112, PARAGRAPH 6/f

[This instruction should only be given where the asserted claims include means-plus-function or step-plus-function requirements.]

Where claims include means-plus-function requirements:

Claim [] uses the phrase “means for [function].” This “means for” phrase has a special meaning in patent law. It is called a “means-plus-function” requirement. It does not cover all of the structures that could perform the function set forth in the claim, namely, “[function].” Instead, it covers a structure or a set of structures that performs that function and that is either identical or “equivalent” to [at least one of] the [set(s) of] structure(s) described in the [] patent for performing that function. The issue of whether two structures are identical or equivalent is for you to decide. I will explain to you later how to determine whether two structures or two sets of structures are “equivalent” to one another. For purposes of this case, I have identified the [set(s) of] structure(s) described in the [] patent that perform(s) the function of “[function].” [Claims [] also include similar means-plus-function requirements.] When I read you my definitions for certain claim terms a few moments ago, I identified the structures described in the [] patent for performing the relevant functions. You should apply my definition of the function and the structures described in the [] patent for performing it as you would apply my definition of any other claim term.

Where claims include step-plus-function requirements:

Claim [] uses the phrase “step for [function].” It does not cover all of the acts that could perform the function set forth in the claim. Instead, it covers acts that perform that function and are either identical or “equivalent” to [at least one of] the [set(s) of] act(s) described in the [] patent for performing that function. The issue of whether two acts [or two sets of acts] are identical or equivalent is for you to decide. I will explain to you later how to determine whether two acts or two sets of acts are “equivalent” to one another. For purposes of this case, I have identified the [set(s) of] act(s) described in the [] patent that perform(s) the function of “[function].” [Claims [] also include similar step-plus-function requirements.] When I read you my definitions for certain claim terms a few moments ago, I identified the acts described in the [] patent for performing the relevant functions. You should apply my definition of the function and the acts described in the [] patent for performing it as you would apply my definition of any other claim term.

Authorities

35 U.S.C. § 112(f); Pre-AIA 35 U.S.C. § 112, ¶ 6; *Allvoice Computing PLC v. Nuance Commc’ns, Inc.*, 504 F.3d 1236, 1240-41 (Fed. Cir. 2007); *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1332-34 (Fed. Cir. 2006) (explaining that an object meeting a means-plus-function limitation with two functions must perform both claimed functions and be an equivalent structure. Equivalence of structure can be shown here if the objects perform both identical functions in substantially the same way to achieve substantially the same result.); *Al-Site Corp. v. VSI Int’l Inc.*, 174 F.3d 1308, 1318-21 (Fed. Cir. 1999) (distinguishing between means- or step-plus-

function to equivalents available at time of issuance and application of doctrine of equivalents to after- arising inventions); *WMS Gaming Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1351 (Fed. Cir. 1999) (“The proper test for determining whether the structure in an accused device is equivalent to the structure recited in a section 112, ¶ 6, claim is whether the differences between the structure in the accused device and any disclosed in the specification are insubstantial.”); *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1266-67 (Fed. Cir. 1999); *Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc.*, 145 F.3d 1303, 1307-08 (Fed. Cir. 1998).