

Day Three Answers

Patent Fundamentals Bootcamp 2020:

An Introduction to Patent Drafting, Prosecution, and Litigation

San Francisco

July 17, 2020

| Claims | Claim Construction | Product |
|--|---|---|
| <p>1. An apparatus comprising:</p> | <p>Preamble element that is not necessarily a claim limitation unless it “breathes life and meaning” into the claim.</p> | <p>Yes.</p> |
| <p>a substantially planar surface with a first and a second surface; and</p> | <p><u>“substantially planar surface”</u></p> <p>Plaintiff’s construction: Ordinary meaning, or “seat.” (2:8).</p> <p>Defendant’s construction: “A planar surface that is approximately equal in area to the area of the back surface of an adult buttock.” (2:20-22; 5: 14-17).</p> | <p>Yes (Arguably). Issues to discuss:</p> <p>Where did these claim constructions come from? Note that defendant’s construction comes from summary of invention, and there is no other embodiment described in the specification (child size seat not really described, but perhaps alluded to, at 5:26-27). May want to mention issues of: (1) referring to something as the “invention” may lead to limitation of the claim, (2) sole embodiment issues, (3) dedication to the public.</p> <p>How does each construction affect the infringement/invalidity case?</p> <p>Does the plaintiff have enough information to prove its case under defendant’s construction? Note how</p> |

DAY 3 MODEL CLAIM CHART ANSWER

| Claims | Claim Construction | Product |
|---|---|---|
| | | infringement/invalidity analysis becomes harder. |
| <p>at least three elongate members, the members each having a first end and a second end, the first ends connected to the first surface of the planar surface and oriented with respect to the planar surface such that the elongate members are substantially perpendicular to the planar surface and the elongate members are substantially parallel to each other.</p> | <p>“elongate members”</p> <p>Plaintiff’s construction: Ordinary meaning, or “leg.” (2:10).</p> <p>Defendant’s construction: “A leg whose length is approximately equal to the distance between the knee and the ankle of the adult leg.” (2:17-20; 5:17-23)</p> | <p>Yes (Arguably). Issues to Discuss:</p> <p>Where did these claim constructions come from? Note that defendant’s construction comes from summary of invention, but this time there is another embodiment explicitly described in the specification (child size leg described at 5:23-26).</p> <p>What changes about invalidity/infringement case?</p> <p>What changes in proof issues?</p> |