

Teaching Patent Drafting: A practitioner's perspective

Gwilym Roberts

Partner

Kilburn & Strode

Introduction

- Personal experience and background
- What we do
- How we learn
- Exams

Formalising the teaching

- Teaching the unteachable
 - How do I do it?
 - I can do it – don't know how.
 - Why can't you do it?
- Can drafting be taught?
- To geeks?

Three step approach

1. Demystify

Who do we have to please

Legal background simpler than it looks

Few constraints, really

2. Create framework

Simple set of rules and tests

3. Apply practically

The cheese grater



Demystify

Who might look at the patent?

The Patent Office (validity)

The Judge (validity and/or infringement)

The infringer (infringement)

The researcher (information)

The investor (pretty pictures)

The balance

– Validity - legal; infringement - commercial

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The infringer

Extent of protection - s125

Claims

Construction...

- Remedies
- Territorial

The Patent Office

- Not patentable
- Insufficient
- Claims not clear/concise...
- Lack of unity
- Claims not supported
- Added matter...
- Formal matters

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The infringer

- Scope of monopoly - s60
 - Infringing acts
 - What acts might your competitor do?
 - Contributory infringement
 - In relation to what products?



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Create Framework - Description

- **S**tructure – Suff, a/m
- **O**peration – Suff, a/m
- **F**abrication - Suff
- **A**dvantages – Claim check
- **V**ariants – Claim check, support

Create Framework - Claims

- Spot invention
 - Pub test
- Identify novel feature (validity)
- Choose main category (infringement)
- Name claim (infringement)
- Add other features/interaction (validity)
 - Pass pub test
- Never lose sight of advantage

Create Framework - Crosscheck

- Infringement check
 - limiting words or features
 - claim what is made/sold
 - claim on the shelf (clarity, scope)
- Validity check
 - novel – prior art/everything
 - check Inventive Step argument
 - check free beer (clarity)

Apply Practically

Apply Practically

- Not novel over known prior art
 - A cheese grater comprising a grating portion and means for moving the grating portion relative to cheese.
- Reads onto something ridiculous
 - Food manipulation means comprising first and second elements movable relative to one another to manipulate food.
 - Knife and fork
- Inventive step argument doesn't work
 - A cheese grater including first and second portions movable relative to one another

Success?

- Cannot confer intuition
- Can provide confidence
- And boundaries
- Maybe their trainees will benefit