Teaching Patent Drafting: A practitioner's perspective

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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 cheesegrater



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 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

- Extent of protection - s125
  - Claims
  - Construction...
- Remedies
- Territorial

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

- Structure – Suff, a/m
- Operation – Suff, a/m
- Fabrication - Suff
- Advantages – Claim check
- Variants – 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 cheesegrater including first and second portions movable relative to one another

Success?

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