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Empirical Study on the Doctrine of Equivalents in Taiwan

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Abstract

The doctrine of equivalents is one of the most difficult and unpredictable doctrines in patent law to apply. By allowing patentees to gain exclusive right beyond the literal claims in their patents, this doctrine creates tension between the adequate protection of patent right and the public notice function in the patent system. Based on the Guideline for Patent Infringement Analysis proposed by Taiwan Intellectual Property Office, to determine patent infringement under the doctrine of equivalents, the Triple-Identity Test should be applied. Under this test, if an accused device performs substantially the same function in substantially the same way to obtain the same result as the asserted patent, the device infringes the patent. However, the information regarding the test is insufficient in the Guideline for Patent Infringement Analysis. It fails to explain how to apply the test, how to define the Way/Function/Result, and what the sequence of applying the three factors is. With-

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out these detailed information, it will be desirable for the public to know how the Taiwan Intellectual Property Court apply the test. This article attempts to review the practice of the test by empirical study. Especially, this article surveys the patent infringement litigations in the Intellectual Property Court and tries to analyze the test implanted in the Court. Besides, this article also provides some comments and suggestions on the test in Taiwan.

Keywords: Doctrine of Equivalent, Triple-Identity Test, Tri-Partite Test, Function-Way-Result Test, Empirical Study