



Displaying Patent Language in Patent Litigation

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As lawyers, we are always arguing about documents, and we often need to display those documents in court. In patent cases, displaying documents is particularly important because the patent's language describes the invention. In today's post, I'll talk about how to display this language in an understandable, readable and trustworthy form for the judge or jury.

Importance of the Patent's Language

The primacy of a patent's language comes from the patent statutes. For example, 35 U.S.C. § 112 requires that inventors describe their inventions fully and clearly, and that they point out their invention in the claims:

"The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same,

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. ..."

35 U.S.C. § 112 (emphasis added).

In light of the key role of patent language, patent litigators often need to display patent language in court to argue about the meaning of the language.

The Three Requirements: Understandable, Readable and Trustworthy

Whenever you display document language in court, you must make sure that (1) the audience understands what is being shown; (2) the language is readable; and (3) that the judge and/or jury trusts that you are displaying the language accurately.



Displaying Your Patent Language: Slides vs. Live Presentation

How do we recommend presenting patent language? First, you need to decide if you will be presenting prepared slides, or showing magnified documents live on Trial Director, Sanction, an Elmo, a poster board or another live display technology in court. There are advantages to both approaches. In this post, I'll assume that you have decided to use pre-prepared slides of patent language, and save for another day the discussion of Trial Director or Sanction versus prepared slides.

A Sample Slide Displaying Patent Language

Below is a sample slide displaying some language from a patent:

'030 Patent, middle of paragraph example

United States Patent
Callaghan US 7,032,630 B1
Patent No. US 7,032,630 B1
Date of Patent: Apr. 18, 2006

25 26

US 7,032,630 B1

25 26

As you can see, the system may only need to update the image file "1.GIF" to publish a replacement fax message. Using this method, a user could maintain (update/edit) the static portions of their webpages independently from the system. The system would then allow non-technical users to update the webpage's main content with the ease of use that the system provides.

Source: '030 patent, 24:62-67.

Features of the Sample

We often use the format above for displaying patent language because it meets the three requirements outlined above. In particular:



- Understandable: The format shown in the sample helps the jury or judge understand the context of the quoted language. By showing the patent in the background with yellow highlighting on the quoted paragraph, the sample visually reminds the viewer of the source patent document.
- Readable: The text box on the right allows us to display the key language in a clear, crisp font that can be sized for easy reading in court.
- Trustworthy: A slide displaying language without context can be misinterpreted as argument rather than evidence. By putting the source patent pages in the background with highlighting for the source text, the slide implicitly communicates the authenticity of the quote.

Please let us know your experience on displaying documents in the comments.

*Michael Kellher is an IP litigator and tech attorney who is a partner of **Cogent Legal**, a litigation graphics and trial strategy firm based in the San Francisco Bay Area that develops clear and compelling visual presentations for attorneys to use in mediation or trial. Services include animations, 2D and 3D graphics, medical illustrations, PowerPoint or Keynote presentations, interactive timelines, videos, strategic consulting and trial support. Cogent Legal integrates the legal expertise of a successful trial attorney with the creative and technical talent of a design firm.*