

Infringement Analysis: 21 Defenses to a Patent Infringement Lawsuit

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Determining whether a patent is infringed should entail the same process that a court would use. Generally, a court would make findings on validity, infringement, and enforceability. Below is a list of twenty-one specific defenses to patent infringement claims:

- (1) Expired Patent,
- (2) Noninfringement under 35 USC § 271,
- (3) Anticipation by prior art under 35 USC § 102 (a), (b), (d), (e), or (g) (Subsection (g) repealed with America Invents Act),
- (4) Obvious over prior art under 35 USC § 103,
- (5) Double patenting,
- (6) Improper inventorship under 35 USC § 102 (f),
- (7) Improper scope of claims under 35 USC § 112,
- (8) Fraud,
- (9) Antitrust violation,
- (10) Plaintiff does not own the patent (standing),
- (11) License to the patent,
- (12) Abandonment under 35 USC § 102 (c),
- (13) Misuse,
- (14) Laches,
- (15) Intervening Rights,
- (16) Lack of utility under 35 USC § 101,
- (17) Inoperable invention under 35 USC § 112,
- (18) Not statutory subject matter under 35 USC § 101,
- (19) Foreign filing after non-publication request.
- (20) Dis-joinder under 35 U.S.C. 299 (Multiple defendants with no joint infringement).
- (21) Prior commercial use - 35 U.S.C. Section 273.

I identified the above 21 defenses to patent infringement.

Note: Best Mode repealed by America Invents Act.

Do you know of any others? Did I get any wrong? Let me know