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Legal Issues due to wrong Punctuations in Patents

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Making mistakes when filling out forms or applications is quite normal and likely to occur to a person, although blunders like using the wrong punctuation in a patent application may not appear particularly critical at first glance. A casual reader would have a very difficult time understanding the potential consequences of incorrect punctuation in a patent, but if your client suffers greatly as a result, it will seriously damage your self-esteem as a patent attorney. As interpreting punctuation correctly can be subjective and there are only a small number of cases in which such conditions have happened, a judge might occasionally overlook it. Nevertheless, it is crucial to evaluate and revise your work, and always make sure to adhere to the patent application's drafting instructions to avoid making mistakes. By doing so, you can ensure that your patent application is error-free and prevent any potential future legal disputes.

Keywords: *legal issues, patents, intellectual property rights, punctuation errors.*

INTRODUCTION

When it comes to creating a patent by a patent drafter, grammar and punctuation are sometimes overlooked. Simply choosing the right terms isn't enough, and it's not the only factor to consider when interpreting a patent claim. The European Patent Office recently issued a ruling on The Boeing Company's invention application for the Aircraft Communication Method, stating that the patent is invalid because one of the features of the

patent was lacking a comma, causing the characteristics to be construed in two ways. The board stated that if the characteristics were intended to be separate, a comma would have been required to make the features independent from each other. As a result, the description cannot contradict the claim language's meaning. This article discusses such concerns as well as all of the flaws, particularly punctuation, that might harm your patent application, as well as how to correct them. These errors can be costly to a business, but they can also be lifesavers in the event of an infringement. It is very easy to make a mistake in a patent application because it requires several documents to be filed, which is already a time-consuming task, but it always kills when you discover that your patent application was rejected due to a punctuation error in the claim construction, which changes the entire meaning of the claim. Before filing a patent application, the patent offices recommend that you check a few things, one of which is punctuation.

WHAT IS A PATENT?

A patent is an exclusive right awarded for an invention, which is a product or a technique that gives a new technological solution to a problem or provides a new way of doing something in general¹. Technical information concerning the innovation must be revealed to the public in a patent application to get a patent. Patents are property rights that are limited to a certain geographical area. In general, exclusive rights are only valid in the nation or territory where a patent has been filed and granted, and only in compliance with that country's or region's laws. The protection is only provided for a limited time, usually 20 years from the application's filing date².

WHAT DOES A PATENT HOLDER BENEFIT FROM?

The patent holder has exclusive rights that prohibit anyone from commercializing the patent holder's innovation until the patent expires, which is 20 years from the date of filing. Because the patent holder has invested a significant amount of money and effort in developing the

¹ 'Frequently Asked Questions: Patents' (WIPO) <https://www.wipo.int/patents/en/faq_patents.html> accessed 10 June 2022

² *Ibid*

cutting-edge product, the chance to implement themselves in the market as an extraordinary product will deliver a larger return on investment. The patent holder can always choose not to utilize the patent themselves and instead sell or license the innovation to another company, generating revenue for the patent holder³. It also aids in cross-licensing agreements, in which two businesses share their patents, allowing both businesses to get rights to utilize the patents and therefore improve their inventions.⁴ A patent is extremely beneficial to a company since it aids in acquiring finance by allowing it to find business partners, hence increasing the firm's worth.

WHY IS A PATENT NECESSARY?

Without a patent, there is a significant danger of losing advantage and supremacy, since rivals may declare control over that innovation⁵. Giants (large corporations) may be able to produce such an innovation without obtaining authorization and manufacture the goods at a low cost, allowing them to compete in the market⁶. As a result, there's a chance that the invention may lose market share. It will benefit tiny rivals since there will be no need to spend on the inventor's research and development costs. As an innovation without patents or intellectual property rights, selling, transferring, or licensing the invention will be difficult, when the value of the invention will be diminished as the invention is exploited by rivals.

STEPS TO OBTAIN A PATENT PROTECTION

The methods for obtaining a patent differ per nation, but the filing process is similar: The patent application is filled out using a specific form provided by the patent office, which may also be obtained online. This is the first step in obtaining a patent. The title of the invention, as well as technical field and framework information, must be included in the patent application. The innovation must be described in clear vocabulary and dialect, with an average grasp of the topic and enough information for a person to understand. Visual representations such as drawings, blueprints, or diagrams are commonly used in patent applications to explain and

³ *Ibid*

⁴ *Ibid*

⁵ *Ibid*

⁶ *Ibid*

define the invention, which includes a brief overview of the invention. In the claims portion of the patent application, the subject matter for which patent protection is sought must be clearly explained⁷. According to applicable patent legislation, numerous types of declarations, supporting papers, and statements may be required to be submitted to the patent office.⁸

WHAT IS PATENT INFORMATION?

Patent information refers to the data entered into patent applications and the data contained in issued patents. The applicant will require information such as vital information about the patent applicant, inventor, or patent holder, a list of claims that illustrate the breadth of patent protection, a description of the invention to be claimed, and relevant features in the field of technology. Such information is required to publicly reveal information about the innovation as well as their exclusive rights to it. The patent applicant's disclosure of the information is crucial to the technology's further progress. Other innovators can use this information to build a foundation on which new technologies might be developed⁹. As a result, it is critical to broadcast the knowledge since, without it, the public would not have simple access to learn about such information, which will impede technological advancement.

WHAT DO WE MEAN BY WRONG PUNCTUATIONS?

Punctuation is more than just a decorative element in a language, as some people assume. It is, in fact, as important to a language as conjunctions, articles, and prepositions, among other things. Punctuation is crucial in ensuring that the language conveys the desired meaning. The use of incorrect punctuation may dramatically alter the meaning of a phrase. The comma, semicolon, and full stop are the most regularly used punctuation marks in English. They all suggest a different level of pause in the phrase¹⁰. Because individuals make the most mistakes with these three punctuation marks, they remain in the spotlight and are discussed. However,

⁷ 'How to File Patents? Understanding the Patent Process in India' (IPTSE) <<https://iptse.com/how-to-file-patents-understanding-the-patent-process-in-india/>> accessed 12 June 2022

⁸ *Ibid*

⁹ Frequently Asked Questions: Patents (n 1)

¹⁰ 'Punctuation is just not only semicolon, comma & full stop' (MBA Rendezvous, 7 January 2019) <<https://www.mbarendezvous.com/grammar/punctuation/#:~:text=Wrong%20punctuation%20can%20change%20the,of%20pause%20in%20the%20sentence>> accessed 13 June 2022

these aren't the only types of punctuation. Other punctuation symbols that have a specific role in a phrase include the colon, hyphen, exclamation mark, and question mark. Other punctuation marks cannot be substituted for the semicolon, comma, or full stop, just as no other punctuation mark may be substituted for the semicolon, comma, or full stop. They serve a separate purpose in the language.

PATENTS WITH WRONG PUNCTUATIONS (NOTEWORTHY CASES)

COMMA WAS FORGOTTEN? NO CONCERNS.

The action in the matter of *BAUSCH HEALTH IRELAND LIMITED v PADAGIS ISRAEL PHARMACEUTICALS LTD.*¹¹ concerned the patents for the medications Duobrii® and Bryhali®. The following were the claim construction similarities where the word from which the controversy arises:

DISPUTED TERM	PLAINTIFF'S CLAIM CONSTRUCTION	DEFENDANT'S CLAIM CONSTRUCTION
Synergistic reduction	a dermatologically acceptable carrier; ... wherein the composition comprising the halobetasol propionate and the tazarotene at said concentrations is capable of providing synergistic efficacy and synergistic reduction of at least an	reduction of at least one adverse event selected from the group <i>consisting of itching, burning, and stinging</i> , wherein the reduction is greater than the corresponding reduction provided by each active ingredient administered individually (i.e., the reduction of the combined product must be greater than

¹¹ *Bausch Health Ireland Limited, et al. v Padagis Israel Pharmaceuticals LTD et al.*, [2021]

	adverse event selected from the group <i>consisting of itching, burning, and stinging</i> , for said treating.	halobetasol propionate and greater than tazarotene).
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The court considered the terminology and ruled whether the contested terms are divided into two categories (*itching, burning, and stinging*) or three (*itching, burning, and stinging*). This problem was simply addressed because the claim's phrasing indicates that there are three categories.¹² The plaintiff advocated ignoring the commas and dividing them into two groups, however after consulting the plaintiff's data table, it was discovered that the data table had included the same phrases (*itching, burning, and stinging*) but had a comma before them, indicating that it was three groups. After examining the three words, the court assigned meaning to all of the commas and suggested that the claim's constructions be rephrased.

THE CASE OF AN ACCIDENTAL SEMICOLON

The controversy emerged in the matter of Pfizer Inc. v Micro Labs USA Inc.¹³ on CLAIM 1, which is as follows: *R5 is a compound containing one to five A, B, C, D, E, F, G; or H.*

Plaintiff claimed that H is part of a list that runs from A to G and includes the R5 compound. They used the example of a compound including A, B, C, D, and H, or a compound containing only H. Defendant argued that R5 can include any five of the letters A to G or only H, but not any four of the letters from A to G plus H. According to the defendant, the formula can only be met by what comes before the semicolon or what comes after the semicolon. The Plaintiffs, according to the Defendants, are incorrectly using the semicolon as a comma.

Plaintiff contended that conjunctions like "and" or "or" are typically used before the last item on a list to signal that all things before the semicolon, as well as the one item after the semicolon, are all part of the same list. The Court agreed with Plaintiff. The court also

¹² *Ibid*

¹³ *Pfizer Inc., et al. v Micro Labs USA Inc. et al.*, [2018]

concluded that a person with ordinary skill in art (POSA) would be aware of it. The semicolon in CLAIM 1 was a mistake, according to the Court, and so does not provide any compelling explanation. Plaintiff's lack of explanation supports their proposed conclusion that the semicolon's purpose is unknown. The court noted that all items before and after the semicolon are part of the same list as a person of ordinary skill in the art (POSA) would interpret the claims as the Plaintiff has asserted, and so the court accepts the Plaintiff's claim construction.

WHAT ARE THE ISSUES FACED DUE TO WRONG PUNCTUATIONS IN A PATENT?

While grammar and punctuation errors are relatively common in the workplace, big screw-ups can cost you and your company money. When it comes to Intellectual Property, they're even more costly. The United States Patent and Trademark Office has reported¹⁴ that a third of errors in patent applications need a correction certificate. Some errors, like incorrect dependencies in claims, can do quite a bit of damage, limiting the scope of the patent or causing it to be revoked. In other cases, an applicant may face extra fees or delays. The last thing an applicant wants is to learn that a patent has been denied or invalidated due to easily correctable errors.

HOW DO COMBAT THESE ISSUES?

The theory of the last antecedent is often applied by the court when there is no goal to the said terms, and the words or phrases just modify the final item. A comma, on the other hand, is intended to divide a group of things, words, or antecedents from an adjective, therefore it applies to all adjectives in the claim construction. It should also be noted that conjunctions such as "and" or "our" are frequently put before the last item because when there are numerous characters stated in a single phrase, each character should be given sufficient prominence by separating them with a comma or conjunctions. In addition, when a claim contains numerous items, each element must be separated by semicolons. Because a patent application typically contains a variety of documents, the possibilities of an error, such as a minor punctuation issue, are relatively significant, potentially leading to an invalid specification because of which

¹⁴ 'When it comes to Patent Application, Proofreading Matters' (*Zachary Hiller*, 13 June 2019)

<<https://zhillerlaw.com/when-it-comes-to-patent-applications-proofreading-matters/>> accessed 14 June 2022

thoroughly proofreading the entire application is a must¹⁵. Except for the reference of digits, the use of parentheses, as well as dashes, should be avoided in claim construction. The patent attorneys employ special punctuation since the claim is a single sentence. The preamble is divided from the transitional phrase by a comma, and the same is separated from the body by a colon in today's way of claim construction¹⁶. As a result, each of the elements in the claim's body should be separated into separate paragraphs, which are then distinguished by a semi-colon into additional paragraphs. It's worth noting that following the transitional period, which precedes the assertion in the preamble, a colon is usually utilized. It is usually acceptable to use a semicolon after each phrase of a claim, and if necessary, the subparagraphs can be separated by a punctuation mark such as a comma.

GRAMMAR OF A CLAIM

When it comes to punctuation in patent claims, several patent offices have certain standards. It's quite simple to deny your patent if the patent drafter is primarily concerned with tailoring the patent claims to the client's business objectives and ignoring minor issues like commas, full stops, and semi-colons. A comma separates their assertions for greater clarity; however, a colon divides the entire claim from itself, resulting in the body of the claim being separated into tiny paragraphs to better describe the claim. As a result, the patent drafter must guarantee that the claim is understood and that it may be construed appropriately. A semi-colon is used to divide the components of a claim, and the second last claim is finished with "; and" before the last element of the claim, which is a full stop.

For Example -

A computer comprising:

- A processor;
- A memory; and

¹⁵ *Ibid*

¹⁶ Format of Claim in Patent Application' (*Patent Drafting Catalyst*, 7 January 2017

<<https://patentdraftingcatalyst.com/format-of-claim-in-patent-application/>> accessed 14 June 2022

- A bus configured to transmit data between the memory and processor

Here, “A computer” is called the Preamble, the word “comprising” is called a transitional phrase, and the claims made under that are called elements of the claim. This is what an effective patent claim looks like. In the United States, it is mandatory to separate each claim by a line indentation, but in some other countries, it is not required.

CONCLUSION

Punctuation is critical in a patent application, and incorrect punctuation may cost a company millions of dollars, if not more. Commas have two purposes: the first is to signal to readers that they should take a breather, and the second is to serve as a grammatical device that can alter the meaning of a phrase. The difficulty lies in the fact that commas have two major functions. The one most writers are familiar with has to do with breathing and rhythm. They use commas to show their readers where to pause and catch their breaths. In several cases, commas also have a grammatical function that can change the meaning of a sentence. Punctuation can be compared to an emergency alarm that is unobtrusive, frivolous, and bothersome, yet can save lives in the event of an accident. The right use of punctuation aids in the comprehension and solidity of claims, allowing the patent to proceed without difficulty. Because the grammatical structure of a claim can be highly crucial for claim formation, it is also critical to make the claim consistent in punctuation and grammatical language to avoid any unintentional interpretation in patent litigations.