

# THE IMPACT OF PATENT CONSTRUCTION:

How to prove infringement and validity in the USA, UK and Germany

21 May 2015, Conf. No H5-3015



5.5 CPD HOURS

# THE IMPACT OF PATENT CONSTRUCTION:

HOW TO PROVE INFRINGEMENT & VALIDITY in the USA, UK and GERMANY

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## Dates

21 May 2015  
Start: 09.30 – Finish: 17.00

## Registration & Coffee

21 May 2015 09.00

## Venue and Accommodation

The Cavendish Hotel, 81 Jermyn Street,  
St James's, London, SW1Y 6JF  
Hotel Tel: +44 (0) 20 7930 2111  
Hotel Fax: +44 (0) 20 7839 2125  
Email: [info@thecavendishlondon.com](mailto:info@thecavendishlondon.com)

Subject to availability, a limited number of bedrooms have been reserved at the hotel at a special rate.

## Directions

For directions to the hotel, please visit the link below:  
<http://www.thecavendish-london.co.uk/hotel-location>

## Fee

**£598 & VAT\* if applicable.** The fee includes course documentation as well as mid-session refreshments and lunch. Invoice and confirmation will be forwarded to you.

**\*Reduced to £498 if you also register for the seminar on Friday 22 May 2015 – How to Avoid Common Pitfalls Ref. H5-3115 [Discount only applicable to the full delegate rate]**

## I would like to attend (please tick)

- Impact of Patent Construction  
Ref : H5-3015 - 21 May 2015
- How to Avoid Common Pitfalls  
Ref : H5-3115 - 22 May 2015

## For Cancellation Policy and T&Cs see website

NB: Cancellations must be received in writing by [registrations@management-forum.co.uk](mailto:registrations@management-forum.co.uk)

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Available on application for personnel from non-profit making organisations and registered charities.  
**Group discount available on request**

Registration Information



## This seminar will:

- Examine the principles of claim construction in the three jurisdictions
- Contrast the doctrines of equivalents and purposive construction
- Analyse validity requirements
- Illustrate the major issues with panel discussion, comparative examples and case studies

## Speakers:

**Ulrich Blumenröder** Grünecker, Kinkeldey, Stockmair & Schwanhäusser, Munich

**William Cook** Marks & Clerk Solicitors, London

**Bradley Hulbert** McDonnell Boehnen Hulbert & Berghoff, Chicago

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The Cavendish Hotel, London



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## THE COURSE PROVIDES:

- A comprehensive overview of the principles of patent claim interpretation in the USA, UK and Germany
- A comparison and explanation of the varying approaches for determining when a patent claim that does not literally describe an accused system is nonetheless infringing
- Exemplary fact scenarios, with comparisons of the USA, UK and German approaches to claim construction and validity determination
- Recommendations for both litigating patents and preparing patent applications
- A unique opportunity to spend a whole day in detailed analysis with recognised experts
- Time for participants to ask questions and discuss individual concerns through the day

## WHO SHOULD ATTEND

- Patent professionals in private practice, including patent attorneys and lawyers
- Heads of IP, Heads of Patents and in-house patent counsel at every level
- Patent engineers and inventors
- All whose responsibilities include the need to understand the scope of patent coverage in USA, UK and Germany

## ATTENDANCE LIMITED – EARLY REGISTRATION RECOMMENDED

This limitation, a unique feature of all **MANAGEMENT FORUM** seminars, will give participants the opportunity for a thorough discussion of the complex issues to be covered by the programme.

## DOCUMENTATION

Participants will receive a course material folder containing comprehensive documentation provided by the speakers, which will be a valuable source of reference for the future.

## SPEAKERS

**Ulrich Blumenröder** is a partner at Grünecker, Kinkeldey, Stockmair & Schwanhäusser, an IP-firm in Munich, which focuses equally on both IP-litigation and IP-prosecution. Mr. Blumenröder is active in all fields of intellectual property but primarily specialises in patent litigation. He has litigated for both plaintiffs and defendants in all prominent German courts in normal as well as preliminary injunction proceedings. Mr. Blumenröder frequently gives lectures on various topics of patent law.

**William Cook** is a partner in Marks & Clerk Solicitors in London. He is involved in all aspects of IP work, specialising in particular in patent litigation. As well as leading infringement and validity litigation in the UK and co-ordinating in the EU, USA and Asia, he works on FRAND licensing, patent essentiality, exhaustion of rights and IP/competition law issues.

**Bradley Hulbert** is a founding partner in McDonnell Boehnen Hulbert & Berghoff, an 80-lawyer patent firm in Chicago. Mr. Hulbert has been lead counsel in a wide range of successful patent lawsuits and is an adjunct professor of law and Director, Academic and Professional Program Development, at the Chicago-Kent Law School.

**This course merits 5.5 hours CPD and may also be relevant training under the IPReg CPD self-accreditation scheme**

**A Certificate of Attendance for Professional Development will be given to each participant who completes the course**

**Reserve your place at the course by registering online now at [www.management-forum.co.uk](http://www.management-forum.co.uk) or by fax +44 (0)1483 730008  
Any questions? e-mail [josephine.leak@management-forum.co.uk](mailto:josephine.leak@management-forum.co.uk)**

# Programme

## I. PATENT CLAIM CONSTRUCTION GENERALLY

### A. In the USA

- Inherent ambiguities of the 'All Elements Rule'
- Use of intrinsic and extrinsic evidence
- Counterintuitive interpretation of 'means for' claims

### B. In the UK

- Interpreting the claim in the context of the specification and the art
- The literal or primary meaning of the claim or integer
- Purposive construction, as defined in *Catnic* and restated by the House of Lords in *Amgen* in 2004
- Any residual relevance of the guidelines in *Improver?*
- Compliance with EPC Article 69 and Protocol

### C. In Germany

- No claim construction below wording
- 'Purposive construction' as part of literal wording
- Meaning of 'Means' in claims
- Relationship between claims and specification

## II. DOCTRINES OF EQUIVALENTS & PURPOSIVE CONSTRUCTION

### A. In the USA

- Sub-tests for determining equivalents
- Counterweights to 'equivalence'
  - Vitiating
  - Prosecution history estoppel and its variants

### B. In the UK

- The effect of *Amgen*: How simple is the approach; are judges given any structured approach at all?

- Continuing significance of 'variants' in slower-moving technologies?
- Material considered by the court
- Expert evidence
- Compliance with EPC Article 69 and Protocol

### C. In Germany

- Expert evidence, admissible evidence
- No prosecution history estoppel
- The 'Formstein' estoppel
- Infringement by patented variant

## III. VALIDITY ANALYSIS

### A. In the USA

- Four-part nonobvious analysis after KSR and the AIA
- Reliance on the specification to construe the claims and avoid the art
- Traps for European specifications filed in the USA

### B. In the UK

- Construction and the four-step 'Pozzoli' test for obviousness
- Relevance of purposive construction to insufficiency analysis

### C. In Germany

- Split infringement / invalidity proceedings
- Requirements for combination of documents

## IV. COMPARATIVE EXAMPLES AND CASE STUDIES

- Presentation and panel discussion on the construction, infringement and validity of granted patents: comparative analysis and case studies