



# THE IMPACT OF PATENT CONSTRUCTION – HOW TO PROVE INFRINGEMENT & VALIDITY In the US, UK and Germany



Application to Register

10 May, 2012  
Conference Ref: H5-3112  
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Registration Information

**Dates**  
10 May 2012 Start 09.30 – Finish 17.00  
10 May 2012 09.00

**Registration & Coffee**  
10 May 2012 09.00

**Venue and Accommodation**  
The Rembrandt Hotel,  
11 Thurloe Place,  
London SW7 2RS  
Hotel Tel: +44(0)20 7589 8100.  
Hotel Fax:+44(0)20 7225 3476.  
Email: reservations\_rembbrandt@sarova.co.uk  
Subject to availability, a limited number of bedrooms have been reserved at the hotel at a special rate. **All bookings should be made directly with the hotel or online at [www.sarova.com/rembrandt](http://www.sarova.com/rembrandt), quoting promo code 'manforum'.**

**Directions**  
Opposite V&A Museum. Nearest Underground station: South Kensington. Map available on Website under Hotels and Venues.

**Fee**  
**£575 + VAT if applicable.**  
**Reduced to £495 if you also register for the course on Friday 11 May – Prosecution of EPO and US Patent Applications Stemming from a Single Specification.** Ref. H5-3212  
**Conference No. H5-3112**

I would like to attend (Please tick)  
 10 May 2012 Conf No H5-3112  
 11 May 2012 Conf No H5-3212

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

**Cancellation Policy:**  
Over 14 days prior to the Seminar: Cancellation fee of £75.  
7/14 days prior to the Seminar: 50% of the fee. Fewer than 7 days or if no notification received: Registrant liable to pay FULL seminar fee. **NB: Cancellations must be received in writing by [registrations@management-forum.co.uk](mailto:registrations@management-forum.co.uk). In the event of circumstances beyond its control, Management Forum reserves the right to alter the programme, the speakers, the date or the venue.**

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To Register

If you have NOT received confirmation seven days after registering, please contact Registration Department.

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Exhibition spaces and promotional opportunities will be available at this meeting.  
For further information please contact Robert Sinclair  
(email: [robert@management-forum.co.uk](mailto:robert@management-forum.co.uk))

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# THE IMPACT OF PATENT CONSTRUCTION – HOW TO PROVE INFRINGEMENT & VALIDITY

In the US, UK and Germany

## Included in this conference:

- Contrasting the Doctrines of Equivalents and Purposive Construction
- Examining the Principles of claim construction and validity determination in the context of the specification and the art
- Preparing for the 'Pincer' argument (or 'Gillette' defence):
  - If the claims are broad: invalid
  - If the claims are narrow: not infringed
- Discussing Approaches for assessing the inventor's intention in the claim language in Europe
- Assessing the Significance of the effect of variants on the way the invention works
- Exploring Best Practice in the Use of Expert Evidence
- Determining of claim scope and validity by a US Examiner, Judge & Jury and the effect of prosecution history estoppel
- Ensuring or Challenging Compliance with EPC Article 69 and Related Protocol

**Bradley Hulbert** McDonnell Boehnen Hulbert & Berghoff, Chicago  
**Ulrich Blumenröder** Grünecker, Kinkeldey, Stockmair & Schwanhäusser, Munich  
**William Cook** Marks & Clerk Solicitors, London

You can register online at  
[www.management-forum.co.uk](http://www.management-forum.co.uk)  
or by phone on +44 (0)1483 730071, fax 730008

10 May 2012  
The Rembrandt Hotel, London



## THE COURSE WILL PROVIDE:

- A unique opportunity to spend a whole day in detailed analysis with recognised experts
- A comprehensive overview of the principles of patent claim interpretation and validity determination in the US, 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 infringed
- An analysis of the conclusions reached in the US, UK and Germany regarding the claim validity
- Recommendations for the preparation and prosecution of patent applications, as well as the litigation of issued patents
- Ongoing opportunities for participants to ask questions and discuss individual concerns

## 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, inventors and everyone else whose responsibilities include the need to understand the scope of patent coverage

## ATTENDANCE IS LIMITED; EARLY REGISTRATION IS 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.

## FORTHCOMING EVENTS

For a full list of forthcoming conferences and seminars please visit our website at: [www.management-forum.co.uk](http://www.management-forum.co.uk). You may make a registration and request a brochure on-line.

## SPEAKERS:

**Bradley Hulbert** is a founding partner in McDonnell Boehnen Hulbert & Berghoff, a 75-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.

**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.

This course merits 5.5 hours under the UK Solicitors Regulation Authority self-accreditation scheme

Ref: CJA/MAFO

It is also potentially relevant CPD for Fellows of CIPA

## DOCUMENTATION

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

## IN-HOUSE TRAINING

If you would like to discuss running this or any other course on an in-house basis, please contact Josephine Leak at: [josephine.leak@management-forum.co.uk](mailto:josephine.leak@management-forum.co.uk)

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 US

- 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.
- Continuing 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 US

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

### 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?
  - Identification of the variant

- Effect of the variant on the way the invention works
- Obviousness of the variant
- Exclusion of variants from scope of claim
- 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 US

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

### B. In the UK

- Four-step 'Pozzoli' test for obviousness (Windsurfing)
- Application in latest case law
- Fundamental shift in the approach of the Court over the last few years

### 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.