

Infringement Search Checklist

If you are a Patent counsel, or in any way responsible for the IP acquisitions of your company, you might receive multiple requests to find out if a certain product or process is infringing upon the existing patent claim. Infringement searches, resultantly, become a core part of your job.

With that being said, you'd agree that analyzing each and every product portfolio can be a long and tedious task, especially when it obligates attention to detail, rightly so because you don't want to miss out on a gem in the ocean.

To make your search efficient, we have created an infringement search checklist that can help you in scenarios where:

1. You are struggling to find a product that has high/relatively good market share.
2. Information provided is either written using ONLY a single sentence, or maybe a Chinese patent (or any foreign patent) with some dull interpretations which make it incomprehensible and the product cannot be tested.
3. There's contributory infringement.
4. You have to search in a particular jurisdiction.
5. It's difficult to find the exact launch date of the product.

This is a non-exhaustive six step checklist that can help you throughout your infringement search-

- Finding the most limiting claim element and searching that on priority.
 - break the claims into clauses and further, subdivide clauses into claim elements
 - Consider all the possibilities of implementing the patent into real-world.
 - Find out the enablement of the claimed elements. (You can either find the enablement from the dependent claims or from the description)
 - Pick up the most limiting claim element and search that element on priority.
 - In case you don't find the most limiting claim element then pickup the novel element. This saves time spent on the obvious elements which can be certainly found in the product.
 - In case you find neither the limiting element nor the novel element you can skip the product and move on to the next one.
- Define the scope of Claim Elements.
 - Find definitions of the ambiguous terms of the patent in the detailed description and file wrapper of the patent to define the scope of such claim elements. It is necessary to go through the file wrapper because there can be restrictions on certain interpretations of the claim elements.
- List down the application areas and pick the product with maximum market share.
 - Before starting the search brainstorm on the possible applications of the invention to make the most of the patent.

Identify the most relevant literature.

- Instead of directly searching the key words list down the areas where you can find the information.
- Ask yourself -
 - Would it be easier if I test the product?
 - Can I find the required information on tech reviews/YouTube?

Using proximity operators and other search tools

- Instead of relying on Google/Ctrl+F, find the keyword present in the required context. Specialized tools like DocFetcher help in this. DocFetcher, in particular, allows searching in specific documents and the use of proximity operators.
- There are a total of 42 such operators (Refer here <https://ahrefs.com/blog/google-advanced-search-operators/>) that can be of great help while searching on Google.

Prepare a tentative mapping

- Identify all the claim elements present in the product
- Prepare a tentative mapping to confirm the overlap. This eliminates the chance of missing a claim element or a sequence of steps followed by the claim and helps prepare a better Evidence of Use (EOU) when required.

Here's a template for tentative mapping-

Claim	Product literature	Comments
a storage system for storing information accessible by the blade server system via the middle plane;	The ***** Storage Blade delivers direct attached storage for c-Class servers, with support for up to twelve hot plug small form factor (SFF) SAS hard disk drives or SAS/SATA SSDs or SATA Midline hard disk drives . The enclosure backplane provides a PCI Express connection to the adjacent c-Class server blade and enables high performance storage access without any additional cables. The ***** Storage Blade features an onboard Smart Array ***** controller with 1 GB flash-backed write cache, for increased performance and data protection. Source: nameoftheinfringer.com	***** - Name of actual product hidden to not reveal confidential information.

Apart from differentiating the specific overlap with assigning colors to the text we can further add comments to make it easier for the reader to understand the mapping.