

The Meaning of Patent Quality

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So what does Patent Quality actually mean anyway? There are many possible answers to this question. Patent Quality can mean different things to different people and has been and continues to be the subject of many discussions.

Maybe it is easier to start with what Patent Quality does not mean. “Patent Quality is not invention quality and it is not patent value. Invention quality, patent quality and patent value are all different. They relate to each other. They may impact each other. But patent quality is its own unique thing.”¹

The quality of the invention has to do with the technology itself and does not relate to the patent. A novel, inventive and useful invention is required for patentability, so a high quality invention would make having a quality patent easier and more likely.

As well, patent value and patent quality are related. For an invention to be patentable, the invention must be useful. For a patent to have value, it must also be useful. But a breakthrough invention or one that would result in commercial success or one with broad claims is not the definition of patent quality. Yes the invention must be useful to be patentable, but we have to look at the requirements of the patent itself. A high quality patent may be more valuable than a lesser quality patent in that a high quality patent would be less likely to be found invalid. On the other hand, a high quality patent may have little value if the invention itself has little commercial value.

So what is patent quality then? What patent quality means depends on perspective; it might mean something different to the applicant, the agent, the inventor, the public and the Patent Office. Many might say that it means validity and whether or not the patent is enforceable. How sure are we that the invention is novel and inventive? Examiners are not given unlimited time to do their search. How much time spent searching is enough? Have the claims been constructed correctly in terms of clarity and other legal requirements? Should the patent have been granted in this form or at all? Is the subject matter statutory and hence patentable?

Others may say patent quality means that all the necessary processes and procedures have been followed and all statutory requirements have been met. Was the application well-prosecuted and examined? What about the search and prior art of record? Has all the relevant art been found?

Perhaps patent quality means that the invention is clearly disclosed so that one could make the invention and that the claims clearly outline the boundaries around which others may be free to work. Here we would look at the scope of the claims. Are the claims too broad, too narrow, or just right in that they reflect what was actually invented? Clarity is also important here. Are the claims clear enough so that what is protected is well understood?

Timeliness and efficiency are also considerations. There is a balance between quality, timeliness and cost. How do we best balance these factors?

An additional question is how do we measure patent quality? One cannot simply look at a patent and determine whether or not it valid or enforceable, or whether the claims are of the correct scope. “While some property attributes like weight [or number of claims] and color [or number of pages] are directly measurable, quality is not. That is because quality is not a physical feature of a thing. Rather, it is an abstract feature. Assessing the quality of some thing may involve measuring its attributes – or “dimensions” – but those measurements serve only as a proxy for the thing’s quality.”²

Patent Offices around the world are putting quality management principles, in the form of Quality Management Systems, to use in order to ensure quality. ISO Standards are often being used to form these Quality Management Systems (QMS). As part of this QMS, we have to determine the measurable attributes or dimensions that can be monitored and assessed and which will provide us with the best basis for determining the quality of our products, processes and services.

Determining what Patent Quality means is a first step. Determining what and how to measure in order to maintain and improve Patent Quality is another. We must determine measurable attributes in consideration of the requirements under the *Patent Act and Rules* and the Patent Cooperation Treaty as well as in consideration what our clients feel is important to them.

To help us understand the different perspectives on this subject, we would like your take on Patent Quality. What does it mean to you? What elements of Patent Quality or of our Quality Management System are important to you? We will discuss this and more at our upcoming CIPO Patent Quality Summit on February 26, 2019. See you there!

References

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