

Federal Trade Commission

Competition and Intellectual
Property Law and Policy in the
Knowledge-Based Economy

Scope and Enforcement of Patent Rights

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- Infringement
 - Infringement Defenses
 - Remedies

Exclusive Federal Jurisdiction

□ Trial level

- District courts
- Court of Federal Claims
- International Trade Commission

□ Appellate level

- Court of Appeals for the Federal Circuit
- Supreme Court

Infringement

- Infringing conduct
- Infringement standards

Infringing Conduct

- Direct infringement
- Vicarious infringement
- Other infringement

Direct Infringement

- Manufacture
- Use
- Sale / Offer to Sell
- Importation

Vicarious Infringement

- Inducing infringement
- Contributory infringement

Other Infringement

- ANDA filing
- Export of unassembled components
- Offshore infringement
- Pre-grant infringement

Infringement standards

- Preponderance of the evidence standard
- Literal infringement
- Infringement under the doctrine of equivalents

Infringement Standards

- Methodology
 - Claim interpretation
 - Comparison of accused product or process to properly construed claim
- Literal infringement
 - Test – Each and every limitation

Infringement Standards

- Infringement under the doctrine of equivalents
 - Test – (In)Substantiality of Difference
 - Application limits
 - Prior art
 - Prosecution history estoppel

Noninfringement

- Implied license
- First sale (repair / reconstruction)
- Experimental use
- First inventor
- Governmental immunity
- Reverse doctrine of equivalents

Invalidity

- Clear and convincing evidence standard
- Conditions for patentability
- Disclosure requirements
- Inventorship

Unenforceability

- Inequitable conduct
- Laches and estoppel
- Patent misuse
- Antitrust
- Overreaching

Remedies

- Injunctive relief
- Damages
 - Lost profits
 - Reasonable royalty
- Enhancement
 - Treble damages
 - Costs and attorney fees