

What is Protected in a Patent?

Usually, people talk about positive rights: the right to take action. Two examples of this right are the freedom to speak and to practice any religion. Patents are different: they are negative rights, which is the right to inaction or to compel others to take no action. A patent allows you to prevent others from taking action.

Negative rights have to be specific. The right holder has to be able to say: "don't do X." In patents, these statements are made through claims. While a patent can have several claims, each claim is evaluated separately. A patent is infringed if any one claim is infringed.

As an example, I will refer to the first claim in Patent 8528120, Flame Resistant Fabric Made from a Fiber Blend. In this patent, the first claim states:

A garment with flame resistant properties comprising:

a fabric shaped to cover at least a portion of a wearer's body, the fabric comprising a woven fabric made from a plurality of yarns, the yarns being made from a plurality of fibers, the plurality of fibers including inherently flame resistant fibers and cellulose fibers that have been treated with a flame resistant composition, the woven fabric having a herringbone weave.

This patent is infringed if somebody makes, sells, or uses:

a garment; that,

is made from fabric woven in a herringbone pattern;

has flame resistant properties;

is made from multiple yarns; where,

each yarn is made from any combination of flame resistant fibers and cellulose fibers treated for flame resistance; and,

is shaped to cover a portion of a body.

Claims are specific statements. All of these conditions must be true before this claim is infringed. A competing company could make this garment from knitted fabric without infringing on this claim. A competing company also could make a fire blanket from the described woven fabric without infringing on this claim.

Also notice that claims don't describe inventions. That is done elsewhere in a patent. Claims describe the boundary of an invention. If you read the patent, you will find that it describes in great detail the fire resistant and cellulose fibers that should be used, the relative weight of the fibers, how to dye and print the fabric, various weave patterns, and how to improve abrasion resistance and comfort. But these are only the details.

The actual invention is a fire resistant garment. That is what was protected.

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