

## Article: The Poetry of Patent Claims

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Patent claim drafters are the poet laureates of intellectual property. Although claim drafters do not employ clever figures of speech or deftly rhyme phrases, their poetic art is the ability to describe highly technical corporeal objects using nothing more than cogent stanzas of language.

A master poet like Robert Frost is able to identify an unspoken emotion common to all human experience and bring readers to an instant realization of its ubiquity and interconnecting power. Similarly, a patent claim drafter must capture the salient features of a tangible, complex device using nothing more than combinations of words to describe and define the invention, and thereby bring readers to a unity of understanding as to its scope. This ability to describe material objects on behalf of inventors is a poetic art form all its own. And patent claims are themselves a form of poetry. They must for the sake of clarity adhere to certain “literary” forms of structure, syntax, rhythm, tone, and terminology. An excellent patent claim drafter is thus a veritable patent poet.

It is the patent claims themselves that define the scope of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). The claim language is thus of paramount importance to the parameters of what is recognized as invented and the patent rights granted. In fact, to obtain a patent, one does not even need to physically build the invention. If you can think it (*i.e.*, conception), and describe it in a patent application (*i.e.*, constructive reduction to practice), you can patent it. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1376 (Fed. Cir. 1986).

It is therefore ironic that inventors are often thought of as garage-tinkering, hands-on practitioners of the mechanical arts, while poets are often classified as theoretical philosophers of emotional virtue and vice, confined to the realm of literary creation. Is not the insightful wordsmith who drafts the patent claims actually the king of inventors? Is not the cleverly articulate patent claim drafter the maestro of capturing the fullest extent of the technology claimed?

Of course, poets and inventors use vernacular in the service of different (but related) ends. A poet marshals verbiage to find a new way to describe the sensation of falling in love, while an inventor channels words to describe a new way of constructing a microscope. But the importance of language and vocabulary remains constant.

The consequences of a patent claim drafter’s language choices are indeed significant. Companies spend hundreds of thousands of dollars in litigation fighting over whether single words and phrases of claim limitations are properly construed to encompass allegedly infringing products. And without the appropriate verbiage to explain and define even the most tangible mechanical invention, no patent will issue. In this way, the words of the claims govern whether a patent is even properly granted in the first place, or is later invalidated. Once again, words rule.

Arguably, poets would better serve society and the progress of the useful arts if they collectively turned their attention to drafting patent claims for inventors. The sensation of love would continue to exist and flourish absent any odes to its force. But that new golf club patent could never be filed for or obtained without someone first birthing it with didactic language, thereby enriching society (and duffers everywhere) with the expansion of useful knowledge.

So will English literature professors one day be deconstructing the stirring lines of computer-related patents in place of the romantic passages of Browning? The art of poetry itself is likely safe. Consider the passage, “How do I patent thee? Let me count the ways.” Somehow it doesn’t have quite the same pathos.

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