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Patentese: A Dialect of English?

Patent attorneys write applications in a language all their own. Their main objective is to cover the client's invention with the widest possible umbrella of protection. One tactic in their strategy is to use vague, general terms and avoid being too specific. If the patent comes to litigation, this increases the number and accessibility of escape hatches. Probably another objective is elegance of expression; but many readers feel that patentese has moved away from, rather than toward, linguistic polish. As an English term, "patentese" itself is more expressive than elegant. An early user of the word, probably the first, was the late Dr. Austin M. Patterson, leading expert in chemical nomenclature.

An example of intentional vagueness in patent terminology is liberal use of the word "substantial(ly)," meaning any large proportion up to totality. Thus, the term "substantially moistureproof" means nearly or quite impermeable to water vapor. Technically it makes no sense; proofness either is or is not and has no degrees. But patent examiners, and probably courts, would accept the term as meaning highly resistant to moisture (water vapor).

Another tactic in the same strategy is to use broadly general circumlocutions to define a specific object. A classic example is "a substantially evacuated rigid transparent envelope containing an energy-translating device," meaning an electric lamp or a vacuum tube. Another is "a mechanically operated device for elevating weighed quantities of raw materials to the charging orifice of a thermal processing unit," meaning a blast furnace skip.

Some minor practices which dodge excessive specificity are:

In patentese, nothing ever hangs: it is suspended or it depends from something. For example, a lamp hung from a wall by a novel hook might be "an illuminating device depending from a curved member attached in the specified manner from a vertical or inclined support."

Vague as they are, terms like "some," "several," "a few" are generally avoided in favor of "a plurality," meaning any number from two on up.

There are no technical experts in patentese; "one skilled in the art" may be any person from an uneducated mechanic, well drilled in some narrow task, up to the most eminent of scientists or engineers. The "art" in which he is skilled may be a narrowly specific fragment of mechanics, electronics, electricity, or the like, or it may be any one of these, or some otoad erbrh art, *in toto*.

A patent is never *about* something; it *pertains to* or *relates to* something.

Composition of matter, a favorite title for chemical patents, is a catchall expression for such terms as "compound," "mixture," "blend," "solution," "dispersion," etc. It reveals nothing but cannot be attacked as being untrue.

Elevated temperature, like "a plurality," covers a whole range from just above room temperature, and has no specified ceiling.

Numerous good English terms have special meanings, dear to practitioners of patentese. A fragmentary glossary will serve to illustrate this situation, a sort of literary protective coloring:

An *art* is a broad or narrow segment of industry or technology in which improvements may be patentable. *Prior art* is the entire accumulation of knowledge and skill in an art prior to the improvement claimed as an invention. *State of the art* is the full extent of the art at a given time. *One skilled in the art* is any person trained or experienced in the practice (not necessarily in the theory) of the art. *Known in the art* refers to any segment of the art which was known before and which the applicant may not claim to be novel. *Advance in the art* refers to an improvement claimed by the applicant to be novel.

Recital is the applicant's description, first of the prior art, after which he recites his contribution to the art, for which he seeks patent protection.

Anticipation, cause for rejecting an application or claim because it was "anticipated" by an earlier publication or by evidence of prior use.

Priority is the time or date from which the invention can claim protection, defined by national patent laws. Less definitely, it means the simple fact of being ahead of any rival or competing application for protection.

Disclosure means a statement or description (published or not, new or old) of subject matter which was novel at the time of disclosure.

Specification is the description of the invention, between the heading and the claims in the granted patent.

A claim is a paragraph (by custom, not by law, all in one sentence) setting forth the subject matter which is claimed to be novel and defining the protection allowed by the patent.

Novel means lacking anticipation in any prior publication or disclosure before the stated time (in many countries, one year before the date of filing the application). The noun is *novelty*.

Embodiment is a particular form of the machine, material, or process constituting the invention.

Citation is a reference, usually by the patent examiner, to a prior publication or disclosure. The applicant may, and often does, introduce his own citations in outlining the prior art. A practice introduced by the U.S. Patent Office, and now followed by many nations, is to print the examiner's citations at the end of the printed patent.

Member is a catchall term to designate, without defining, a part of a device, machine, or system.

Device means any mechanism or arrangement for performing a specified function.

Body is inelegant English (apparently acquired by awkward translation of German *Körper*) for "substance," whether a single compound or a mixture. The word also appears in

[1] Deceased.

patents with meanings closer to the fundamental meaning in literary English.

Drawback, meaning disadvantage, has a flavor which is much relished in patentese.

Now it has been found is a phrase much used, after outlining the prior art, to introduce the novel features of the invention.

Delimiting is that undesirable effect on patent protection which the examples do *not* cause, as is commonly declared at or near the close of the specification.

British and American patentese differ only about as much as do British and American usage in writing and speaking. Differences in patent laws, court procedures, daily speech, and other factors have led to differences in favored terms.

English is not alone in having a patentese dialect. German, French, and other foreign language patents have their pet expressions too. In every language, any art which a patent attorney must discuss with clients has its own jargon; why should not the attorneys have theirs? Lacking an answer, no criticism of patentese is intended or implied in this discussion.