

# Invention-Aimed Patent Drawings for More Lucid Comprehension

BY GREGORY T. KAVOUNAS<sup>1</sup> OF IMPINJ, INC. AND  
CARL K. TURK OF MERCHANT & GOULD, PC

## INTRODUCTION

In building a patent portfolio, one can discern that not all inventions are created equal. Some are plain more important to a business plan, or more fundamental to a project, and thus more likely to be eventually considered individually by the competition, and possibly disputed. These ought to give pause to an in-house counsel, or to an outside counsel in whom the investment has been made to teach the broader business plan or project. More effort can be justified in patenting these inventions than others.

So, in drafting patent applications for them, additional care, effort, and thus also money, can be expended, so as to result in patents with fewer problems. To begin with, and as has been written extensively before, this includes drafting at least some broad claims.<sup>2</sup> Then, simply reading out these broader claims will sometimes permit the drafter to visualize the invention as a concept, not only as physical embodiments. This thinking will in turn enable drafting so as to preclude more of the possible design-arounds.<sup>3</sup> Also drafting a specification that supports these claims, defines terms where desired, and so on.

This article is about patenting in such instances also with drawings that are attended to above and beyond what seems usual for today. We call such drawings “invention-aimed”, in that they aim to elucidate the invention – make it understood faster, easier, and better by a future reader. This article analyzes the impact of invention-aimed drawings on the patent, and gives some guidelines for generating them as part of drafting a patent application for the client.

## IMPACT OF INVENTION-AIMED DRAWINGS ON A PATENT

There is ample evidence that drawings play a role in how fast, easily, and well a

presentation or document is understood. Comprehension has to do with how the human mind thinks. A quote attributed to Immanuel Kant states: “Thinking in pictures precedes thinking in words.”<sup>4</sup> We submit that a reader’s mind can reach a picture better by also looking at well chosen pictures, instead of only reading word combinations and conjuring their meaning.

Drawings, then, can be made to help also patents be understood fast, easily and well. For drafting patent applications, a relevant book quotes: “A picture is worth 1000 words.”<sup>5</sup> When in litigation, it is no accident that many of the patentee’s demonstrative exhibits are themselves visual, not long flows of text.

Faster, easier, and better comprehension of a patent results in benefits that many a patent owner (client) would appreciate, in various stages where the patent is considered. In all of them, the patent itself has to do some of the explaining. Invention-aimed drawings will shorten this explaining, advantaging the client in each. Some of these stages are now described in more detail.

At a litigation stage, the client will use the patent to educate a litigator as to the invention. When the patent is also very clear due to its drawings, this education will be faster, saving time. And the litigator will need to generate fewer demonstrative exhibits, saving some initial litigation costs. These savings alone would more than justify the added expense of procuring a patent with invention-aimed drawings.

Later in the litigation stage, the patent and the demonstrative exhibits will be used to educate a judge, and then a jury. In these stages the patent will be the client’s Exhibit A, and will be on a different footing than the demonstrative exhibits. When the jury goes to the jury room, where no attorney or judge will be speaking to them, they will take with them the patent but not the demonstratives. If the patent has invention-aimed drawings, it will remind them more of what the client’s attorney said. This in turn reduces the uncertainty about the outcome.

Before litigation, licensing negotiations may take place at two different stages. Let’s call them “hard licensing” and “soft licensing”. Hard licensing would be the later stage, where litigation has started and litigators have been engaged. Soft licensing takes place earlier, among licensing attorneys or professionals of the client and its rival. Soft licensing is far more frequent, and the client invests a lot less in it. For example, demonstrative exhibits have not been prepared. Litigation has not started, but is only a threat if the outcome is not satisfactory.

Both types of licensing negotiations are typically confidential. In both, the merits of litigation are hinted at, or even discussed openly. Among other arguments, an accused infringer will consider and even suggest problems with enforcing the patent.

Where the client’s patent is also very clear due to its drawings, the accused infringer will understand it faster, which will give them pause. They will determine that some of the problems in the patent will be easier to overcome due to the clarity. Moreover, if the lawsuit does proceed, and the judge and the jury are told about the invention, they will reach a mental picture more quickly, and with higher confidence that all the others reached the same picture. This in turn will reduce the uncertainty about the outcome, which can be factored into the calculations of whether one should settle or not.

Before the licensing negotiations, a rival may read the client’s patent and analyze it at some stage. In some of these instances the patent owner will not even know this is happening, so they will not be available to supply additional demonstrative exhibits. But if the patent has invention-aimed drawings, the rival may be deterred more readily, especially if they consider their diminished prospects in licensing and litigation as per the above. The earlier the rival is deterred, the better for the patent owner. As such, deterrence is the patent’s highest and best use for the owner. Paradoxically, this use of the patent is also the one that its owner might never learn is taking place! So, they might not make the connection that more investment up front in drafting resulted in avoiding competition.

In parallel stages, the patent might be translated in a foreign language. In such translations, the words are sometimes translated automatically, by software, while the drawings are merely copied. If these

drawings are invention-aimed, the whole patent will be understood faster and better.

In the above stages, the client has incremental benefits from such patents. Over all these stages, the cumulated benefits can become super-additive, for example resulting in the dispute ending earlier than it otherwise would. This will reduce the enforcement cost to the client. The price to the client for this benefit is that, while drafting, more of the explaining work will have been done up front, and imparted in the patent.

These benefits accrue where the invention is important, and thus likely to be disputed individually. Where, however, the invention is a small incremental improvement, or business-wise not of interest to a rival, then clarity will not benefit the client. Instead, the rival will determine – more quickly! – that they do not need the invention. This invokes the topic of how to select what to patent, which is beyond the scope of this article.

Whether the invention is important or not, there are additional residual benefits to the client, having to do with the mere act of patenting this way. Even regularly issued patents and published patent applications will work for the client automatically and indefinitely. First, they will become prior art, precluding later filing rivals from patenting the same feature, or one obvious in view of it. This can take place without the client's further action, or even knowledge of it. As such, later filing rivals will receive either no patent protection, or less by narrowing their claims. Second, even if the narrowed rival patent does issue, it will still cite the client's patent. These forward citations are themselves a self-renewing source for identifying potential infringement candidates, in addition to what can be gleaned from the market.

These residual benefits to the client can become amplified disproportionately, when their patent includes invention-aimed drawings. First, such drawings will offer the Examiner more opportunity to reject the rival's later filed applications. This is a desirable outcome for the client, since they also compete against the rival in the marketplace. Second, even if the narrowed rival patents do issue, disproportionately more of them will cite the client's patent, thus increasing the pool of potential infringement candidates.

## **OLD PARADIGM: CRAFTING PATENT DRAWINGS SEEMS STUDIED LESS.**

Since drawings can have such a positive impact on the patent, why don't we study them more? Why don't they make headlines? Deservedly, a lot is being written about claims. Also a lot is being properly written and discussed about the remainder of the patent text, e.g. the Summary, words to include or avoid, and why. All that is fair and good. But the drawings are also part of the patent, yet they do not seem to be studied systematically. We suggest some explanations as to why:

First, words are the most important. Infringement is determined from the claims. As such, the primary reason for investing in a patent is the ability to get allowed claims. And claims are written in words, not drawings.

Second, words are easy to identify. Some repeat across patents. If their meaning is litigated, they can be searched electronically via databases. But drawings almost never repeat, so they are harder to generalize for discussion.

Third, in a climate where a large majority of patents are written with tight budgets, crafting drawings is easy to ignore routinely. A client will not miss in a draft patent application a drawing that they have not shown in the Invention Disclosure Form (IDF). So, it is easier to just repeat the drawings the inventor gave in the IDF, and generate words to describe them. The result is an acceptable patent where the future reader can follow what the drafter did. It is not required that a patent be understood fast or easily by a future reader.

Fourth, what patent attorneys perform as a routine service keeps the issue from being raised. Litigation attorneys will routinely generate demonstrative exhibits to supplement the drawings of the patent they are given. The inadequacy of patent drawings for full litigation is presumed, and so one does not think to improve the patent drawings while drafting.

Fifth, where drafters learn from also does not raise the issue of improving drawings while drafting. Primarily, drafters first learn from other drafters, and from other patents that are put in front of them. Beyond that, drafters typically continue to learn from on-going litigation. Litigation makes headlines; the results are recorded as case law, and then analyzed, taught, etc. There, everyone is looking at what decided the case. The *ease* or not of the patent's

explanation by its drawings alone is seemingly never the case. That is because these patent drawings were presented at trial in combination with the demonstrative exhibits. Only the jury, while in the jury room, saw the patent drawings without the demonstratives, but their individual impressions on this topic are not reflected in the reported court opinions.

Drafters seem to learn less from soft licensing negotiations. The latter are typically confidential, and do not make headlines or case law. Even when outcomes are actually learned, that is often only partially. One does not learn why that was the outcome, or can analyze the what-ifs. We postulate that invention-aimed drawings probably help the owner in soft licensing of important individual patents, but that is not something drafters learn this way.

The above contribute to prejudices that one should be cognizant of, while considering alternate ways of drafting.

## **NEW PARADIGM: IMPROVING CLIENT SERVICE WITH BETTER DRAWINGS**

For improving service, one can ask: where can the client use additional help? An answer of this article is in all stages where the rivals are reviewing patents, before litigators are hired. These stages are far more frequent than hard licensing or litigation, whether the subject patents are treated individually or in bulk. That is because the client can pursue soft licensing far more economically, and with less risk than litigation.

So, the new paradigm includes switching from being drafter centric, to being sensitized to what the future reader will need. While drafting, additional effort should be expended up front for presenting the invention, so the future reader's effort to understand will become less. Ideally, the future reader will be able to understand the patent faster, easier, and better.

The additional effort in drafting does not go to simply writing more text, because that will take proportionately longer for the future reader to read. The additional effort should go largely to generating the right set of drawings, so as to result in lucid comprehension of the invention.

Generating new drawings is not easy or automatic, but involves creativity. It involves engaging also the right hemisphere of the brain, as opposed to only the left (which is used for analysis-type tasks).

For coming up with such drawings while drafting, a mantra can be: “what is really happening in this invention? what is the mental picture I want the reader to reach? can I draw it? or one that will help them get there?”

The answer is not to be found in final schematics. Those only speak to a person skilled in the art, as minimally required. But an invention is a concept, not merely its embodiments. If possible, a conceptual drawing could serve well, because the intent is to drive comprehension. By the way, conceptual drawings are permitted in patents, because no Patent Rule forbids them – indeed no Patent Rule *requires* that the patent drawings be only complete, dry, final schematics. These final schematics do have a place, usually near the end, to provide enablement, best mode, and so on.

## **PATENTING WITH INVENTION-AIMED DRAWINGS**

Before deciding on this kind of patenting, one should first ask what the patent will be used for, and by whom. If it is going to be treated in bulk, with a group of many other patents, then its individual speed of comprehension may not matter much. If, however, a patent is going to be negotiated individually, its individual speed of comprehension will make a difference, as discussed above.

One should also ask whether the type of subject matter of the invention is amenable to patenting with invention-aimed drawings. Some subject matters are simply not amenable to much.

Once a decision is reached to go ahead, an understanding should be reached among the stakeholders that this is not a routine patent. Or a routine budget, for that matter. Drafting like this is more work, maybe 75% more than with routine patents, when everyone’s effort is accounted for. The decision should also involve the inventor. They can do their part to ensure that the generated patent is for their whole invention, not simply for the exact embodiment they did. Additionally, success or failure should not be left to chance; drafting should be by either in-house drafters, or trusted contractors; reviews should happen from a number of stakeholders.

Particular suggestions are now given for drafting such patent applications. First generating the drawings is described, which is to take place in conjunction with deriving

the claims. When those are finalized, the specification can be written.

The following are suggestions for a list of drawings to consider including. The list can probably be expanded. But even if it is possible to include all drawings in the list, not all will be needed every time. Fast and easy comprehension can be accomplished with a judicious selection from the list.

### ***A Starting Sequence for the Drawings***

It is suggested to start by generating a Starting Sequence of drawings. In particular, individual drawings can be created that correspond to the individual claims. That should not be a surprise. Our laws exploit the fact that the most succinct way to describe the whole invention (above and beyond mere embodiments) is with claims. A sequence or set of claims goes from the general to the specific, also modularly, which streamlines resolving questions of patentability and infringement. Using the same highly efficient scheme, the invention can be advantageously presented initially by the drawings of the Starting Sequence. As such, these drawings will also go from the general to the specific, also modularly.

A challenge is that claims are somewhat abstract; not all recite complete, working, fully enabled embodiments down to every detail. That is exactly the difference between an invention and its embodiments. It is always safe to patent embodiments, but patenting at the whole invention level is not prohibited. No Patent Rule requires that every drawing show a complete, working, fully enabled embodiment down to every detail. The same level of abstraction of claims can be replicated in those drawings that belong in the Starting Sequence.

### **CONTEXT DRAWING**

Context drawing is a drawing that shows the invention in its context. The invention is shown only as a block diagram.

### **HIGH-LEVEL BLOCK-TYPE DIAGRAMS REPRESENTING THE INDEPENDENT CLAIMS**

Such diagrams can be generated to develop the invention of the context diagram. The labeled boxes are merely the elements of the independent claims. This is equally true for noun-denominated claims (block diagrams for devices and systems), as for verb-denominated claims (flowcharts for methods).

These initial high-level block diagrams can be labeled with at least the dominant

term (noun or verb) of their corresponding claimed element. But not all the other words need to appear. In fact, the relationship of the elements ought to arise instead from the relationship of the labeled boxes in the drawing. Words that appear only in dependent claims can be avoided. If not, they can be shown in boxes with dashed lines as optional features.

There is also an advantage from these high-level diagrams. These days, PTO Examiners seem to try for restriction requirements based on drawings, instead of claims (the propriety or not of this practice is beyond the scope of this article). But one high-level drawing for each independent claim will be considered “generic”, just as the corresponding claim will be. This way, at least species-based restriction requirements will be fewer.

### **DIAGRAMS REPLICATING SOME OF THE DEPENDENT CLAIMS INDIVIDUALLY**

Furthermore, claims operate modularly. After an independent claim, a dependent claim either adds (“further comprising”), or further defines (“in which”), a noun- or verb- denominated limitation.

Additional drawings for the Starting Sequence can be generated just as modularly. In fact, they can even track, parallel the language of the dependent claims. Where a claim adds a limitation, the main drawing can be repeated with an additional box. Where a claim further defines a limitation, a standalone, more refined drawing can be provided for it, which is either itself a block diagram, or a schematic. This drawing, taken together with the other drawings, can designate that it can be optionally, modularly plugged into one of the blocks of the earlier high-level drawing.

### **USING THE STARTING SEQUENCE WHILE DRAFTING**

This kind of Starting Sequence provides an outline for organizing all the drawings of the set, including the drawings of the IDF. These, and the other IDF materials, will be better understood for what they provide, and what they do not provide. The relationships between similar, alternate, and optional embodiments will be understood better.

### **SPECIAL VALUE OF THE STARTING SEQUENCE**

The result will be a patent where the drawings visually parallel the claims. This

will be helpful for the rest of the life of the patent. When building the case for infringement, the client's future litigator can choose those combinations of claims that provide a word-based description of the accused product. IF the patent also includes such drawings, the litigator can also use those *drawings* paralleling the chosen claims, to further construct a composite *diagram* of features of the accused product.

### Aspects To Depict In Further Drawings

Above and beyond the Starting Sequence, the drafter can think of additional drawings, for depicting further aspects. It should be considered what would facilitate presenting the eventual infringement case. As examples, four sample drawings are included in this article. These have been modified from actual cases, and relabeled for purposes of this article.

### DEPICT CONCEPTS.

In some instances a concept is used in an invention, which will have to be explained to the trier of fact. Presenting the concept in the patent by a drawing should be considered more, where the concept will be difficult, and especially if important for the claims.

The practitioner can decide what to depict. They can be creative. For general ideas, three books are recommended: "Visual Explanations", "Envisioning Information", and "The Visual Display of Quantitative Information".<sup>6</sup> These show how remarkably much can be conveyed by how little, if time is invested in crafting drawings.

An example is also shown here in FIGURE A, which is adapted from a drawing of US2006/0082442, for the concept of autocorrelation. That is a concept expressed mathematically by a summation that results from taking values in a certain way. In FIGURE A, this concept is expressed graphically in a single page. From top to bottom, an inventive solution 420 is presented in general form; it is shown graphically how values are taken by depicting a sweep of solution 420, with both arrows and snapshots, and how the values result in a diagram 440. So, much of the future effort to explain autocorrelation will be already built into the patent.

### DEPICT THE PROBLEM THAT THE INVENTION SOLVES.

An example is seen in FIGURE B, which is one of the drawings of US2006/0096303, as adapted for this article. A person is merely looking at the contents, deciding what they want out of it, without removing anything. Meanwhile, cold air 126 is escaping – wasted.

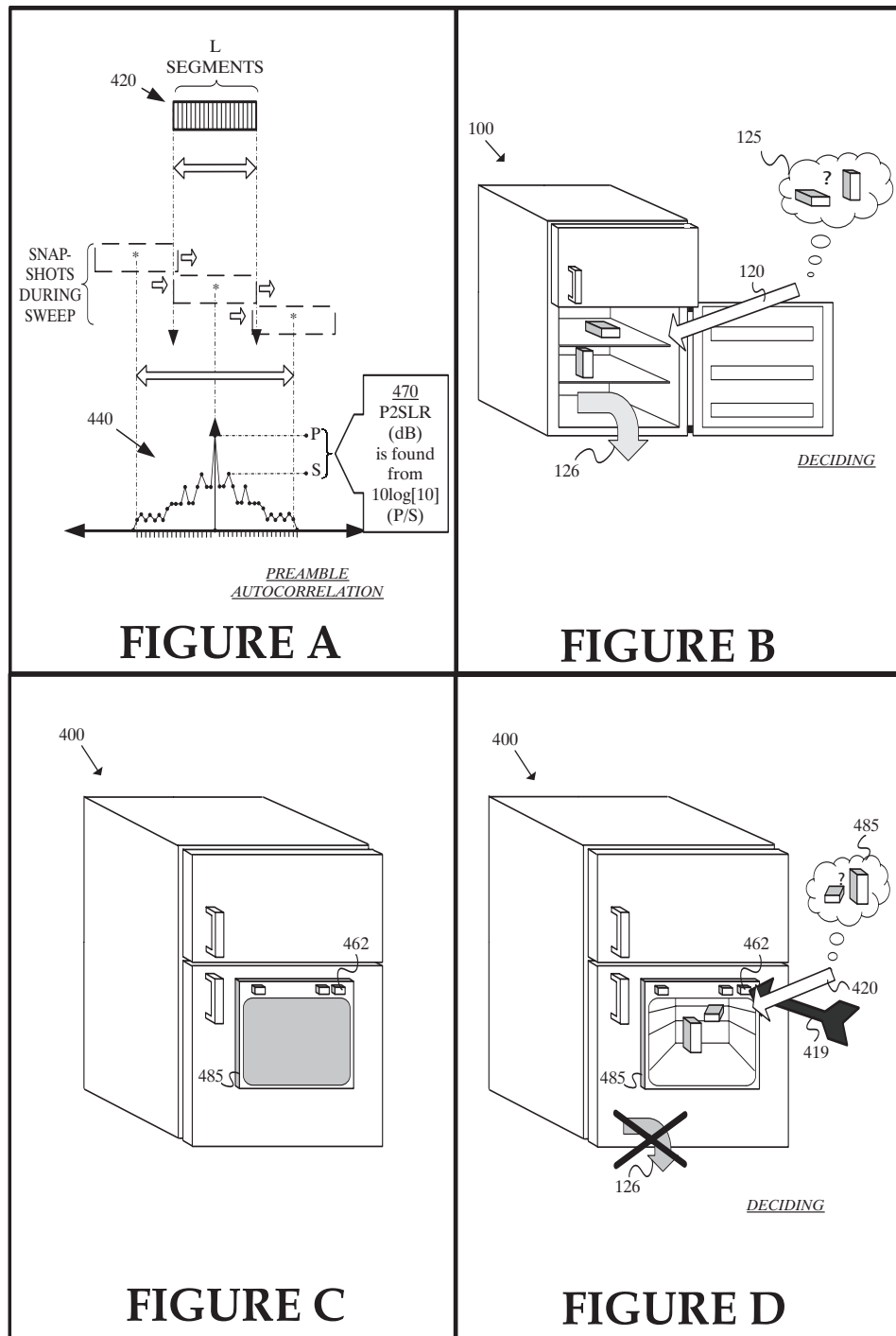
### DEPICT PRIME EMBODIMENTS THAT ARE LIKELY TO BE INFRINGED.

This does not necessarily flow from the Starting Sequence, but is well understood as a principle. For purposes of this article, FIGURE C reproduces a version of another one of the drawings of the refrigerator patent application, for an embodiment where there is a screen on it.

### DEPICT THE INVENTION WORKING.

Refreshing examples of such drawings can be seen in electrical and especially mechanical patents. In some instances,

## PATENTING WITH INVENTION-AIMED DRAWINGS – FIGURES



there is transition or change. For example, in the mechanical arts, a moving component can be seen in different positions, in the same or in different diagrams. In the electrical arts, symbols are superimposed on circuit diagrams, while arrows point which direction electrical current is going. In some, individual electrons or holes are pictured.

Another example is given in this article by FIGURE D, again for the refrigerator patent application. Upon pressing a button 462, the refrigerator displays an image of its interior.

## DEPICT AN ADVANTAGE OF INVENTION.

This can be coordinated with depicting the problem, which was described above. In this article, FIGURE D also shows that, while the invention working (image being displayed, user deciding), no cold air 126 is escaping.

The advantage can be further amplified by a table, which brings everything together. (The refrigerator patent application has one, which is not repeated here.) In a row the prior art can be shown, with its features, while in another row the invention can be shown. The contrast can be drawn by the different elements in the table entries. These entries can accelerate comprehension by not being limited to words, but also using earlier developed themes, referencing a prior figure, or recycling a minified version of it, including an icon, etc.

### **Expressive Techniques For Drawings**

Some drawings can have captions. Such captions should be brief; less is more. They can bridge with the text by using consistent words with those in the Brief Description of the Drawings. A caption can be placed near the word "FIG." of the drawing, preferably separately from it.

For unusual items, such as non-objects, a discreet icon can be considered. Some icons can be referenced by a regular reference numeral, as other elements. For example, a thick arrow can be used to indicate motion.<sup>7</sup> Also, FIGURE B shows an arrow 120 to depict where a user is looking, while deciding what to take out of the refrigerator. In electrical drawings, a small characteristic waveform of a signal can be given near a conductor, e.g. a pulsed clock signal. It conveys that the conductor carries a signal of such a waveform, even though the small waveform appears informally, without coordinates, etc.

Some icons include text. Such text is preferably brief. An icon can be a comment box that points to a feature of interest. For example, FIGURE A has a comment box 470 for a specific feature of diagram 440.

Icons can be customized for their purpose, using imagination and creativity. For example, FIGURE B has a bent arrow 126 for cold air pouring out of the refrigerator. (There is no other, commonly understood diagram for freely flowing cold air.) For another example, where a decision is to be made, by a human or a machine, a familiar thought bubble conveys immediately what is taking place. A thought bubble 125 appears in FIGURE B. In other instances, the decision itself may even be the problem that the invention solves.

An additional technique is to draw an item and then cross it out. This can be more expressive than not including at all the crossed out item; especially true where its *absence* is part of the problem, or the solution.

Another technique is to bring out an aspect by contrast. As described above, a single table can characterize the prior art and the invention, for easier contrast. In other instances, two drawings can be given ("differential drawings"), which are substantially similar. Then their differences can be highlighted for discussion. In this paper, FIGURE B and FIGURE D also operate as differential drawings: care was taken to keep many features similar, down to the caption, for highlighting the contrasts.

Just like with claims, individual drawings can be scrutinized for optimization. One criterion that can be applied iteratively is "how much explanation" is provided "for how much ink".<sup>8</sup> Optimization sometimes includes deleting items that are unnecessary, either by themselves, or because they are repeated in other drawings. Extraneous items dilute the meaning of drawings, slowing down their comprehension. Even drawings furnished in an IDF should be looked at with a critical eye; different features of them should possibly be presented in different drawings. And as a final thought, one might consider that explanation is not only science, but also art.

### **Arriving at the Final Sequence of Drawings**

Then all the drawings should be arranged in a Final Sequence. Ideally, they should be organized to work together, so that they anchor telling a Story, coherently.

The drawings can be organized from the Starting Sequence, proceeding from the general to the specific. Then each of the further drawings can be inserted right after all its individual elements have been presented. A good way for this is to examine different drawings in pairs, and analyze their relationship. Each such analyzed relationship can be referred to in the often neglected "Brief Description of the Drawings".

There is a tendency to describe the device embodiments before the method embodiments. It can refresh the perspective to occasionally try, tentatively, the method drawings first. For a few minutes, then, to consider the invention as mainly a method, where the device embodiments are sample ways of implementing the method, and other such sample device embodiments are possible. With a refreshed perspective, good choices can be made for the Final Sequence, in which some of the flowcharts can appear before some of the device drawings.

### **Validation**

When the final sequence is ready, it can be validated by the drafter actually going through the Story, while pointing to the figures. This rehearsal will streamline for him the Detailed Description, for when he will write it. The rehearsal can be either mentally, or told to another, such as a local friendly litigator for an hour. In some instances, this Story can even be told to the client, such as the inventor or an in-house quality review person, before even drafting the full specification.

The Story can be rehearsed by reading, from the Brief Description of the Drawings, the description of FIG. 1. Then point to FIG. 1, by bridging from the hopefully similar caption. Then proceed to describing the elements of FIG. 1, and end usually with the icons, if any. This will reveal items that are missing or extraneous in the drawing.

Then back to the Brief Description of the Drawings for FIG. 2, then to FIG. 2 itself, and so on. The shift can be further bridged by consistency across drawings, in themes, icons, reference numerals, etc. Shifting, then, will reveal missing drawings, extraneous elements, and so on.

### **Remainder.**

There can be different arguments as to what order the claimsets should appear in. One possible order is to reflect the Final Sequence.

Then, the specification can be written, which can follow the Story. If telling the Story worked, there will be very few rewrites of the specification.

## LOGISTICS AND EXPERIENCES FROM GENERATING SUCH DRAWINGS

For patents with such drawings, it has been observed that the expressiveness of a set of drawings can increase dramatically if iterative revisions are made, even if some of these changes are small. While there are no units for measuring absolutely an amount of explanation, it can be determined if the amount increased relative to a previous version. The newer version need not add ink, but may succeed by moving things around, changing the order of the drawings, or even removing ink, etc.

Not every drafter will find it practical to make this type of many revisions to the drawings, so as to render them very expressive. It is too difficult if each revision of the drawings includes drawing again what has already been settled on, or entails an iteration with a separate patent draftsman. In other words, the drafters who do well in this regard are those who do the drawings themselves. This is completely analogous to using a word processor for the text, instead of writing from the beginning every time. This seems to be also the trend – fewer and fewer drafters rely on patent draftsmen, while the number of patent attorneys is increasing.

A drafter can learn to generate drawings by themselves, by investing a mere two Saturdays. In the first Saturday, one can

start by installing a medium complexity drawings program, like Microsoft® Visio®, Technical Edition. Then, they can create a sample “document” of drawings with lines, diagrams, try the various menus, import other pictures, etc. If they print it, they will have drawings acceptable as formal by the PTO, if “everything else” is right.

In the second Saturday, the drafter can assimilate the “everything else”. In only the morning, they can read the less than 8 pages of the Patent Rules for drawings (37 C.F.R. 1.81 to 1.84). In the afternoon, they can adjust their sample Visio document to comply with dimensions of margins, fonts for reference numerals, etc.

Informal experience is that, once this investment is made, some more time is indeed spent generating drawings, but two types of efficiencies accrue to the drafter that start ameliorating the additional cost. Immediate type efficiencies include that drawings received in the IDF can be imported directly into the Visio drawings “document”, eliminating items to keep track of. Attention is conserved because the description will flow more easily, because it will follow a sequence of drawings that makes more sense. Steps are saved in not having to go back and forth with a patent draftsman, and check their work. Inventors will identify errors more quickly in a drawing, than in text, which prevents rewrites and future problems with the patent.

Long term type efficiencies also accrue to the drafter. Some drawings can be reused, if stored when first made. Moreover, growing experience will lead the drafter to

identify often where they can save a lot of words while drafting, by instead including a drawing or modifying one on the fly.

A patent application is then created, whose text and drawings operate more cohesively together. It will engage the future reader more, and accelerate and enhance their comprehension.

It is also an interesting experiment for a drafter to include a well-thought out drawing unexpectedly in a routine patent application. Mindful clients appreciate these – they show that the drafter actually got engaged.

## ENDNOTES

1. Gregory T. Kavounas can be contacted at [greg.kavounas@impinj.com](mailto:greg.kavounas@impinj.com). Carl K. Turk can be contacted at [cturk@merchantgould.com](mailto:cturk@merchantgould.com). This article includes various thoughts of the authors, advanced for purposes of discussion. Thus, the authors and their past, present, and future employers and clients cannot be, and are not bound by them.
2. See, for example: How To Write A Patent Application, PLI, 1992 Sheldon, Chapter 6.
3. Core-Driven Patenting for Strong Rival Preclusion, Intellectual Property Today, Vol. 12, No. 11, November 2005, p. 34-37.
4. As quoted in “Juice, The Creative Fuel That Drives World-Class Inventors”, p. 125, by Evan Schwartz, Harvard Business School Press, 2004.
5. See Sheldon, id., Chapter 5.1.
6. by Edward Tufte, Graphics Press, CT, [www.edwardtufte.com](http://www.edwardtufte.com).
7. 37 C.F.R. section 1.84 (r)(3)
8. Something analogous is also taught as “data to ink ratio” in The Visual Display of Qualitative Information, Id, p. 91ff

## Court Protects Kimberly-Clark Trademark Orange Color

The United States District Court for the Northern District of Georgia, Atlanta Division, recently granted a permanent injunction in favor of Kimberly-Clark Corporation and Kimberly-Clark Worldwide, Inc. against ValuMax International, Inc. in a trademark infringement and dilution case involving color.

Kimberly-Clark asserted trademark infringement, unfair competition and trademark dilution, violations of the Lanham Act, as well as a violation of the Georgia Deceptive Trade Practices Act and Georgia Trademark law regarding its Color Orange disposable medical face mask sold under the FLUIDSHIELD® trademark. The Color Orange is a registered trademark of Kimberly-Clark in connection with face masks. Kimberly-Clark claimed that ValuMax infringed its registered trademark by selling a disposable medical face mask of a “confusingly similar orange color.”

The court ordered that ValuMax be permanently enjoined from using an orange color for its medical face mask product or from using any other mark which could cause confusion or dilute Kimberly-Clark’s trademark-registered Color Orange. It further ordered ValuMax to destroy all medical face masks of an orange color similar to that used by Kimberly-Clark as well as any product used to produce the orange color in contention.

Kimberly-Clark is a widely recognized manufacturer and supplier of a variety of consumer and non-consumer products that are marketed and sold worldwide. Kimberly-Clark has sold and extensively promoted disposable medical face masks under its Color Orange trademark since 1988 and the company’s Color Orange trademark has become a valuable asset as a symbol of Kimberly-Clark, its quality products and its goodwill.

Kimberly-Clark was represented by attorneys Thomas M. Williams and Michelle A. Miller of the intellectual property law firm Brinks Hofer Gilson & Lione and attorneys Mark VanderBroek and Alison Grounds of the Atlanta law firm of Troutman Sanders.

*Founded in 1917, Brinks Hofer Gilson & Lione is based in Chicago with four additional offices across the country serving the intellectual property needs of clients from around the world. The firm is one of the largest IP law firms in the country, with more than 150 attorneys, scientific advisors and patent agents specializing in intellectual property litigation and all aspects of patent, trademark, copyright, trade secret, unfair competition, intellectual asset management, and technology and licensing agreements.*