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Introduction to Interference

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Introduction to Interference - Outline

- Definition of Interference
- Consequences of Winter v. Fujita
- Reasons and tactics to *avoid* an Interference

Definition of Interference

- 35 USC 135(a): “Whenever an application is made for a patent which, ***in the opinion of the Director, would interfere*** with any pending application, or with any unexpired patent, an interference [proceeding] may be declared....”

Definition of Interference

Winter v. Fujita:

- **HELD**: "There is an interference if ... "[t]he claimed invention of Party A ... anticipate[s] or render[s] obvious the claimed invention of Part B **and** the claimed invention of Party B ... anticipate[s] or render[s] obvious the claimed invention of Party A."

Definition of Interference

W v. F NOW EMBODIED IN 37 CFR 41.203(a):

- An interference exists if the subject matter of a claim of one party would, if prior art, have anticipated or rendered obvious the subject matter of a claim of the opposing party ***and vice versa***.

Consequences of W v. F

- Ability to make certain interference proceedings *unnecessary*
- Ability to antedate additional 102(e) references - 1.131/ 37 CFR 41.203(a)

Consequences of W v. F

- Limited scope for use as a cancellation proceeding
- Motivated a push for an true post grant cancellation proceeding

Reasons to *Avoid* an Interference

Business goals do not require canceling another's patent

- Cost and uncertainty
- Delayed issuance (of up to a decade)

Tactics to *Avoid* an Interference

- Do not request an interference, and do not exactly copy claims
- Claim broadly vis-à-vis opponent
- Claim narrowly vis-à-vis opponent
- Antedate opponent patent

THANK YOU!

THE END

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