

# The Patent Language Gap: A Tool to Assess Patent Writing from a Litigation Perspective

*How IPVision Helped a Fortune 100 Company Complete a Valuable Claims Analysis on 1,000 Patents in Two Days*



Lawyers who focus on patents and intellectual property are typically divided into two specialties: those who write the patent applications and those who litigate the patents. The two sides rarely collaborate or cross over, which creates a gap in patent law. **As a result, companies are left holding patents that invite litigation, and struggle with IP strategy that is based on incomplete or inaccurate patent claim data – both of which can be costly, inefficient and time-consuming.**

## PROBLEM

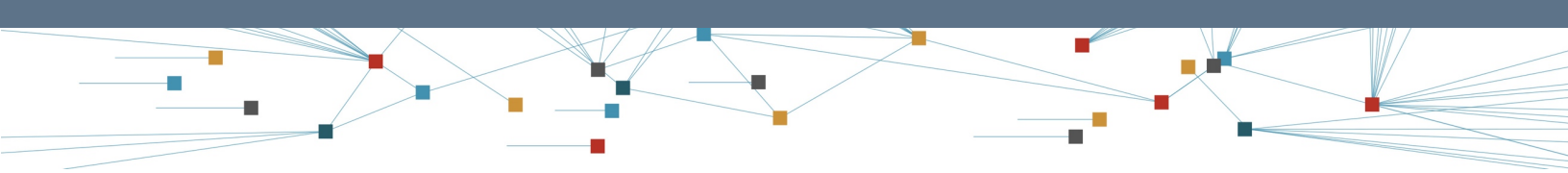
### Patent Language That Is Not Easily Approved nor Defensible

Patents are written to obtain fast and easy approval from the U.S. Patent and Trademark Office – which prefers narrow and indirect language. However, patents that are easily approved are difficult to defend in court. (More broad language and minimal use of indirect language are key aspects of a strong, defensible patent.)

When the lawyer who writes a patent hasn't had to defend those patents in court, they lack the experience and insight to craft patent language that will achieve both outcomes: quick approval and protection from future litigation. This Achilles heel for patent-driven IP exists within law firms and corporate legal teams, and creates risk and inefficiency for companies.

*“...they lack the experience and insight to craft patent language that will achieve both outcomes: quick approval and strong protection from future litigation.”*

The VP of Intellectual Property for a Fortune 100 company was struggling with this division in patent law.



## SOLUTION

### Algorithm-Based System that Quickly Assesses Patent Claims from a Litigation Perspective

To address this company's needs, IPVision developed a Claims Analysis system that assesses a patent portfolio's strength and quality from a litigation perspective. Using proprietary algorithms, the system quickly analyzes independent patent claims based on court cases and rules developed by experienced patent litigators and licensing experts.

*“Using proprietary algorithms, this system can quickly analyze independent patent claims based on court cases and rules developed by experienced patent litigators and licensing experts.”*

IPVision's Claims Analysis system looks at more than 40 separate claims characteristics as part of its analysis, including:

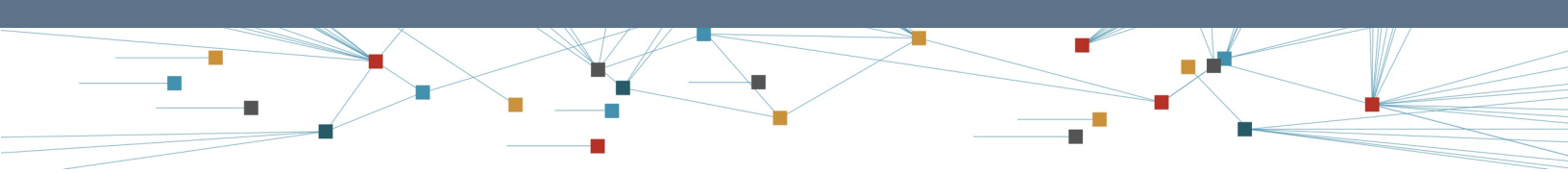
- Claim length
- Preamble to claim ratio
- Limiting clauses
- Indefinite terms
- Number of noun phrases

It also examines the antecedent bases and checks the specification to determine whether claims are adequately supported.

## RESULTS

### Fast and Cost-Effective Patent Language Assessment That Reduces Legal Risk and Analyzes Patent Portfolio and Claims Quality

Before it came to IPVision, this client had sent 1,000 patents to a law firm to be assessed for their strength and quality. The client requested that the law firm spend no more than three hours to review each patent. **At that rate and with typical legal billable rates, this project would have taken 3,000 hours and nearly a million dollars (or more) to complete.** The assessments would also have no specific standards or consistency.



Using its Claims Analysis system, **IPVision analyzed the same 1,000 patents within two days, for one-hundredth of the cost.** This automated system is based on a standard set of rules, which ensures consistency and repeatability.

*“IPVision analyzed the same 1,000 patents within two days, for one-hundredth of the cost.”*

As a result, the client uses these assessments to:

1. **Ensure stronger patent claim defensibility** by providing quality control for in-house and outside counsel
2. Quickly identify strong patents in a portfolio for further analysis, to be used in:
  - Mergers and acquisitions
  - Cross-licensing negotiations
  - Patent litigation
  - Patent acquisition and licensing transactions

---

*“IPVision's Claims Analysis provides a unique resource to intellectual property owners and professionals, supporting strategic needs as well as quality improvement initiatives.”*

— Kent Richardson, Former Executive Vice President & General Manager, ThinkFire

---

## Reliable, Repeatable Claims Analyses That Support IP Strategy

### IPVision enables companies to quickly make valuable, data-driven IP decisions

IPVision’s Claims Analysis system determines patent quality by analyzing the actual claim language of each patent. It provides timely and unique insights into the strength or weakness of patent claims for a single patent and for large portfolios of patents.

The system evaluates and rates each independent claim of a U.S. patent for broadness and structure, which are represented as:

- **Breadth/Scope Rating:** Each independent claim receives a rating of A, B, or C. These identify claims coverage from A (likely to be broad) to C (narrow, specific embodiments).

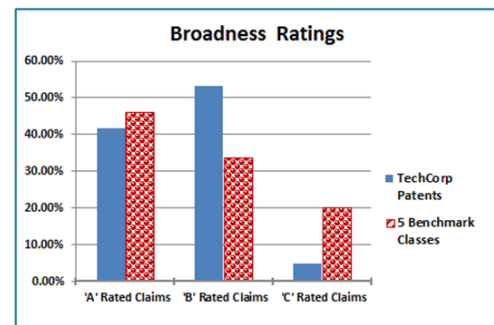
- **Structure Rating:** Each independent claim also receives a structure rating of 1, 2, 3, 4, or 5. These identify the quality of the claim construction from 1 (no obvious structural problems) to 5 (potential major problem). The structure quality rankings are based on case law references from treatises on claims construction and interpretation.

Using these claims ratings, the Claims Analysis system provides results in four different formats:

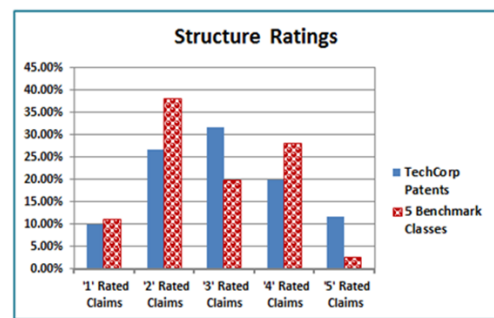
1. **Independent Claim(s) Extraction:** This spreadsheet identifies the independent claim(s) with the best-combined rating(s) according to their weighted value.
2. **Full Claims Analysis:** This spreadsheet ranks all of the independent claims of a single patent. It includes detailed information about the patent, the claims, the client, and IPVision’s calculated analyses of the claims’ characteristics.
3. **Claims Analysis Summary Sheet** that outlines the distribution and percentage of each independent claim category (system, method, apparatus, Jepson) in the group being analyzed.
4. **Claims Benchmarking:** This compares the portfolio or patents being evaluated against two different benchmarks:
  - a. More than 50,000 patents that have been offered for sale to a Fortune 100 company, and/or
  - b. All patents of a similar age in the same technology classification.

Claims Assessment XYZ Patent Portfolio		
Claims Analysis		Distribution and Percentage of Independent Claims
Total # of Independent Claims:	370	
Claim Category	# of Claims	Percentage
System Claims:	52	14.05%
Method Claims:	189	51.08%
Apparatus Claims:	142	38.38%
Jepson Claims:	0	0.00%
(13 Claims w/2 Categories)		
Breadth Rating	# of Claims	Percentage
'A' Rated Claims:	86	23.24%
'B' Rated Claims:	217	58.65%
'C' Rated Claims:	67	18.11%
Structure Rating	# of Claims	Percentage
'1' Rated Claims:	29	7.84%
'2' Rated Claims:	77	20.81%
'3' Rated Claims:	137	37.03%
'4' Rated Claims:	115	31.08%
'5' Rated Claims:	12	3.24%
Combined Rating	# of Claims	Percentage
'A1' Rated Claims:	19	4.95%
'A2' Rated Claims:	30	8.11%
'A3' Rated Claims:	31	8.38%
'A4' Rated Claims:	7	1.89%
'A5' Rated Claims:	0	0.00%
'B1' Rated Claims:	11	2.97%
'B2' Rated Claims:	36	9.73%

Claims Analysis Summary – Example



A = Broad C = Narrow



1 = Good 5 = Bad

Claims Benchmarking Example

IPVision has years of experience performing Claims Analysis, and has verified its accuracy with independent experts and patent attorneys. Claims Analysis is part of the company’s more comprehensive iScore system, which scans through the text of patent claims to evaluate and rank individual patents and patent portfolios for claims quality.

**IPVision** is a 2.0 strategy consultancy that is driven from internally-developed technologies built to parse and analyze large amounts of IP data. Our interactive platform helps align collaborative stakeholders in your organization, enabling efficient and effective implementation of strategic insights and decisions that result from our consulting work with you.