



Is a Poster Presentation Really a “Printed Publication”?

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The appeals court for most patent related decisions, the Court of Appeals for the Federal Circuit, decided a case in August of 2004, which finally resolves the question of whether a poster presented at a scientific meeting constitutes a “printed publication” under 35 U.S.C. § 102, thereby preventing the author from being able to obtain a patent on the technology described in the poster. It has been a common misconception among the scientific community that such a poster is not a “printed publication” because it is not disseminated by the distribution of copies and/or indexed in a library or database. However, in an opinion by Judge Prost, the Federal Circuit upheld the rejection of an application for a patent on a method for preparing foods, by the United States Board of Patent Appeals, on the basis that the invention was described in a “printed publication” more than a year before patent filing. In *re Klopfenstein*, 03-1583 (Fed. Cir. 2004). The “printed publication” was in the form of 14 slides printed and pasted on poster boards, which were displayed for about two and a half days at a meeting of the American Association of Cereal Chemists (“AACS”) and for less than a day at an Agriculture Experiment Station (“AES”) at Kansas State University. No copies of the presentation were disseminated at either the AACC meeting or the AES display, and the presentation was never catalogued or indexed in any library or database. However, neither presentation contained a disclaimer or notice to the intended audience prohibiting note-

taking or copying of the presentation. The patent applicants/authors of the poster argued that because the poster presentation was not distributed and indexed, it cannot count as a “printed publication” for the purposes of 35 U.S.C. §102. However, the court found that a reference is not a “printed publication” only when there is distribution and/or indexing. The key inquiry is whether or not a reference has been made “publicly accessible.” The relevant factors are: (1) the length of time the display was exhibited, (2) the expertise of the target audience, (3) the existence (or lack thereof) of reasonable expectations that the material displayed would not be copied, and (4) the simplicity or ease with which the material displayed could have been copied. The duration of the display is important in determining the opportunity of the public in capturing, processing and retaining the information conveyed by the reference. The more transient the display, the less likely it is to be considered a “printed publication.” Conversely, the

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longer a reference is displayed, the more likely it is to be considered a “printed publication”. The requisite duration may be considerably shorter now, in view of the frequent use of digital cameras and photographic cell phones. The court noted that the

poster itself was presented in such a way that copying of the information it contained would have been a relatively simple undertaking for those to whom it was exposed—particularly given the amount of time they had to copy the information and the lack of any restrictions on their copying of the information.

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The Federal Circuit previously held that a paper which is orally presented in a forum open to all interested persons constitutes a “printed publication” if written copies are “disseminated” without restriction. *Massachusetts Institute of Technology v. AB Fortia*, 774 F.2d 1104, 1109, 227 USPQ 428,

432 (Fed. Cir.1985). In this case, a paper was orally presented to between 50 and 500 persons at a scientific meeting open to all persons interested in the subject matter, with written copies distributed without restriction to all who requested. Six persons actually requested and obtained copies of the material. In *Klopfenstein*, we have a case where printed subject matter was orally presented, but no copies of the printed materials were distributed to the public (i.e., the attendees at the meeting did not have a tangible copy of the subject matter to take home with them). Thus, the distribution of copies of printed materials is not determinative in assessing whether a presentation is a “printed publication” under 35 U.S.C. §102. In conclusion, the decision in *Klopfenstein* emphasizes that whether something is a “printed publication” or not is largely controlled by its “public accessibility”. The court made clear that the meaning of “disseminated” is to be used in its literal sense, i.e. “make widespread” or “to foster general knowledge of”, and is not to be used in the narrower sense which requires distribution of reproductions or photocopies. Therefore, if one plans on presenting potentially patentable work in any public forum, whether in the form of an oral presentation, slide presentation, or poster presentation, it is extremely important, if not imperative, that at least a provisional patent application be filed on the subject matter prior to the presentation.