

Claiming through a Linguistic Looking Glass

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Systematic limitations on the efforts for global patent harmonization exist. As patent professionals, we encounter the risks of such linguistically derived differences on a regular basis. Awareness of such differences between the linguistic characteristics of different languages can help mitigate or even minimize their impact.

This article reviews the differing linguistic approaches to some concepts as basic as expressions of numerical limitations, including the singular and plural. The reasons for the occurrence of these linguistic differences are reviewed to help practitioners understand why they occur and, more importantly, when they may occur and how they can be avoided. The article then notes that the degree of consistency of language in a specification can fundamentally impact claim scope if addressed inappropriately on translation. The insights provided by this article suggest how drafting in a source language (e.g. English) can be adjusted to improve the clarity of resulting claim and specification in the target language (e.g. Chinese (i.e. Mandarin) or Japanese as a language of prosecution) to more closely correspond with the initial, intended scope on drafting (i.e. source text); and vice-versa.

The authors found that effective communication between the parties from the client and to local prosecuting attorney is key to reduce the chance of unintentionally introducing linguistic limitations during translation. The best practical translation is purposeful and holds true to the original concept expressed in the source text, and thus the commercial application of the claimed invention as originally defined and intended by the patent applicant.

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