

*The Shape of Things to Come:
What We Can Learn from Patent Claim Length*

Kristen Osenga

There is no question that technology is always changing. Patent law, too, is ever evolving, as the courts, and now even Congress, continue to make significant changes to this area of law. But what about patents themselves? Some studies have looked at how patent specifications have changed over time, but no one has looked specifically at the most important aspect of a patent: its claims. Given the changes in technology and law, one would anticipate patent claims too to have evolved. Other factors would also be expected to affect the shape of patent claims. Have patent claims gotten longer over time to describe new technology or to keep up with the law? Do patent claims look different across different technology areas? Are patent claims longer in crowded art fields or if the patent takes longer to prosecute? Despite the expectations, this paper concludes that patent claim shape is largely unaffected by time, technology, crowded fields, or prosecution time. This paper suggests a possible reason why claim length appears incommensurate with technology and unaffected by other factors. Specifically, patent claims are drafted to “look good,” regardless of the underlying technology or any other factor that should figure into claim length.