

## Choose Your Words Carefully

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Communications is a science, an art, and a field of study, depending on the context. In simplest terms, communications is the means by which people express ideas or information. Communications is elevated to an art form by poets and authors of prose who seem to know just how to weave words together into a colorful fabric that can create images and even emotions in the mind of the reader. Communications is a science or assemblage of sciences that come together to create and apply the technologies that underlie the systems and networks that support the sending, transmission, switching and receiving of messages. If communications takes place across a distance, it becomes telecommunications. Completing the loop, communications is the means by which people express the ideas behind and otherwise convey information about the technology. That's where we can get into trouble. In business, including most especially the business of science, words must be chosen carefully to convey precise meaning...or not. As Mark Twain once said, "The difference between the almost right word and the right word is really a large matter—it's the difference between the lightning bug and the lightning."

All of us who have been around long enough have both enjoyed the benefits of choosing the right words and paid the price for choosing the wrong ones. Now, it's not as though I haven't paid the price for having chosen the wrong words on occasion, but I have made a reasonably nice living over the past 20 years or so as a telecommunications consultant, lecturer, writer, columnist and author, all of which require excellent communications skills. As a lexicographer (i.e., writer of dictionaries) for approximately the last dozen years, I have developed a high level of respect and even an affinity for words and their precise meanings. I also do a fair amount of litigation support work as a consulting expert and testifying expert in telecommunications related lawsuits involving contract disputes, product/service misrepresentations, the Telephone Consumer Protection Act (TCPA) and intellectual property such as patents, trademarks and service marks. It is this work that has underscored for me, at least, the incredible value of the right word. Please allow me to illustrate the point.

### Cases in Point

Several years ago I was involved as a consulting expert in a contract dispute between a local exchange carrier and a public agency in which many millions of dollars hinged on

the definition of the word *line*, which, of course, is not to be confused with *trunk*, *channel*, *circuit* or *loop*. I have since been involved in several other lawsuits also involving many millions of dollars that hinged on the meaning of a single word.

A few years earlier I was involved in a legal battle between Nextel Communications and Verizon Wireless over the use of the term *push-to-talk (PTT)*. Nextel claimed that, through the unique use of the term in its advertising, it had essentially redefined a term that had been in continuous use since at least 1935, according to my research, and made *push-to-talk* its own. Nextel trademarked the term and then sued Verizon for misappropriating the mark. I was retained to support Verizon's position, which prevailed, but not before a lot of money had been spent on attorneys and experts.

## **Patently So**

Over the past few years I have studied hundreds of patents, many of which are overly complicated and confusing almost beyond belief. As if it weren't tough enough to deal with technical terminology, patent writers seem to delight in increasing the degree of difficulty as they move back and forth between conversational and technical English. I can't begin to tell you the number of times I have had to opine on the differences between the definitions of *circuit*, *line*, *loop*, *trunk* and *channel*, each of which has multiple definitions sensitive to semantics and technical context. I have been called upon innumerable times to define *digital* and *analog*, and to draw comparisons between them. In times past, these definitional issues were argued before a judge and jury. In its *Markman v. Westview Instruments, Inc.* decision in 1996, however, the United States Supreme Court unanimously held that judges, rather than juries, should decide the meaning of terms used in patent claims. So, a great deal of effort and buckets of money now go into the process of claim construction, which is the legal art of translating the patent claim language into plain English. The attorneys for the plaintiffs and defendants, alike, prepare definitional arguments for presentation to a judge in what has become known as a *Markman hearing*. In fact, a case can easily (Hmmm, *easily* may not be exactly the right word.) be won or lost depending on the rulings a judge makes with respect to the definitions of critical technical terms. This phase of the legal process often determines whether a plaintiff has a legal claim and whether the defendant infringed the patent.

Once upon a time, issues of patent infringement affected only inventors of processes, machines, manufactured products or other tangible goods, or significant improvements to them. In the United States and many other countries, patent law has since extended to biology, chemistry, methods and software. Just in case you think that none of this applies to you, it lately it has become fashionable... and highly profitable... for patent holders to sue end users, rather than manufacturers, of technology. It seems as though end users are much easier to bully and that they, therefore, are much more likely to settle out of court simply as a matter of risk management. After all, if Troll Technology sues Unsuspecting Inc. for patent infringement and the Unsuspecting CEO can make the lawsuit go away for \$5 million, it can seem like a bargain as compared to even the slight risk of a \$50 million judgement if the case were to go to trial. That doesn't include, of course, the \$3-5 million

in legal fees that might accrue if the case were to go to trial, not to mention the bad publicity, the loss of customer confidence or the loss of internal business focus caused by the distraction of a lawsuit. Forget that fact that a patent troll may have a portfolio of unworthy patents granted by inexperienced, overworked patent examiners and that a concerted legal effort by a single thoroughly agitated defendant can put an end to the madness. Sometimes CEOs and Boards of Directors reckon it's just easier to roll over, write a check and put it behind them.

There are ways to limit your liability, of course. You may not like this bit of advice, but retaining the services of a good attorney would be a good start.

## **Pet Peeve**

In closing, I must draw you into my personal crusade against the misuse of two words—premise and premises. The official definitions are in *Webster's New World Telecom Dictionary* by Ray Horak, which would be me:

**premise** An assumption, proposition or presupposition that serves as the basis for an argument. The word is often confused with premises. For example, CPE is the initialism for Customer Premises Equipment, which is equipment physically located on the customer premises, at least that is the premise.

**premises** A building, or part of a building, including its grounds.

For the record, there is no such thing as customer premise equipment, a premise-based PBX or premise-based VoIP and, therefore, there is no basis for comparison between cloud and premise-based telephony.

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**Disclaimer:** Ray Horak is not an intellectual property attorney or any other form of attorney, for that matter. He is an independent telecommunications consultant, lecturer, writer, columnist and author who is internationally recognized for his ability to translate complex technical matter into plain-English, commonsense terms. His latest books are [\*Telecommunications and Data Communications Handbook\*](#) and [\*Webster's New World Telecom Dictionary\*](#), both published by John Wiley & Sons. See the dictionary, in particular, for multiple authoritative definitions of *analog*, *digital*, *channel*, *circuit*, *line*, *loop*, *trunk* and more than 4,600 other telecom terms.

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