

# How to Draft Patent Claims Effectively

By **Deepshikha Sarkar** - January 3, 2018



*In this article, Deepshikha Sarkar discusses steps for drafting effective patent claims.*

## What is a Patent claim?

Patent Claim is that part of the Patent Specification which defines the boundaries of Patent protection. They form the base of the protection given by law by virtue of patents. One among the many functions that a patent claim has is that of forming the scope of the patent. In a way, claims create the boundary line which is crossed will amount to infringement of the patent holders rights.

As the claims are so crucial, they need to be perfectly worded for complete protection. If not, it might cause problems with relation to prosecution and litigation. Hence, it is advised to inventors to take help from the legal professionals in drafting claims as it is a techno-“legal” document.

## How to draft a claim?

As per the PATENT CLAIM FORMAT AND TYPES OF CLAIMS published by the World Intellectual Property Organisation (WIPO) which can be found [here](#), the following formula is put forth

*Patent Claim: A + B+ C*

*A B C*

*{insert title} comprising: {list the parts one by one} {then explain how each are connected}*

Any claim can be divided into three parts, namely, preamble, linking word and the main body of the claim.

## • Preamble

- Identifies the category into which an invention falls (device, composition, process).
- Talks about the objective of the invention.
- Relates the claims to the title of the invention.

## • Linking Word

- Open-ended Phrases-, “including, “characterized by” this aids in expanding the scope of the claims.
- Closed-ended Phrases- “comprising” “consisting of” this basically lists the items mentioned and NOTHING else.

(example :A chemical compound *consisting of*: 50% A component; 25% B component; and 25% C component)

## • Main body

- A coherent sentence actually explaining the content of the claim.
- Not merely a list of parts

## EXAMPLE

An apparatus, comprising: a plurality of printed pages; a binding configured to hold the printed pages together; and a cover attached to the binding.

Preamble: An apparatus

Linking (transition): comprising

Main body: a plurality of printed pages; a binding configured to hold the printed pages together; and a cover attached to the binding

## How to punctuate a claim?

A comma (,) separates the preamble from the linking word or the transitional phrase. A colon (:) separates the transitional phrase from the body of the claim.

Subsequent small paragraphs that describe the elements further are separated with semicolons (;)

## Basics of Patent Claim Drafting

### Starting to Draft Claims

1. One should remember to keep a claim broad-but not add anything unnecessary. The "scope", "characteristics" and "structure" of the invention must be very clear from reading the claims.
2. Clarity and conciseness are mandatory.
3. Addition of dependant claims is a good way of defining the borders of the invention with minute detailing and specificity
4. The focus should be kept on the "scope", that is, one should check that whether the claim covers all parts of the invention or not.
5. It is important the claims should include "broad" claims as well as "specific" claims. This aids in balancing the invention, in a way that, the claims don't leave out anything that the invention does or in a broad sense as well as a specific sense.
6. A key to effective claim drafting depends upon explanation of the "connection" between several parts of the invention, and the interconnecting functioning.

## *ILLUSTRATION*

### **CLAIM SAMPLE A**

*A shovel comprising:*

*an elongated handle; and*

*a shovel head;*

*wherein said shovel head is attached to said elongated handle.*

### **CLAIM SAMPLE B (IMPROVED)**

*A shovel comprising:*

*an elongated handle having a first end and a second end; and*

*a shovel head;*

*wherein said shovel head is attached to said first end of said elongated handle.*

When one part of the invention is introduced, like here "Hammer head" and then later referring to it as "said hammer head" or "the hammer head" etc. Use "a" or "an" would be incorrect grammatically. Also, to avoid the confusion (arising in CLAIM SAMPLE A) regarding the where the hammer-head is to be attached to the elongated handle- extra explanation is added as to how to elements of the inventions are interconnected.

1. As one of the main objectives of claim drafting shows that the invention is different from the knowledge available in prior art so the drafting of claims should be done in such a way that it shows the uniqueness of the invention.
2. Laudatory language should be avoided. This usually stifles the descriptive details. More importantly, praises for the invention do not matter in a Patent Specification.

For example "Earth's best gadget" or "the perfect solution" or "using this tool is the ultimate choice for a technician to make."

1. The Patent claims can be said to be similar to an instruction manual. The detailing available in such manuals is such that by which a layman can put together something as complex as a lawnmower.

## What does an effective claim look like?

EXAMPLE: PEANUT BUTTER AND JELLY SANDWICH. US Patent No. 6,004,596. Available [here](#).

### **CLAIM SAMPLE 1**

A sandwich comprising: 2 pieces of bread, peanut butter, and jelly, wherein the peanut butter is spread on 1 piece of bread and the jelly is spread on the other piece of bread and then the two pieces of bread are put together so that the peanut butter and jelly are touching.

### **CLAIM SAMPLE 2 (IMPROVED)**

1. A sealed crustless sandwich, comprising:
  1. a first bread layer having a first perimeter surface coplanar to a contact surface;
  2. at least one filling of an edible food juxtaposed to said contact surface;
  3. a second bread layer juxtaposed to said at least one filling opposite of said first bread layer, wherein said second bread layer includes a second perimeter surface similar to said first perimeter surface;
  4. a crimped edge directly between said first perimeter surface and said second perimeter surface for sealing said at least one filling between said first bread layer and said second bread layer;
5. wherein a crust portion of said first bread layer and said second bread layer has been removed.

The CLAIM SAMPLE 1 explains the claim in a very general sense and it does not look like a part of a techno-legal document at all. Also, by using terms like “peanut butter” “jelly” the drafters have excluded the scope of any other nut butter or filling etc.

Whereas CLAIM SAMPLE 2 “any” crustless sandwich which has two layers of bread, “any”center filling which would cover less than the entire layer of bread leaving perimeter surfaces on both layers without filling on them, and a sealed plus crimped edge around the sandwich circumference. And because it is a “crust sandwich”, the crust is explained to be that part of the sandwich which is formed by the contact of the perimeter parts of the two layers of bread.



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