

Patent Drafting for Beginners
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Lecture – 38
Apparatus Claims

Apparatus claim.

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Apparatus Claim



We had already mentioned that the classes of claims could be apparatus, it could be method, it could be a composition, it could be a system claim, there are different classes. But broadly in India we have 2 classes. What we call a product or a process; if you look at the language of section 2(1)(j) an invention is defined as a new product or a process. Or if you look at the language of section 48, we tells us what are the rights that a patentee has; there are 2 broad sets of rights a patentee has, one right as with regard to a product patent and the other right (Refer Time: 00:52) in a product a process patent, a patent over a product or a patent over a process.

Now, apparatus claim is the thing that belongs to the first category what we called product claims.

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General Use

An apparatus denotes to:

“machines”

“devices”

“Instruments”

“Appliances and Gadgets”

Includes electrical circuits, computer-related inventions, hydraulic devices, mechanical and electrical devices.



Now let us look at apparatus claims in detail, the general use of apparatus claim. An apparatus denotes it covers a wide variety of things, it includes machines, it includes devices, instruments, appliances and gadgets. It includes electrical circuits, computer related inventions, hydraulic devices, mechanical and electrical devices, whole lot of things can come under an apparatus claim. You could call the machine, a machine for doing certain thing a device, and instrument, but the bigger genus is the apparatus. So, so the apparatus could include any of these different categories of inventions.

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An Apparatus claim

A Ceiling Fan

1. Apparatus for circulating air which comprises Motor; a means for suspending the said motor from a ceiling; a motors housing; a switch for controlling operation; and a plurality of blades



Now, a ceiling fan can be described in this language apparatus for circulating air which comprises motor, a means for suspending the said motor from a ceiling a motor housing, a switch for controlling operation and a plurality of blades. Now this is a claim for a ceiling fan. Now you will notice here that what is being recited, you can identify from here the preamble, the transition, the preamble is here and apparatus for circulating here. A transition comprises, and from here on you will find the body.

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An Apparatus claim

Preamble

1. **Apparatus for circulating air** which comprises Motor; a means for suspending the said motor from a ceiling; a motors housing; a switch for controlling operation; and a plurality of blades



That is the preamble the transition and the body.

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An Apparatus claim

Transition

1. Apparatus for circulating air which **comprises** Motor; a means for suspending the said motor from a ceiling; a motors housing; a switch for controlling operation; and a plurality of blades



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An Apparatus claim

1. Apparatus for circulating air which comprises **Motor; a means for suspending the said motor from a ceiling; a motors housing; a switch for controlling operation; and a plurality of blades**

Body



Apparatus for It whenever you refer to apparatus for it describes the function of the apparatus, and apart as for heating an apparatus for boiling.

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Preamble & Body

"Apparatus for..."

Short preamble preferable

"A ceiling fan comprising..."

Find the main elements to be claimed

Make each element the subject of one clause

Name the elements and show cooperation



So, you can bring in a function by introducing the function along with the apparatus. But over a period of time, if there are large number of patterns filed for that particular apparatus. That particular apparatus may take a more specific name. So, in which case, it is better to refer to that specific name. Rather than referring to an apparatus for

circulating air, you could say a ceiling fan comprising. So, whenever a particular apparatus or a gadget or a machine gets a specific name, it is better to use the shorter preamble.

Find the main elements to be claimed, this is what you would do in making an apparatus claim, and make each element the subject of one clause, we had seen that every element is recited in a separate clause, we had seen that in the case of at the foldable iPhone, we had seen that in this example to the ceiling fan example. It has to be a separate clause. You have to find the main elements to be claimed, in an apart as claimed; you will find the main element to be claimed. Then you will make each element the subject of one clause. We had seen it, in the context of the foldable iPhone, each element the housing the structure the display they shown as different clauses.

You can write them together, but you should to understand that each element is shown as a separate clause. Name the elements and show the cooperation. You will name the elements housing give it a name structure foldable structure, the display, you would have to name it with an appropriate name, and show how they cooperate.

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Preamble & Body

Negative limitations allowed where justified

“non-magnetic”

“non-identical”

“colourless”

Support with drawings



Now, you could have some negative limitations in an apparatus claim, but they are allowed only in few cases where they are justified. You could call nonmagnetic, because that is a negative limitation, or non-identical colorless, there have been instances where

such words have been used. And because you are claiming an apparatus which is a mechanical device, you should support your claim with drawings.

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Meaning of elements

Use clear names for each element

Broader scope: use functional names “means for heating....”

Claim interpretation:

Intrinsic	Extrinsic	Tertiary
claims, specification	dictionary	expert evidence



Now in a mechanical invention for an apparatus, you would use clear names for each element. Many a times there will be similar elements grouped together. So, you have to qualify and use the right name for each element. If you want about broader scope for your invention, then you would use functional names, rather than calling a particular device which is used for heating, you would use means for heating; which can in incorporate multiple different types of heating devices.

Now in interpreting the claim, what we call claim interpretation, they can be intrinsic extrinsic or tertiary tools that you use. When it comes to an apparatus claim. The intrinsic or internal tools that you will use are the claims and the specification itself. So, if you if there is some doubt or ambiguity with regard to a claim, and when the claim needs to be interpreted, the first thing that you will rely on are the intrinsic tools, the claims what do the claims say about that word or what does the specification say about that word. You can also get into something what we call the prosecution history, what was the idea, or what was the intent of the applicant during the course of prosecution history. What did the applicant submit, or what is the applicant do while the pattern was being prosecuted in the patent office.

So, all these are what we call intrinsic tools. So, there is doubt ambiguity with regard to a word or a passage, you first use the intrinsic tools. Then if the ambiguity persists or of the doubt continues, then you go for the extrinsic tools; like a dictionary or a thesaurus or an encyclopedia whatever is required to further explain those terms.

The last thing which you would use to explain a term or a phrase in a patent or to claim or to interpret the claim will be the tertiary tool which is expert evidence. Normally happens in proceedings before the code.

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Meaning of elements

Show preferred embodiment in specification

Abstract is part of specification

State the minimum number of similar elements when more than one is required

More than one: plurality

Reference the drawing in the claims using parenthesis



Meaning of elements, you have to show the preferred embodiment in the specification and that has to be claimed. The abstract is a part of the specification.

So, it has to be defined, and you have to state the minimum number of similar elements when more than one is required. In terms of number of things, you have to show the minimum number if you if there is a possibility to use more than one. So, if you are using a heater, you can say at least one heater or at least a heater. So, which is which is at that the minimum of one could be more and when you are using more than one, you use the word plurality, then you will see this word appearing in various claims that you read a plurality of fans or a plurality of blades. So, this is something which is particular for pattern drafting, the language rather than using many we use plurality. And the reference to the drawing has to be made in the claims using parentheses. We have already covered this is a requirement in the law.

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Antecedents

Element mentioned first time 'Ceiling Fan'

Subsequent references:

'the Ceiling Fan' 'said Ceiling Fan'

Antecedent

A claim must be consistent with the specification and with itself

Elements recited in the claim must find antecedent basis in the description and within the claim, if earlier recited.

Avoid alternative expressions

Describe elements in logical order



Antecedents, now the element in the first claim if it mentions for the first-time ceiling fan. You would refer to it as a ceiling fan or a ceiling fan. The subsequent references you can call it the ceiling fan, the said ceiling fan or even search ceiling fan. So, we have already mentioned this, the claims should have antecedent basis. If you mentioned something for the first time, you will refer to it using the indefinite article. And if you mention it subsequently you are going to use the definite article the or said or search.

Now the claim must be consistent with the specification, now this is what antecedent or antecedent basis means. A claim must be consistent with the specification and with itself; elements recited in the claim must find antecedent basis in the description and within the claim, if earlier recited. So, the elements should find some basis in the description, which is a requirement what we refer to as fair basis. So, what is mentioned if you mention rotor or a blade in the claim, you should have mentioned it in the specification and even within the claim within the claim is every second reference to a ceiling fan should mention it as the ceiling fan, because it has already been mentioned before.

Now you try to avoid alternate expressions to avoid confusion, you cannot be using the ceiling fan in 1 place, and in apparatus for circulating here. That is not permissible unless there are specific reasons for broadening the scope. Described elements in logical order, because it is an apparatus you need to describe the logical order or the structure or the operational details. If it was an assembly of things, then you can just list out how it is

assembled, but because these are different parts which cooperate and work with each other, you have to describe the elements in a logical order.