

**Patent Drafting for Beginners**  
**Prof. Feroz Ali**  
**Department of Humanities and Social Sciences**  
**Indian Institute of Technology, Madras**

**Lecture – 49**  
**Background & Summary**

Background and Summary; The background and summary refers to the first two parts of the specification.

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## Background

- Narrate the problem
- What others have done
- Where others have failed
- Existing solutions (not sufficient)
- Connect to the summary



Now, the background narrates the problem, it also tells you what others have done it is more like a literature review which you would find in an scholarly article. It just tells what others have done more importantly it also tells where others have failed and you would also describe existing solutions, if your invention is an improvement over an existing solution, then you will describe the existing solutions and say that the existing solutions are not perfect or that their solutions are not sufficient to solve a problem in an efficient manner.

So, it could be also the fact that what exists is not efficient that itself could be the problem that you are addressing and it does the role of being a precursor to the summary. So, the background of the invention should connect to the summary. So, this is one part where you start your description and in the background part, you narrate the problem. So,

from the problem solution statement this part will cover the problem part of the problem solution statement.

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## Background = Problem

- Bring out the problem in a way it prepares for the summary
- Be brief and conclude quickly
- Avoid the temptation to compare the prior art
- Show how prior art falls short
- “unfortunately” “disadvantageously”
- Exceptions: long felt need, earlier failed attempts
- Not to include description of invention
- End with the problem



Now, so, the if we equate background to the problem. So, we had worked on a problem solution statement and in the background part of the specification, you are going to explain the problem and flush out the details of the problem. Now you bring out the problem in a way it prepares for the summary, you have to be brief and conclude quickly. The reason being dealing in great detail with the prior art because the problem could bring some elements of the prior art may not be advisable because the focus of your application is your invention the problem is only the context.

So, focus on your invention spend your time and effort in explaining the invention cover the background to the extent it requires to be covered. So, you have to be brief and if you see some samples, you will find that there is no great discussion on the background and patent agents throughout the world very quickly cover the background in a few sentences.

Now, you should avoid the temptation to compare the prior art, because when you make a comparison there is a possibility that the, you your invention may look obvious if you compare it with the prior art. There is no harm in describing in broad statements what the prior art is what the problem is, but a step to step comparison with your invention could be detrimental to your to the future of your invention.

Now, you can show how the prior art falls short while describing the problem, this is normally done by using words like unfortunately disadvantageously. So, when you read the background portion, if you find this word these words you will know that this is where they are describing the problem.

Now there could be exceptions where you may have to describe the background in some detail, for instance if there is a long felt need for a solution then you are going to create that need by saying that the prior art has these deficiencies over a period of time or if your invention is a successful attempt in achieving something which was previously attempted by multiple people and they have been failures then you may have to even describe that to show that your invention has been tried or the what you try to achieve has been tried by others and all their attempts ended in failures.

So, that these are exceptional cases where you may have to cover the background in some detail, otherwise you be brief and you conclude quickly. Now do not include the description of the invention in the background, the background is not for your invention the background is what creates a pitch for your invention.

So, you should conclude the background without touching on the invention. So, that the next part of your specification, which is a summary introduces the invention. So, it is more like setting up for your invention the background does the role of setting up the stage for your invention and for that reason you will not include any description of their invention in this part of the specification.

And you end with the problem that the inventions solved. So, you give the background the field and you say the attempts others have done and you end with the problem as you have defined it in the problem solution statement. So, this sets the stage for introducing your invention.

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## Field of invention (Part of Background)

- Don't introduce the invention
- Deemed part of prior art



In some cases you would also describe the field of invention this is a requirement in the United States, you have to describe the field of invention, but it is not mandatory from the Indian perspective you could have it or you could even include the field as a statement in the background part.

Now, again you should not introduce the invention in this field and whatever you state here can be deemed as a part of the prior art. So, you should be cautious that and understand that the field of invention is nothing, but a part of the background it is not a part of your invention.

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## Summary = Solution

- Present the invention in a narrative form
- Present the invention as restatement of the claims
- From the problem-solution statement
- Begin with one sentence statement of the inventive solution



Now, that we have set the stage for the invention the summary part will describe the solution. So, the problem has been taken care of and you end with the problem as you have defined it, and the next part of your specification which is the summary will now present the solution. Now, the solution has to be presented in a narrative form and it has to be it can be presented as a restatement of the claims.

Now, these are the two approaches to how do you present your solution, you have created a problem solution statement the problem is taken care of in the background part in the summary part you have to immediately impress the reader with what is your invention. So, there are two approaches one, you describe your invention in a narrative form or you rephrase or you restate your claims which will be in claim language.

So, the preference is to describe it in an narrative form because then you have the flexibility of cutting the various longer parts of your claim into easily understandable parts nevertheless holding the invention together.

Now, the solution part comes from the problem solution statement and the solution is what you will start your summary with. Now, ideally you should start your summary with a one sentence statement of the inventive solution and you could in a in a patent specification that is well drafted you will find that the first big opening statement in a summary will be a crisp one sentence statement of the inventive solution what was the. So, because what you have done in the earlier part is you have concluded the earlier part

by ending the earlier part which is the background with the problem with a statement of the problem as you have defined it.

Now, the next sentence should be the solution in a single statement. So, you know you are able to capture the entire scope of your invention in a single statement.

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## Summary = Solution

- Followed by how it addressed the problem
- Describe the invention functionally, avoid limitations
- Refer to the problem solution statement as invention
- Designate optional features with appropriate language:  
“maybe” “optionally” “for example” “if needed”



Now, once you open with a single statement of your invention you can follow it up with how it is at how it has addressed the problem in detail. Now, you can describe the invention functionally and you should avoid limitations in this section, because limitations are created consciously in the claim. So, here you will not do that because here this part could be used for understanding the scope of your claim. So, you have to be careful and drafting this part and you should refer to the problem solution statement as the invention.

Now, here on you will not mention the problem solution statement or there is no problem now you are just going to concentrate on the solution which is the invention. So, from here on you will see you can say the invention or the said invention you can use that language from the summary portion onwards. Now, they could be optional features in your invention, they could be a main claim and they could be dependent claims which bring out the optional features.

Now, when you have to describe the option optional delete last few words when you have to describe the optional features you may use words like maybe or optionally or for example, if needed, which shows that there is a broad summary where you capture the scope of the claim and something extra the features of this invention may be or may include or optionally include or for example,. So, you bring those variants.

So, that it is very clear that the main claim is covered in a crisp summary statement and everything else that you regard as an optional feature is described with appropriate language.