

# Patent Claims Drafting Guide for Startups (India)

Practical guide to understanding and preparing patent claims for Indian startup founders

## HOW TO USE THIS TEMPLATE

1.	Claims are the legal boundaries of your patent — what is inside the claim is protected, everything else is free for others to use.
2.	Broad independent claims define the widest scope; narrow dependent claims are fallbacks if independent claims are rejected.
3.	Indian Patent Office examiners routinely object to claims that are too broad — have a strategy for responding.
4.	Method claims and apparatus claims can protect the same invention from two different angles — draft both.
5.	This guide helps you understand what your patent attorney is doing — it is not a substitute for a qualified patent agent.

## 1. THE ANATOMY OF A PATENT CLAIM

**1.1 Structure of a Claim.** Every patent claim consists of three parts: (a) the **Preamble** — identifies the category of the claim (method, system, apparatus, composition) and optionally describes the context; (b) the **Transitional Phrase** — the most important structural element, defining whether the claim is open or closed; and (c) the **Body** — lists the elements, steps, or features that define the invention.

**1.2 The Critical Transitional Phrase.** The transitional phrase used in a claim determines how broadly it protects the invention:

Transitional Phrase	Meaning	When to Use
"comprising" / "including"	Open-ended — protects the listed elements PLUS any additional elements. A product with more than the listed features still infringes.	Almost always — gives maximum scope
"consisting of"	Closed — protects ONLY the listed elements. A product with additional features does NOT infringe.	Rarely — only when the exact composition is critical (e.g. pharmaceutical formulations)
"consisting essentially of"	Semi-closed — protects the listed elements plus elements that do not materially change the basic characteristics.	Occasionally — intermediate scope

## 2. INDEPENDENT CLAIMS

**2.1 Definition.** An independent claim stands alone — it does not refer to any other claim. It defines the broadest scope of protection. Every patent should have at least one independent claim. Independent claims are typically the first claim of each claim category (method, apparatus, system).

**2.2 Drafting Principles for Independent Claims.** An effective independent claim should: (a) include only the minimum elements necessary to distinguish the invention from prior art — every extra element narrows the scope; (b) use functional language ('configured to', 'adapted to', 'operable to') rather than structural language where possible — this gives more flexibility; (c) avoid unnecessary references to preferred embodiments or specific implementations; and (d) be written to capture the broadest possible interpretation that the prior art permits.

**2.3 Example Independent Claim Structure — Method Claim:**

"1. A computer-implemented method for [achieving the technical result], the method comprising: [first step, described functionally]; [second step, described functionally]; [third step, described functionally]; and [final step producing the technical result]."

**2.4 Example Independent Claim Structure — System/Apparatus Claim:**

"2. A system for [technical function], comprising: a [first component] configured to [perform a function]; a [second component] operably connected to the first component and configured to [perform another function]; a [third component] configured to [produce the technical result] based on output from the second component."

**3. DEPENDENT CLAIMS — BUILDING THE FALLBACK LADDER**

**3.1 Purpose.** Dependent claims add specific features to an independent claim. They serve two critical purposes: (a) they define specific embodiments that may be allowable even if the independent claim is rejected; and (b) they provide stronger protection for specific preferred implementations. A dependent claim is always narrower than the claim from which it depends.

**3.2 How to Draft Dependent Claims.** Each dependent claim starts by referencing its parent: 'The method / system of claim [N], wherein ...' or 'The method / system of claim [N], further comprising ...'. Each dependent claim adds one or more specific features to the parent claim's scope.

**3.3 Example Dependent Claims:**

"3. The method of claim 1, wherein the [first step] further comprises [a specific technical detail of how the step is performed]."  
 "4. The method of claim 1, wherein the [second step] uses a [specific algorithm or technique] to [perform the function]."  
 "5. The system of claim 2, further comprising a [fourth component] configured to [additional function], the [fourth component] being communicatively coupled to the [first component]."

**4. CLAIM CATEGORIES — DRAFT ALL APPLICABLE TYPES**

<pre>Paragraph( 'caseSensitive': 1 'encoding': 'utf8' 'text': 'Claim Type' 'frags': [ParaFrag(__tag__='b', bold=1, fontName='Helvetica-Bold', fontSize=8, greek=0, italic=0, link=[], rise=0, text='Claim Type', textColor=Color( 266667, 266667, 266667, 1), us_lines=[]) 'style': 'bulletText': None 'debug': 0 ) #Paragraph</pre>	<pre>Paragraph( 'caseSensitive': 1 'encoding': 'utf8' 'text': 'What It Covers' 'frags': [ParaFrag(__tag__='b', bold=1, fontName='Helvetica-Bold', fontSize=8, greek=0, italic=0, link=[], rise=0, text='What It Covers', textColor=Color( 266667, 266667, 266667, 1), us_lines=[]) 'style': 'bulletText': None 'debug': 0 ) #Paragraph</pre>	<pre>Paragraph( 'caseSensitive': 1 'encoding': 'utf8' 'text': 'Example Use Case' 'frags': [ParaFrag(__tag__='b', bold=1, fontName='Helvetica-Bold', fontSize=8, greek=0, italic=0, link=[], rise=0, text='Example Use Case', textColor=Col or( 266667, 266667, 266667, 1), us_lines=[]) 'style': 'bulletText': None 'debug': 0 ) #Paragraph</pre>
<p>Method / Process claim</p>	<p>The steps of performing an action or process</p>	<p>Software algorithm, manufacturing process, data processing method</p>

Apparatus / System claim	The physical or logical structure of a device or system	Hardware device, software system architecture, network system
Product claim	A physical article or composition of matter	Manufactured product, chemical compound, physical device
Computer-readable medium claim	A non-transitory storage medium storing instructions	Software stored on disc, chip, or cloud — bridges product and method
Use claim	A specific use of a known compound or product	New medical use of a known compound, new application of a known material

## 5. CLAIM DRAFTING WORKSHEET

Complete this worksheet before your claims drafting session with your patent attorney:

What is the invention in one sentence (no jargon)?	[Write the invention in plain language as if explaining to a non-technical colleague]
What technical problem does it solve?	[The specific technical problem — not the business problem]
What is the minimum set of elements / steps that make it work?	[List only the essential elements — each element you add here narrows your claim]
What are competitors doing now (prior art)?	[Describe known approaches so the attorney knows what to distinguish]
What makes your approach different from prior art?	[The delta — this is what your claim needs to capture]
What are 3–5 preferred specific implementations you want protected?	[These become dependent claims — list specific technical choices]
Are there variations that achieve the same result differently?	[These may be covered by functional language or separate independent claims]
Do you want method, apparatus, and/or system claims?	[Check all that apply: <input type="checkbox"/> Method <input type="checkbox"/> Apparatus/System <input type="checkbox"/> Computer-readable medium <input type="checkbox"/> Product]

## 6. RESPONDING TO OBJECTIONS — COMMON GROUNDS

**Section 2(1)(j) — Lack of novelty (anticipation):** The examiner has found prior art that discloses your invention. Response options: (a) argue the prior art does not disclose all elements of your claim; (b) amend claims to distinguish from the prior art by adding specific technical features; or (c) if the prior art was filed after your priority date, cite the date distinction.

**Section 2(1)(ja) — Lack of inventive step (obviousness):** The examiner argues that combining two or more prior art references would lead a skilled person to your invention. Response: argue that the combination was non-obvious; provide evidence of unexpected results; or show that the prior art taught away from your combination.

**Section 3 — Non-patentable subject matter:** Common for software inventions. Section 3(k) excludes 'mathematical methods, business methods, computer programmes per se'. The key word is 'per se'. Claims directed to a technical implementation (a system doing something technical) are more likely to overcome 3(k) than pure algorithm claims. Frame claims around the technical effect, not the algorithm itself.

**Section 10(4) — Insufficient disclosure:** The specification does not enable the claim scope. Response: amend claims to be no broader than the disclosure, or add examples and embodiments to the specification (permissible at

provisional stage, more restricted at complete stage).

**IMPORTANT NOTE**

Patent claims drafting is a specialised legal skill. This guide explains the concepts so you can have informed conversations with your patent attorney — it is not a substitute for a qualified and registered patent agent. Under the Patents Act 1970, only the applicant or a registered patent agent may represent an applicant before the Patent Office. Not legal advice.