

英文クレームチェックサンプル

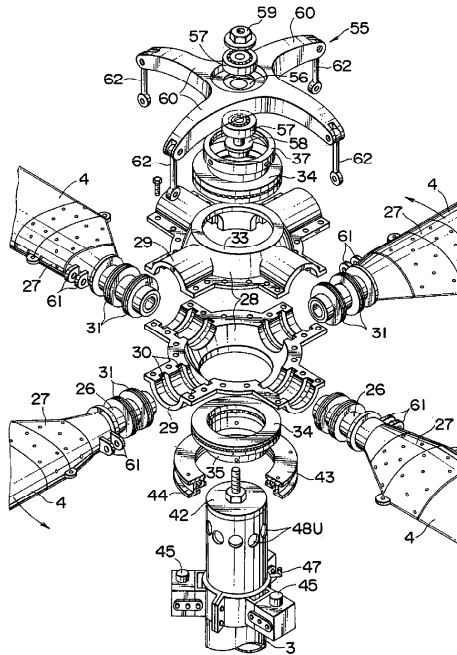
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【請求項 1】

弾性を有する複合材料で構成されている複数のローターブレード（４）と、前記複数のローターブレード（４）を支持するローターヘッド（２９）と、前記複数のローターブレード（４）の迎え角を調節するためのスワッシュプレート（６０、６２）と、メインロータシャフト（３）とを備えるヘリコプタ用の無関節型ローターであって、

前記ローターヘッド（２９）は、前記複数のローターブレード（４）のそれぞれをフラッピングヒンジとドラッグヒンジとを介すことなくフェザリングヒンジ（３０、３１）を介して支持し、

前記スワッシュプレート（６０、６２）は、前記メインロータシャフト（３）の回転軸に対して傾斜することによって前記フェザリングヒンジ（３０、３１）を使用して前記複数のローターブレード（４）の迎え角を調節するヘリコプタ用の無関節型ローター。



[Claim 1]

A hingeless rotor for helicopter having a plurality of rotor blades (4) constituted of elastic composite material, a rotor head (29) that supports the plurality of rotor blades (4), a swashplate (60, 62) for adjusting pitch angles of the plurality of rotor blades (4), and a main rotor shaft (3), wherein

the rotor head (29) supports each of the plurality of rotor blades (4) via a feathering hinge (30, 31) not via a flapping hinge or a drag hinge, and

the swashplate (60, 62) inclines with respect to a rotation axis of the main rotor shaft (3) to adjust the pitch angles of the plurality of rotor blades (4) using the feathering hinges (30, 31).

英文クレーム強化修正提案例：

リバイズ後（修正記録付き）

ヘリコプタ用の無関節型ローターcomprising:

~~弾性を有する複合材料で構成されている複数のローターブレード（４）と、~~

フラッピングヒンジとドラッグヒンジとを介すことなく、前記複数のローターブレード（４）のそれぞれの迎え角を調節可能に支持するフェザリングヒンジ（３０、３１）を介して、前記複数のローターブレード（４）のそれぞれを支持するローターヘッド（２９）と、

~~前記複数のローターブレード（４）の迎え角を調節するためのスワッシュプレート（６０、６２）と、~~
~~メインロータシャフト（３）と~~

~~を備えるヘリコプタ用の無関節型ローターであって、~~

~~前記ローターヘッド（２９）は、前記複数のローターブレード（４）のそれぞれをフラッピングヒンジとドラッグヒンジとを介すことなくフェザリングヒンジ（３０、３１）を介して支持し、~~

前記スワッシュプレート（６０、６２）は、前記メインロータシャフト（３）の回転軸に対して傾斜することによって前記フェザリングヒンジ（３０、３１）を使用して前記複数のローターブレード（４）の迎え角を調節するスワッシュプレート（６０、６２）ヘリコプタ用の無関節型ローター。

リバイズ後（修正記録反映後）

ヘリコプタ用の無関節型ローターcomprising:

弾性を有する複合材料で構成されている複数のローターブレード（４）；

フラッピングヒンジとドラッグヒンジとを介すことなく、前記複数のローターブレード（４）のそれぞれの迎え角を調節可能に支持するフェザリングヒンジ（３０、３１）を介して、前記複数のローターブレード（４）のそれぞれを支持するローターヘッド（２９）；

メインロータシャフト（３）；

前記メインロータシャフト（３）の回転軸に対して傾斜することによって前記フェザリングヒンジ（３０、３１）を使用して前記複数のローターブレード（４）の迎え角を調節するスワッシュプレート（６０、６２）。

修正英文：

[Claim 1]

A hingeless rotor for helicopter, comprising:

a plurality of rotor blades (4) constituted of elastic composite material;

a rotor head (29) that supports each of the plurality of rotor blades (4) via a feathering hinge (30, 31) without via a flapping hinge or a drag hinge, the feathering hinge (30, 31) supporting each of the plurality of rotor blades (4) to have an adjustable pitch angle;

a main rotor shaft (3); and

a swashplate (60, 62) configured to incline with respect to a rotation axis of the main rotor shaft (3) to adjust the pitch angles of the plurality of rotor blades (4) using the feathering hinges (30, 31).

修正提案コメント例：

問題点 1：

米国特許クレームは、プリアンブル (Preamble)、遷移フレーズ (Transitional phrase)、及びボディ (Body) の3つの部分から構成されています。「wherein」も遷移フレーズと解釈されるおそれがあるので (Faber P. 2-17: 添付)、本クレームでは、whereinが遷移フレーズとなります。遷移フレーズの前の部分 (A hingeless rotor for helicopter (中略) the plurality of rotor blades (4),) がプリアンブルで、遷移フレーズの後ろの部分がボディとなります。

ここで、プリアンブルの取り扱いにおいて、日米間に差違がある点に注意する必要があります。日本における特許要件の判断 (新規性や進歩性の判断) では、プリアンブルとボディが同じように扱われます。これに対して、米国では、特許要件の判断 (新規性や非自明性の判断) では、プリアンブルは、無視されることがあります。

米国では、プリアンブルは、法101条のいずれに該当するか (statutory class) を記載する部分で、一般的には、発明の名称が記載される一方、ボディは、特許要件の判断の対象となる発明の構成を記載する部分だからです。

したがって、リバイズ前のクレームでは、プリアンブルに記載された部分が審査の過程で無視され、特許の取得において不利に扱われる可能性があります。一般的に、プリアンブルは、可能な限り短くすることが要請されます。

そこで、プリアンブルを「ヘリコプタ用の無関節型ローター」としました。これにより、全ての構成が特許要件の判断の対象となるので、特許取得を有利にすることができます。権利行使においても無効の主張に対して強い権利となります。

問題点 2：

日本のクレームに多い記載の仕方ですが、プリアンブルの部分に従来技術の構成を記載し、遷移フレーズの後に新規性のある構成を記載する場合があります。このような記載は、日本では問題となりませんが、米国では、問題となる場合があります。

具体的には、ローターヘッド (29) やスワッシュプレート (60、62) の構成がプリアンブルとボディの部分に分断して記載されているため分かり難い記載となっています。

そこで、ローターヘッド (29) やスワッシュプレート (60、62) の構成をまとめることにより、審査官による理解を促します。具体的には、ローターヘッド (29) やスワッシュプレート (60、62) の構成の認定において、それぞれ一カ所にまとめてありますので、その部分を読むだけでその構成を認定することができます。

これにより、審査官による認定ミスを防止することができます。日本の文化では、「行間を読め」という考え方が強いですが、米国の文化は、分かりやすく書いてない記載は書いていないことと同じという考え方が強いという特徴を有しています。

問題点 3 :

本発明の特徴は、フラッピングヒンジとドラッグヒンジとを省略したことを特徴としていますが、それをそのまま「not」を使用して表現すると、不明確として記載不備の認定がなされる場合があります。米国の審査官は、「not」の語を嫌います。一方、本発明は、フラッピングヒンジとドラッグヒンジとを省略したことを特徴としています。

そこで、このような場合には、without のような語を使用して記述します。他の例では、「動かない」は、たとえば immovable で表現すると、審査官の心理的な抵抗を小さくすることができます。

Faber on Mechanics of Patent Claim Drafting

SIXTH EDITION

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These cases show different treatments of preamble recitations. But if the preamble lacks unnecessary words, there is no interpretation issue raised.

There is nothing to gain by having an overlong preamble, with many elements recited. Each may become a claim limitation which a later copyist could avoid using.

Since cases appear to go in different directions as to when a preamble element is to be considered part of a claim, the writer should make that decision and then clearly make it an element in the body of the claim, if that is decided, or not refer to the element at all, or not as more than a workpiece if it is not to be an element of the claim.^{50.1} Recommended preambles for different types of claims are set out in subsequent parts of this treatise.

Summary

Use descriptive preambles defining the nature of the combination claimed. Do not put unnecessary limitations even in the preamble. Assume every word you write in a claim is critical, and may some day be used against your client, to restrict the scope of his invention.

§ 2:5 Transition from Preamble to Body—“Comprising” and Other Open-Ended Terms

Most ordinary combination claims require a transitional word or phrase between the preamble (naming the thing to be claimed) and the body of the claim (defining what the elements or parts of the thing are). Two recommended forms of transition that can be employed for most claims are the phrases: “which comprises” or “comprising.” The choice between the two is immaterial.

The word “comprises” has been construed to mean, in patent law, “including the following elements but not excluding others.”⁵¹ The claim is “open,” not “closed.”⁵² An “open” claim or claim element is

50.1. See *Marrin v. Griffin*, 599 F.3d 1290, 94 U.S.P.Q.2d (BNA) 1140 (Fed. Cir. 2010).

51. M.P.E.P. § 2111.03; *Moleculon Research Corp. v. CBS, Inc.*, 229 U.S.P.Q. (BNA) 805, 812 (Fed. Cir. 1986).

52. M.P.E.P. § 2111.03; *Burke, Inc. v. Everest & Jennings, Inc.*, 991 F.2d 812, 29 U.S.P.Q.2d (BNA) 1393, 1397 (Fed. Cir. 1993) (unpublished); *Special Metals Corp. v. Teledyne Indus., Inc.*, 219 U.S.P.Q. (BNA) 953 (4th Cir. 1983); *Air Prods. & Chems., Inc. v. Chas. S. Tanner Co.*, 219 U.S.P.Q. (BNA) 223 (D.S.D. 1983); *In re Certain Slide Fastener Stringers*, 216 U.S.P.Q. (BNA) 907 (Ct. Int’l Trade 1981). A patent claim “which uses the term ‘comprising,’ is an ‘open’ claim which will read on devices which add additional elements. . . .” *Carl Zeiss Stiftung v. Renishaw PLC*, 945 F.2d 1173, 20 U.S.P.Q.2d (BNA) 1094 (Fed. Cir. 1991); *Abtox, Inc. v. Exitron Corp.*, 43 U.S.P.Q.2d (BNA) 1545, 1548 (Fed. Cir.), *modified on other*

not completely open, in that the specification or the prosecution may preclude an “open” claim from encompassing what had been disavowed as within a claim scope.^{52.1}

Additional elements in an accused device or method do not avoid an “open” claim.⁵³ The clause “comprising . . . a group of first, second, and third blades . . .” covered a four-blade razor. Both “comprising” and “group of” are open-ended claim terms. This was held despite the specification’s repeatedly teaching that the invention was in a three-blade razor.

“Comprises” not only permits additional elements besides those specifically recited, it does not enable removal of elements specifically recited.⁵⁴ All elements recited in the claim are construed as having to be present. For example, in *In re Skvorecz*,^{54.1} the court did not permit the presence of the transition word “comprising” in the claim to mean that not all wire legs need have offsets, despite the claim also saying that “each wire leg” has an offset. The Patent and Trademark Office had incorrectly construed that claim element to find a claim to be anticipated by a prior art reference that had some legs without an offset.

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- grounds*, 46 U.S.P.Q.2d (BNA) 1735 (Fed. Cir. 1997); *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 U.S.P.Q.2d (BNA) 1608, 1613 (Fed. Cir. 1997); *see also* *T.J. Smith & Nephew Ltd. v. Parke, Davis & Co.*, 871 F.2d 1098, 10 U.S.P.Q.2d (BNA) 1946 (Fed. Cir. 1989); *Berenter v. Quigg*, 737 F. Supp. 5, 14 U.S.P.Q.2d (BNA) 1175 (D.D.C. 1988); *Vehicular Techs. Corp. v. Titan Wheel Int’l, Inc.*, 212 F.3d 1377, 54 U.S.P.Q.2d (BNA) 1841 (Fed. Cir. 2000); *CIAS, Inc. v. Alliance Gaming Corp.*, 504 F.3d 1356, 84 U.S.P.Q.2d (BNA) 1737 (Fed. Cir. 2007).
- 52.1. *Simplification LLC v. Block Fin. Corp.*, 593 F. Supp. 2d 700, 93 U.S.P.Q.2d (BNA) 1057 (D. Del. 2009) (precluding a claim element from including an alternative which avoided invalidity); *Trading Tech. Int’l, Inc. v. eSpeed, Inc.*, 595 F.3d 1340, 93 U.S.P.Q.2d (BNA) 1805 (Fed. Cir. 2010) (“comprising” does not cover features not recited in the claim, when the unrecited feature is inconsistent with a recited feature); *Simplification LLC v. Block Fin. Corp.*, 593 F. Supp. 2d 700, 93 U.S.P.Q.2d (BNA) 1057 (D. Del. 2009) (disallowed alternative not in claim due to transition “comprising”).
53. *In re Skvorecz*, 580 F.3d 1262, 92 U.S.P.Q.2d (BNA) 1020 (Fed. Cir. 2009); *Ortho-McNeil Pharm. Inc. v. Teva Pharm. Indus. Ltd.*, 344 F. App’x 595, 93 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 2009); *Gillette Co. v. Energizer Holdings, Inc.*, 405 F.3d 1367, 74 U.S.P.Q.2d (BNA) 1586 (Fed. Cir. 2005); *Power Mosfet Techs. LLC v. Siemens AG*, 378 F.3d 1396, 72 U.S.P.Q.2d (BNA) 1129 (Fed. Cir. 2004); *Smith & Nephew, Inc. v. Ethicon, Inc.*, 276 F.3d 1304, 61 U.S.P.Q.2d (BNA) 1065 (Fed. Cir. 2002); *Dow Chem. Co. v. Sumitomo Chem. Co.*, 59 U.S.P.Q.2d (BNA) 1609, 1620 (Fed. Cir. 2001); *Vivid Tech., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 811, 53 U.S.P.Q.2d (BNA) 1289, 1301 (Fed. Cir. 1999).
54. *Power Mosfet Techs. LLC v. Siemens AG*, 378 F.3d 1396, 72 U.S.P.Q.2d 1129 (Fed. Cir. 2004).
- 54.1. *In re Skvorecz*, 580 F.3d 1262, 92 U.S.P.Q.2d (BNA) 1020 (Fed. Cir. 2009).

“Comprising” and “consists” may both be present in a claim:

A purified oligonucleotide comprising at least a portion of . . .
wherein said portion consists of . . .

The Federal Circuit held that “the term ‘consists’ limits the ‘said portion’ language to the subsequently recited numbered nucleotides, but the earlier term ‘comprising’ means that the claim can include that portion plus other nucleotides.”⁵⁵

When “comprising” is used as a transition word in a method claim, that claim encompasses a method including additional steps to those expressly recited in the claim, including a step preceding or following one of the steps expressly recited.⁵⁶

Although “comprising” raises the presumption that a list of elements following that transition word is nonexclusive and may include other elements, to infringe the claim, every recited element must be present, meaning that the open transition does not permit an accused method or device to infringe if one of the recited elements is absent.^{56.1}

Further, “comprising the steps of” does not convert the claim element to step-plus-function form under section 112, paragraph 6.⁵⁷

Other words, less often used, have been given the same meaning in patent claim interpretation as “comprising”:⁵⁸ “including,”⁵⁹ “having,”⁶⁰ “containing,”⁶¹ “characterized by” or “characterized in that” (which is a transition used in claims in non-U.S.

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55. *In re Crish*, 393 F.3d 1253, 1257, 73 U.S.P.Q.2d (BNA) 1364 (Fed. Cir. 2004); see *Ortho-McNeil Pharm. Inc. v. Teva Pharm. Indus. Ltd.*, No. 2007-1303, ___ F.3d ___, ___ U.S.P.Q.2d (BNA) ___ (Fed. Cir. Aug. 26, 2009).
56. *Invitrogen Corp. v. Biocrest Mfg., LP*, 327 F.3d 1364, 66 U.S.P.Q.2d (BNA) 1631 (Fed. Cir. 2003).
- 56.1. *Ricoh Co. v. Quanta Computer, Inc.*, 550 F.3d 1325, 89 U.S.P.Q.2d (BNA) 1577 (Fed. Cir. 2008).
57. *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 381 F.3d 137, 72 U.S.P.Q.2d (BNA) 1333 (Fed. Cir. 2004).
58. M.P.E.P. § 2111.03.
59. *Lucent Techs., Inc. v. Gateway, Inc.*, 525 F.3d 1200, 87 U.S.P.Q.2d (BNA) 1001 (Fed. Cir. 2008) (“including” means “comprising,” not “involving as a factor”); *SanDisk Corp. v. Memorex Prods. Inc.*, 415 F.3d 1278, 75 U.S.P.Q.2d (BNA) 1475 (Fed. Cir. 2005); *In re Certain Slide Fastener Stringers*, 216 U.S.P.Q. (BNA) 907 (Ct. Int’l Trade 1981); *Burke, Inc. v. Everest & Jennings, Inc.*, 991 F.2d 812, 29 U.S.P.Q.2d (BNA) 1393, 1397 (Fed. Cir. 1993) (unpublished).
60. *In re Certain Slide Fastener Stringers*, 216 U.S.P.Q. (BNA) 907 (Ct. Int’l Trade 1981); *Compro-Frank Corp. v. Valk Mfg. Co.*, 216 U.S.P.Q. (BNA) 531 (E.D. Pa. 1982). *But see Lampi Corp. v. Am. Power Prods., Inc.*, 228 F.3d 1365, 56 U.S.P.Q.2d (BNA) 1445, 1453–54 (Fed. Cir. 2000).
61. *Mars, Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 71 U.S.P.Q.2d (BNA) 1837 (Fed. Cir. 2004). Some claims had “containing at least . . .” while others had “containing.” The latter claims were still considered to be open-ended.

patent applications by foreign attorneys), and even “wherein.”⁶² However, “comprising” is recommended simply because it has become a standardized word of the patent art. “Comprised of” is also an acceptable variation of “comprising,” although a district court misconstrued it as closed-ended, and the Federal Circuit corrected that.⁶³

*Lampi Corp. v. American Power Products, Inc.*⁶⁴ illustrates the risk a claim writer takes by using a word, here “having” rather than “comprising,” as an open-ended transition word.⁶⁵ The court spent much time analyzing the specification to see if the word “having” was open-ended in a claim. The court also relied on a dependent claim that used the word “comprising” as a basis for finding the “having” in the parent claim open-ended. So, why take a risk in claiming? The Federal Circuit yet again construed “having,”⁶⁶ saying that word does not presumptively “open” the body of the claim. It is not as strongly open a word as “comprising.” The court therefore had to examine the claim in context to determine the limits of “having.”

That other transition words can present unnecessary claim interpretation problems later is seen in a case construing “providing” as having a different meaning than “including” or “containing,” which were the words used in the specification.⁶⁷

For example, a claim to “A writing implement *comprising* a pencil with an eraser fastened at one end” covers any type of eraser-tipped pencil: wood, mechanical, etc.; with or without a clip to hook it in one’s pocket; and whether or not additional features or additions are patentable to later inventors. Thus, in patent shorthand, “the combination comprising A + B (individual elements or parts)” covers A + B + C . . . or A + B’ (a variation of element B falling under the claim definition). In general, the technique of writing broad claims is to claim the minimum number of elements that will function in the combination, each defined as broadly as the prior art and claim drafting doctrines will allow. In that manner, the main “point of the invention,” or “inventive concept,”⁶⁸ should be crystallized in concrete terms.

62. *Ex parte Grasselli*, 231 U.S.P.Q. (BNA) 395 (B.P.A.I. 1983).

63. *CIAS, Inc. v. Alliance Gaming Corp.*, 504 F.3d 1356, 84 U.S.P.Q.2d (BNA) 1737 (Fed. Cir. 2007).

64. *Lampi Corp. v. Am. Power Prods., Inc.*, 228 F.3d 1365, 56 U.S.P.Q.2d (BNA) 1445 (Fed. Cir. 2000).

65. M.P.E.P. § 2111.03.

66. *Crystal Semiconductor Corp. v. TriTech Microelectronics Int’l, Inc.*, 57 U.S.P.Q.2d (BNA) 1953, 1958–59 (Fed. Cir. 2001).

67. *Arlaine & Gina Rockey, Inc. v. Cordis Corp.*, 175 F. App’x 329 (Fed. Cir. 2006).

68. Note, some attorneys sometimes speak loosely of “the invention,” meaning the point of novelty or inventive concept, rather than merely the technical subject matter to be patented, as the word “invention” is defined in the statute. This double or triple meaning for the word “invention” is confusing and should be avoided.