

Claim Drafting Exercise

True or False. Please apply current US law.

1. “Comprising” is an open ended transition phrase and does not exclude additional method steps or additional elements. [True]
2. “Consisting of” is a closed ended phrase and excludes additional steps, elements or ingredients not specified in the claims. [True]
3. The following is a proper preamble of a multiple dependent claim:
  - a. A device as in claim 3, 4 and 5, [False, “any one of claims 3, 4 and 5”]
4. The following is a proper preamble of a multiple dependent claim:
  - a. A device as in the preceding claims, [False, “any one of the preceding claims”]
5. The following has no formality issues. :

Claim 1 The device comprising A, B and C .... [False, The → A]
6. The following has no formality issues. :

Claim 3. A device as in claim 6, wherein .... [False, A → The]
7. The following has no formality issues.

Claim 1. A device consisting of A, B and C.

Claim 2. The device as in claim 1 further consisting D. [False, “consisting of” in claim 1 excludes other elements. It is therefore not ok to further add additional elements]
8. The effective filing date may not mean the actual filing date. [True]
9. Prior art can be equally interpreted as “any publication published earlier than the effective filing date”. [False, not only publication but also public sale and use]
10. In order to get claim allowed, the claims should be drafted in a way that they are distinguished from prior art, i.e., novel under 35 USC 102 and not obvious under 35 USC 103. [True]