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Design Patent Drawings

Overview: The drawings are the critical part of a design patent application, because the drawings constitute the claim. U.S. design patent requirements are different from requirements in other countries. Here are six tips for adapting drawings from a non-U.S. priority application to U.S. design patent requirements.

Six Drawing Tips

U.S. patent law has strict requirements for design patent drawings. Nothing in the drawings can be left to conjecture. U.S. design patent examiners have an amazing ability to identify even the smallest detail in a drawing that might be unclear.

The most common rejections for design patent applications are under 35 U.S.C. § 112 due to insufficient disclosure, non-enablement, inconsistency, and/or ambiguousness. Objections are raised if something is incorrect, but the drawing is nevertheless understood. Although many rejections and objections can be overcome by submitting replacement sheets, it is best to file the application with the best drawings possible to try to avoid an office action.

- (1) The most common rejections are for non-enablement and indefiniteness under 35 U.S.C. § 112 (a) and (b), if the design is not fully disclosed. If you must guess what a shape is, or how deep a recess is, even after reviewing all figures, you are improperly “resorting to conjecture.” To avoid these, consider the following:
 - In the as-filed application, include not only the usual six side views and one perspective view (showing three sides), but also a bottom perspective view (showing the other three sides).
 - In the as-filed application, provide a cross sectional view of any complex recessed area, for full disclosure of the configuration.
 - Change the solid lines of unclaimed (unimportant) elements to broken lines, and omit shading from an unclaimed surface. This can be done in the as-filed application, or by an amendment. Enablement of an unclaimed element is not required. Reducing to broken lines will broaden the scope of the claim.
- (2) A design may be rejected under 35 U.S.C. § 112 if the figures are inconsistent and do not agree with each other. Sometimes a feature shown in one figure is different from another figure. The inconsistent feature usually may be reduced to broken lines in all figures and shading omitted, which makes the design more general.
- (3) A design may be rejected for ambiguity under 35 U.S.C. § 112 if an element’s shape cannot be determined because the drawings do not have enough information. This can happen if one of the views is omitted or an element is partly covered. Converting the ambiguous element to broken lines can avoid the rejection.
- (4) An objection may be based on incorrect shading (e.g., a rounded surface shown as flat; shading is omitted), or when an element changes position in different views. In the figures, correcting the shading, or making the element have the same position in the views, can avoid/overcome an objection.
- (5) An objection may be caused by lines which are not clear and sharp. Try magnifying the drawings to 300%; if a line is blocky, it should be objected to as not clear. Try a better resolution drawing; avoid grayscale.
- (6) The examiner should object to text in a drawing sheet, other than the figure number (e.g., “FIG. 1”). Omit text.

If an office action issues, it should specify all deficiencies in the drawings and suggest how the rejection/objection may be overcome. Typically a rejection or objection is overcome by reducing a feature in solid lines to broken lines, which disclaims the feature and thereby broadens the scope of the claim. Interviewing an examiner to propose drawing changes is an effective way to ensure rejections are overcome without introducing improper new matter.