

Design Patent ProGuide - Descriptive Statements  
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Quick Start Guide

DO:

Include descriptive statements only when they serve a permitted purpose. Use descriptive statements only if they fall within the limited categories allowed by USPTO practice (e.g., figure descriptions, broken line statements, nature and intended use statements, mirror image statements, or characteristic feature statements).

Ensure every descriptive statement is fully supported by the drawings. Anything described must be clearly and accurately shown in the figures.

Keep descriptive statements neutral, factual, and minimal. Statements should describe what is shown, not why it is shown or what it accomplishes.

Remove unnecessary descriptive statements whenever possible. If a statement adds no clarification beyond what is evident from the drawings, it should be omitted.

Verify descriptive statements after election of embodiment. After election, remove all statements referring to non-elected embodiments or canceled figures.

Use characteristic feature statements sparingly and carefully. If included, they must describe ornamental appearance only and may later limit claim scope.

Include a broken line statement only when broken lines appear in the drawings. The statement must accurately correspond to the elected embodiment.

DON'T

Don't use descriptive statements to explain function, operation, or use. Design patents protect ornamental appearance, not how an article works or is used.

Don't restate what is already obvious from the drawings. Statements describing symmetry, identical features, contours, shading meaning, or line conventions that are visually apparent are redundant and objectionable.

Don't explain drafting conventions. Do not describe what solid lines, broken lines, shading, hatching, contour lines, transparency, or opacity "represent." These conventions are well understood.

Don't include orientation or "reference only" disclaimers. The drawings define orientation. Statements disclaiming "top," "bottom," "left," or "right" are unnecessary and improper.

Don't describe unshown portions of the article. Unillustrated portions are inherently unclaimed and generally require no narrative description.

Don't suggest alternative embodiments, variations, or future modifications. Statements referring to other embodiments, equivalents, combinations, scaling, or contemplated designs are prohibited.

Don't reserve rights or anticipate future amendments. Statements purporting to reserve the right to amend drawings, convert line types, or file continuations are extraneous and improper.

Don't include mirror image statements when both sides are shown. Mirror image statements are permitted only for unillustrated portions whose mirror relationship is evident from the drawings.

Don't attempt to define boundaries through narrative description. Boundary-line practice is conveyed exclusively through the drawings, not descriptive statements.

Don't include legal, ownership, or administrative language. Copyright, trademark, ownership notices, examiner authorization language, or prosecution strategy statements have no place in a design patent specification.

## 1. Introduction and Theory

Descriptive statements are one of the most common sources of examiner objections in design patent prosecution. Seemingly harmless language added to "clarify" a design or "preserve options" frequently triggers office actions requiring amendment. Understanding when descriptive statements are necessary, and when they create more problems than they solve, is essential to efficient prosecution.

In design patent practice, the term "descriptive statements" is the most accurate and comprehensive way to refer to both the optional and, in some cases, mandatory narrative statements permitted in a specification under MPEP § 1503.01(II)(A). This umbrella category includes several distinct subtypes: figure descriptions (mandatory), descriptions of the appearance of claimed portions not illustrated, descriptions disclaiming unshown portions, broken line statements (mandatory when broken lines are present), nature and intended use statements, and characteristic feature statements.

Each descriptive statement serves a different purpose, whether it is highlighting a feature of novelty, clarifying what broken lines represent, describing the article's nature and intended use, or disclaiming unshown portions. The unifying characteristic is that all of these statements provide

explanatory context for the drawings without introducing new matter, and they are governed by the same general rules regarding clarity, accuracy, and compliance with the MPEP.

Both practitioners and examiners sometimes use the term “feature statement” loosely to refer to any of these descriptive subtypes, or even to descriptive statements generally. This informal usage can cause confusion, because “feature statement” is, strictly speaking, only one specific type: the “characteristic features” statement contemplated by 37 CFR 1.71(c). Using “descriptive statements” as the overarching term avoids this ambiguity and helps ensure precise communication. By recognizing that figure descriptions, broken line statements, nature and intended use statements, and characteristic feature statements are all simply different forms of descriptive statements, practitioners can better navigate MPEP guidance and reduce misunderstandings in prosecution.

Note: This ProGuide is subject to certain limitations, which are set forth in Appendix 3 of this document.

## 2. Recommended Forms and Drafting Notes

This section provides examples of permissible descriptive statement forms when such statements are necessary.

### 2.1 Figure Descriptions

“FIG. 1 is a front elevation view of the [article].” Figure descriptions must use neutral, objective phrasing and should not include possessive, promotional, or ownership language such as ‘our design,’ ‘the invention,’ or ‘embodying the applicant’s design.’”

### 2.2 Broken Line Statements

“The broken lines depict portions of the article that form no part of the claimed design.”

### 2.3 Nature and Intended Use

“An ornamental design for an eye mask for sleeping.”

### 2.4 Mirror Image Statements

“The left side is a mirror image of the right side.”

Note: This statement is permissible only if the left side is not illustrated and its mirror-image relationship is evident from the shown right side. If both sides are illustrated, this statement is redundant and must be removed.

### 2.5 Characteristic Feature Statements

“The characteristic feature of the design resides in the configuration shown in FIG. 3.” All such statements should be concise, neutral, and strictly limited to ornamental appearance.

### 3. Descriptive Statement Rules and Guidance

#### 3.1 Drawings Are the Primary Description of the Design

The drawings are the primary and usually the only necessary description of a design. Descriptive statements are optional and should be used only to clarify what is already shown, not to supplement or replace the drawings.

#### 3.2 Descriptive Statements Must Not Broaden Claim Scope

A descriptive statement may not broaden the scope of the claimed design beyond what is shown in the drawings. Statements suggesting alternative embodiments, variations, equivalents, scaling, or future modifications are improper.

Practice Note: Certain descriptive statements may appear in an application as filed solely to preserve antecedent basis for later amendment, but such statements are routinely objected to and must be removed prior to allowance.

#### 3.3 Descriptive Statements Must Be Supported by the Drawings

Every feature, view, or characteristic described in a descriptive statement must be clearly and accurately shown in the drawings. Statements describing features, materials, functions, or embodiments not depicted are not permitted.

#### 3.4 Only Permitted Categories of Descriptive Statements May Be Used

Descriptive statements are limited to the categories expressly permitted by MPEP § 1503.01(II), including figure descriptions, disclaimers of unshown portions, broken line statements, nature and intended use statements, mirror image statements, and characteristic feature statements.

#### 3.5 New Matter May Not Be Introduced Through Descriptive Statements

A descriptive statement may not be added or amended after filing if it introduces new matter (i.e., information not reasonably conveyed by the original drawings or specification). Descriptions of unillustrated claimed portions are permissible only if included in the application as originally filed. However, amendments that merely clarify what is already shown in the original drawings without adding new subject matter may be permissible (e.g., correcting an inaccurate figure description to match what is actually depicted).

#### 3.6 Functional or Structural Descriptions Are Prohibited

Descriptive statements may not describe how the article works, operates, moves, or achieves a functional result. Functional and structural descriptions belong to utility patent practice and are improper in design patent specifications.

### 3.7 Statements Must Not Restate What Is Obvious from the Drawings

Statements that merely restate features, symmetry, shading conventions, line meanings, or ornamental properties clearly visible in the drawings are extraneous and must be removed.

### 3.8 Orientation and Directional Disclaimers Are Improper

Statements disclaiming orientation or direction (e.g., “the terms top, bottom, left, and right are used for reference only”) are unnecessary and improper because the drawings themselves define the orientation of the design.

### 3.9 Statements Explaining Drafting Conventions Are Improper

General explanatory statements about drafting conventions (e.g., “Solid lines indicate claimed subject matter” or “Shading represents surface contour”) are improper and unnecessary because these conventions are well understood in design patent practice. However, this prohibition does not preclude the specific, required broken line statement that identifies what particular subject matter is depicted in broken lines in the specific design (e.g., “The broken lines depict portions of the article that form no part of the claimed design”).

### 3.10 Broken Line Statements Are Permissible Only When Broken Lines Are Present

A broken line statement may be included only if broken lines appear in the drawings. If no broken lines are shown, any broken line statement must be removed.

### 3.11 Statements Referring to Non-Elected Embodiments Must Be Removed

Following an election of embodiment, any descriptive statements referring to non-elected embodiments or their figures must be removed.

### 3.12 Mirror Image Statements Are Limited

A mirror image statement is permitted only as a narrow exception where: (1) the mirror image view or portion is not illustrated, (2) the mirror relationship would be evident from the illustrated embodiment, and (3) the shape and appearance of the unillustrated portion are self-evident from the drawings. Such statements must be factually accurate and may not suggest variations or alternatives beyond what is clearly shown. This narrow exception applies only to unillustrated portions whose mirror-image appearance is evident from the illustrated embodiment, and does not permit descriptive statements merely restating symmetry or mirror relationships already shown in the drawings.

### 3.13 Characteristic Feature Statements Must Be Used with Caution

Characteristic feature statements are optional, must describe ornamental appearance only, and may later limit claim scope. Although characteristic feature statements may later affect claim

construction, an examiner must always evaluate patentability based on the overall visual impression of the design as shown in the drawings. Although such statements do not control patentability during examination, they may later influence claim construction in litigation and therefore should be used sparingly and with precision.

### 3.14 Statements Reserving Rights or Anticipating Future Amendments Are Improper

Statements reserving the right to amend drawings, convert line types, claim equivalents, or file future applications are extraneous and improper.

### 3.15 Descriptive Statements Must Be Accurate and Non-Confusing

Any descriptive statement that creates ambiguity, confusion, or inconsistency between the specification and the drawings is objectionable and must be removed.

### 3.16 Boundary Line Statements

While the physical path and geometric configuration of a boundary are conveyed exclusively through the drawings, a concise narrative statement in the specification is required to define the functional role of "dot-dash" lines used as boundaries. Such statements are not merely descriptive but are procedurally necessary to distinguish a boundary from environmental structure or unclaimed portions of the article.

When a boundary line is used to separate claimed and unclaimed surfaces where no physical edge exists, the specification should include a statement such as: *"The dot-dash broken lines define the bounds of the claim and form no part thereof"*. A statement is improper if it attempts to characterize, explain, or add substantive structural or functional detail to the boundary that is not visually apparent in the original disclosure.

Boundary line statements must be strictly supported by the original visual disclosure. Any attempt to "subdivide" an integrated surface into smaller claimed regions after filing where no natural physical break or plane change was originally shown will be rejected as new matter under 35 U.S.C. § 132. The absence of a clarifying statement for "dot-dash" lines may lead to a rejection under 35 U.S.C. § 112(b), as the examiner cannot determine the "metes and bounds" of the claim from the drawings alone.

### 3.17 Multiple Embodiment Practice

When an application contains multiple distinct designs, the examiner will require election of a single embodiment for examination.

Before election:

- Figure descriptions for all embodiments are permissible and necessary
- Descriptive statements may reference different embodiments if they correspond to illustrated figures

- Statements such as "FIG. 1 shows a first embodiment" are permissible at this stage

After election:

- All figure descriptions and descriptive statements referring to non-elected embodiments must be removed
- Only the elected embodiment may be described in the specification
- Canceled figures must be removed from the figure description section

Statements suggesting alternative embodiments or variations (e.g., "The design may also be embodied as...") are never permissible, whether before or after election, as they attempt to broaden scope beyond what is illustrated.

### 3.18 Nature and Intended Use Statements

A statement denoting the nature and intended use of the article is permissible but not required if this information is included in the claim preamble. If provided:

- It must identify the article and its intended use at a high level
- It must not describe function, operation, or performance
- It should be consistent with the claim preamble
- It may be requested by the examiner during initial docketing if the article's nature is unclear from the drawings

Example - Acceptable: "An ornamental design for a protective case for a mobile phone"

Example - Improper: "An ornamental design for a protective case that prevents screen breakage through shock-absorbing materials"

The improper example describes function and materials rather than merely identifying the article.

### 3.19 Descriptive Statements Must Conform to Corrected Drawings

When drawings are corrected in response to examiner objections:

- Figure descriptions must be updated to match the corrected views
- Any descriptive statements referring to corrected features must be revised for accuracy
- If views are canceled or redesignated, corresponding figure descriptions must be removed or renumbered
- After drawing corrections, verify that all descriptive statements remain fully supported by and consistent with the revised drawings

### 3.20 Language That Suggests Figure-Combinations or an Unclear Relationship Between Figures Can Create § 112(a)/(b) Indefiniteness

Where an application includes a “special description” (or similar narrative) that suggests the claim “encompasses” aspects of multiple figures “alone and/or in combination,” the statement may be treated as unnecessary and indefinite language that makes the relationship between figures ambiguous, and can contribute to a § 112(a) and (b) rejection (non-enablement / indefiniteness), particularly where it becomes difficult to determine the scope of the claimed design.

Source: Application 29/857,485 – examiner: “Relationship of figures is ambiguous... figure descriptions and special description are unclear... special description includes unnecessary and indefinite language,” and identifies the “alone and/or in combination” phrasing as the removable statement.

#### 4. Application of Rules and Guidance to Objections and Rejections

##### (Representative Examiner Objections to Improper Descriptive Statements)

The following examples illustrate common examiner objections to impermissible descriptive statements. Each example reflects a recurring pattern where applicants include unnecessary, redundant, or improper narrative language that does not clarify the drawings and instead creates ambiguity, expands scope, or introduces prohibited content.

##### 4.1 Orientation Disclaimer Statements (“Reference Only” Language)

In Application No. 29/823,820, the examiner objected to the descriptive statement: “The terms top, left, right, bottom, rear, side, and front are used for reference only and do not limit the claimed design.” The objection reflects the USPTO’s position that the drawings inherently establish orientation and that disclaimers attempting to neutralize directional terminology are unnecessary and improper because they do not clarify the design and may create confusion as to how the figures should be interpreted. Rule 3.1, Rule 3.7, Rule 3.8.

In Application No. 29/671,610, the examiner objected to the descriptive statement: “The labels used herein to describe orientation (e.g., front, top, left, right) are merely for reference and are not intended to limit the interpretation of the design.” The statement was treated as an impermissible attempt to disclaim the significance of orientation language, even though the drawings themselves define the article’s position and perspective. Such disclaimers are consistently regarded as redundant and improper in design patent practice. Rule 3.1, Rule 3.7, Rule 3.8.

##### 4.2 Drafting Convention Explanations (Shading, Contour, Line Meaning)

In Application No. 29/823,820, the examiner objected to the descriptive statement: “Shading lines shown in the drawings represent surface contours, or transparency, translucency, or opacity, and not surface ornamentation, and such lines, in and of themselves, are not part of the claimed design.” The objection reflects the general USPTO view that shading conventions are already understood in design patent practice, and explanatory statements attempting to define

what shading “represents” are extraneous, unnecessary, and improper because they do not provide permissible clarification of the claimed design. Rule 3.7, Rule 3.9, Rule 3.15.

In Application No. 29/728,729, the examiner objected to the descriptive statement: “The oblique shade lines represent transparent surfaces of the claimed design.” The statement was improper because it attempted to explain the meaning of shading through narrative language, rather than allowing the drawings to control the visual disclosure. Such statements are routinely objected to because they introduce interpretive language that can create ambiguity or appear to add claim-relevant information. Rule 3.7, Rule 3.9, Rule 3.15.

In Application No. 35/514,441, the examiner objected to the descriptive statement: “Parallel thinner lines represent shading and do not illustrate ornamentations or decorations.” The examiner treated this as an impermissible drafting convention explanation because it attempts to narratively define what a drawing technique means, rather than simply presenting the drawing disclosure. These types of statements are consistently regarded as unnecessary because the USPTO already recognizes the conventions of shading and contour representation. Rule 3.7, Rule 3.9, Rule 3.15.

In Application No. 29/818,236, the examiner objected to the descriptive statement: “The above-defined drawings incorporate solid lines and hatching to represent claimed design.” The statement was improper because it merely restated the well-known design patent convention that solid lines depict claimed subject matter and hatching is a drawing technique. Examiners treat such statements as redundant and unnecessary because they do not clarify what is actually claimed beyond what the figures already convey. Rule 3.1, Rule 3.7, Rule 3.9.

In Application No. 29/762,035, the examiner objected to the descriptive statement: “The oblique broken line hatch shading in FIGS. 9-11 illustrates interior structure of the HEAD HOLDER PAD that forms no part of the claimed design.” The statement was improper because hatch shading conventions are already understood and the statement unnecessarily attempts to explain how the drawing should be interpreted. Where broken lines already appear, the proper approach is to use only the required broken line statement, rather than providing additional narrative about hatch shading meaning. Rule 3.7, Rule 3.9, Rule 3.15.

#### 4.3 Redundant Statements Disclaiming Unshown Portions

In Application No. 29/823,820, the examiner objected to the descriptive statement: “Portions of the CONTAINER not shown in the drawings form no part of the claimed design.” The objection reflects the principle that unshown portions are inherently not claimed, and therefore narrative statements disclaiming them are generally redundant unless needed for a specific permitted purpose. Examiners often object where such statements do not add meaningful clarification and merely restate the fundamental rule that the drawings define the claim. Rule 3.1, Rule 3.7, Rule 3.15.

#### 4.4 Broadening or Reservation Language (Future Amendments, Continuations, Line-Type Conversions)

In Application No. 29/823,820, the examiner objected to the descriptive statement: “Applicant reserves the right to amend this application, and/or to file one or more divisional or continuation applications, to specifically claim or disclaim any subject matter represented by solid lines or broken lines in the drawings. Accordingly, the disclosure and description include any version of the drawing figures wherein any solid line(s) is/(are) convertible to broken lines and vice-versa, and wherein any lines may be deleted.” The statement was improper because it attempted to reserve rights already granted by law while also suggesting claim scope flexibility beyond what was actually disclosed. Such statements are routinely objected to because they imply alternative embodiments and future modifications, which are not permissible descriptive statements in design patent practice. Rule 3.2, Rule 3.14, Rule 3.15.

In Application No. 29/671,610, the examiner objected to the descriptive statement: “Applicant reserves the right to convert a portion or portions of any of the broken lines to solid lines such that the features described by those lines then form a part of the claimed design; and/or a portion or portions of any of the solid lines to broken lines such that the features described by those lines no longer form part of the claimed design.” The objection reflects the USPTO’s position that applicants may not narratively suggest future claim manipulation through line-type conversions because such language implies alternative claim scope and unclaimed embodiments. These statements are consistently treated as improper broadening language. Rule 3.2, Rule 3.14, Rule 3.15.

In Application No. 29/805,771, the examiner objected to the descriptive statement: “Any combination of the illustrated features, including claimed features and unclaimed features... may be claimed in this application or a continuing application...” The statement was improper because it attempted to reserve broad claim scope across unspecified combinations of features, which directly conflicts with the rule that the design claim is limited to the specific overall appearance shown. Statements suggesting claimable “combinations” are routinely objected to as impermissible broadening language. Rule 3.2, Rule 3.14, Rule 3.15.

In Application No. 29/805,771, the examiner objected to the descriptive statement: “Our design is not limited to the exact details shown in the drawings, since equivalents and colorable imitations thereof will be evident...” This language was improper because it borrows utility patent-style scope expansion concepts and implies that the design extends beyond what is shown. Examiners routinely object to “equivalents” and “colorable imitation” language because it suggests a broader design than the drawings disclose and creates ambiguity in the public notice function of the figures. Rule 3.2, Rule 3.14, Rule 3.15.

In Application No. 29/699,253, the examiner objected to the descriptive statement: “Other embodiments not presently claimed include broken lines in place of one or more solid lines...” This statement was improper because it expressly describes other embodiments not illustrated in the drawings and attempts to preserve claim flexibility beyond the disclosed design. Design patent specifications may not include narrative statements suggesting undisclosed alternative embodiments. Rule 3.2, Rule 3.14, Rule 3.15.

In Application No. 29/736,537, the examiner objected to the descriptive statement: “...other embodiments to be contemplated...” The statement was improper because it suggests

additional embodiments beyond those shown in the drawings, which is not permitted in design patent practice. Such statements are routinely objected to because they introduce ambiguity and imply claim scope beyond the disclosed ornamental design. Rule 3.2, Rule 3.14, Rule 3.15.

#### 4.5 Improper Examiner Authorization / Prosecution Strategy Language

In Application No. 29/823,820, the examiner objected to the descriptive statement: “To the extent a Patent Office Examiner objects to any of the aforementioned paragraphs 0008 through 0011, the Examiner is authorized to delete those paragraph(s) and this paragraph, without prejudice, without disclaimer or disavowal as to any claim scope, and merely to advance prosecution.” This statement was improper because it adds administrative and procedural language unrelated to the ornamental design disclosure and attempts to control prosecution consequences through narrative disclaimers. Such statements are routinely objected to because they are extraneous, confusing, and not within any permitted category of descriptive statement. Rule 3.4, Rule 3.15.

#### 4.6 Broken Line Statements Included When No Broken Lines Exist

In Application No. 29/758,375, the examiner objected to the descriptive statement: “The portions shown in broken lines are included for illustrative purposes only and form no part of the claimed design.” The statement was improper because no broken lines appeared in the elected embodiment, making the broken line statement unsupported by the drawings and therefore objectionable. In design patent practice, broken line statements are permissible only when broken lines are actually present in the figures being examined. Rule 3.3, Rule 3.10, Rule 3.15.

#### 4.7 Over-Descriptive Statements (Redundant Descriptions of What is Obvious)

In Application No. 29/814,025, the examiner objected to the descriptive statement: “The buckles on the front and bottom of the SPLIT TOP FITTED SHEET MATTRESS PROTECTOR are identical.” The statement was improper because it restated a feature relationship that was already apparent from the drawings. Examiners routinely object to statements describing symmetry, identity, or repetition where the drawings themselves clearly convey the same information, because such language is unnecessary and can introduce interpretive ambiguity. Rule 3.1, Rule 3.7, Rule 3.15.

In Application No. 29/698,818, the examiner objected to the descriptive statement: “As is evident from a comparison of FIGS. 3 and 4...” The objection reflects the USPTO’s position that figure relationships should be conveyed by the drawings themselves, and narrative commentary about what is “evident” from comparing figures is unnecessary and improper because it adds nothing to claim clarity and may create confusion. Rule 3.1, Rule 3.7, Rule 3.15.

#### 4.8 Mirror Image Statements Improperly Used When Both Sides Are Shown

In Application No. 29/762,035, the examiner objected to the descriptive statement: “The left side of the HEAD HOLDER PAD is mirror symmetrical to the right side of the HEAD HOLDER PAD.” The statement was improper because both sides were illustrated, making the

mirror-image relationship (if any) already apparent from the drawings. Mirror image statements are only permitted when an unillustrated portion is being described and its mirror relationship is evident from what is shown. Rule 3.7, Rule 3.12, Rule 3.15.

#### 4.9 Functional or Improper Non-Ornamental Commentary

In Application No. 29/695,069, the examiner objected to the descriptive statement: “For clarity, the back side of the cartridge...” The objection reflects the examiner’s position that narrative statements attempting to clarify structure or function often stray into utility-patent-type explanation, rather than permissible ornamental design disclosure. Such language is routinely treated as confusing and improper where it implies structure, function, or use rather than describing what is actually shown. Rule 3.6, Rule 3.15.

#### 4.10 Improper Boundary or Claim-Scope Narrative Statements

In Application No. 29/699,253, the examiner objected to the descriptive statement: “The solid lines represent the bounds of the claimed design.” The statement was improper because solid lines do not represent “bounds” in the sense of boundary-line practice; rather, solid lines depict claimed subject matter. A narrative statement describing solid lines as “bounds” can create confusion with dot-dash boundary line practice and may imply an incorrect claim interpretation. Rule 3.7, Rule 3.9, Rule 3.15.

#### 4.11 Non-Elected Embodiment References and Figure Description Conflicts

In Application No. 29/704,292, the examiner objected to the descriptive statement: “FIGS. 9-14 are views of the [article].” The statement was improper because the referenced figures were subject to a drawing objection and required removal. When figures are canceled or withdrawn, any figure descriptions or narrative statements referring to them must also be deleted to avoid inconsistency between the specification and the drawings. Rule 3.3, Rule 3.11, Rule 3.19.

In Application No. 29/704,292, the examiner objected to the descriptive statement: “The part indicated by the solid line is the part to be protected as a partial design.” The statement was improper because it restated a fundamental drafting convention already inherent in design patent practice and also risked confusion with boundary line practice. The drawings alone define what is claimed, and narrative statements attempting to explain this concept are typically treated as redundant and unnecessary. Rule 3.7, Rule 3.9, Rule 3.15.

#### 4.12 Scale and Size Disclaimer Statements

In Application No. 29/711,335, the examiner objected to the descriptive statement: “The design shown is not to be limited to any particular size and may be scaled to be longer or shorter.” The statement was improper because it attempts to disclaim size limitations and implies that the design may vary in proportion or scale, which is not an appropriate subject of narrative description in a design patent specification. Examiners routinely treat these statements as

unnecessary and improper because the design is defined by what is shown. Rule 3.2, Rule 3.7, Rule 3.15.

#### 4.13 Copyright and Trademark Reservation Statements

In Application No. 29/711,335, the examiner objected to the descriptive statement: “A portion of the disclosure of this patent document contains material to which a claim for copyright and trademark is made...” The statement was improper because it introduces administrative or ownership language unrelated to design patent disclosure requirements and does not fall within any permissible category of descriptive statement under USPTO design practice. Rule 3.4, Rule 3.15.

### 5. Enforcement and Practice Notes

#### 5.1 Objections vs. Rejections

Improper descriptive statements are addressed through examiner objections, not rejections. An objection is directed to the form of the specification rather than the substance of the claim. Because objections must be resolved before allowance, practitioners should treat descriptive statement objections as high-priority and address them promptly. Failure to comply with a requirement to cancel an impermissible statement may ultimately result in abandonment if left unresolved.

#### 5.2 Amending Descriptive Statements in Response to Office Actions

When responding to an objection directed to a descriptive statement, the appropriate response is cancellation or amendment of the offending language, accompanied by a brief explanation confirming the change. Practitioners should avoid arguing for retention of impermissible statements, as such arguments are rarely successful and may delay prosecution. Where a statement is objected to in its entirety, the safest course is cancellation rather than attempted rewording.

#### 5.3 Prosecution History Implications

Although descriptive statements are not the basis for patentability determinations during examination, they become part of the prosecution history and can be consulted in subsequent litigation or post-grant proceedings. Statements that were included in the application as filed and later canceled in response to an examiner objection may nonetheless be considered as part of the prosecution record. Practitioners should therefore be deliberate about what is included at filing, not only what survives to allowance.

#### 5.4 Consistency Between Specification and Drawings

Throughout prosecution, practitioners should verify that any remaining descriptive statements are consistent with the drawings as corrected or amended. Drawing corrections, including changes to line types, addition or cancellation of views, and redesignation of figures,

can render previously accurate statements inaccurate. A statement that was compliant as filed may become objectionable after drawing amendments if it no longer accurately reflects what is shown.

## 5.5 Pre-Filing Review

The most efficient way to avoid descriptive statement objections is to review the specification before filing using the checklist in Appendix 1. Applications filed with lean, compliant specifications that are limited to figure descriptions, a broken line statement if applicable, and a nature and intended use statement if needed, consistently require fewer office actions related to specification form. The default posture should be minimal: include only what is necessary and permitted, and omit everything else.

Appendix 1  
(Descriptive Statement Evaluation Checklist)

1. Necessity and Scope Control
  - All descriptive statements included in the specification are necessary to clarify the design as shown.
  - The drawings alone would still clearly define the design if all descriptive statements were removed.
  - No descriptive statement expands the scope of the design beyond what is illustrated in the drawings.
  
2. Drawing Support and Accuracy
  - Every descriptive statement is fully supported by the drawings.
  - No descriptive statement refers to features, variations, or details not shown in the drawings.
  - No descriptive statement suggests alternative forms, configurations, or embodiments beyond what is illustrated.
  
3. New Matter and Timing
  - All descriptive statements were present in the application as originally filed or were amended without introducing new matter.
  - No descriptive statement adds information that was not evident from the original drawing disclosure.
  
4. Functional, Structural, and Use-Based Language
  - No descriptive statement describes how the article functions, operates, moves, or is used.
  - No descriptive statement describes functional advantages, performance, or user interaction.
  - No descriptive statement describes internal structure, materials, or mechanical relationships.
  - Any reference to the article's nature or intended use is limited to high-level identification and does not explain operation or function.
  - No descriptive statement includes utility-patent-type language.
  
5. Redundancy and Obviousness
  - No descriptive statement merely restates features that are clearly visible in the drawings.
  - No descriptive statement explains symmetry, repetition, identical features, or proportional relationships apparent from the drawings.
  - No descriptive statement attempts to "clarify" what is already obvious from the figures.

6. Orientation and Reference Language
  - No descriptive statement disclaims orientation terms (e.g., top, bottom, left, right) as “for reference only.”
  - No descriptive statement attempts to control or limit interpretation of orientation shown in the drawings.
7. Drafting Convention Explanations
  - No descriptive statement explains the meaning of solid lines, shading, hatching, contour lines, transparency, translucency, or opacity.
  - No descriptive statement explains what drawing conventions “represent” or “indicate.”
8. Broken Line Statements (If Applicable)
  - Broken line statements are included only if broken lines appear in the drawings.
  - Broken line statements accurately match the elected embodiment and the figures shown.
  - No broken line statement appears if no broken lines are present in the elected embodiment.
9. Embodiments and Election
  - After election of embodiment, all descriptive statements referring to non-elected embodiments have been removed.
  - No descriptive statement refers to “first,” “second,” “third,” or alternative embodiments unless expressly illustrated and permitted.
  - No descriptive statement refers to figures that have been canceled or withdrawn.
10. Characteristic Feature Statements
  - Any characteristic feature statement included describes only the ornamental appearance shown in the drawings.
  - No characteristic feature statement could reasonably be read as limiting claim scope beyond the drawings.
11. Prohibited Reservation or Broadening Language
  - No descriptive statement reserves the right to amend, convert line types, file continuations, or claim combinations.
  - No descriptive statement refers to equivalents, colorable imitations, contemplated designs, scale variations, or size changes.
  - No descriptive statement attempts to broaden claim scope beyond what is shown.
12. Miscellaneous Improper Statements

- No descriptive statement repeats the claim language or explains what a design patent is.
- No descriptive statement includes copyright, trademark, ownership, or reservation language.
- No descriptive statement attempts to justify prosecution strategy or examiner authority.

13. Final Compliance Confirmation

- The specification contains only those descriptive statements that are permitted under USPTO design patent practice.
- The specification complies with MPEP § 1503.01 and related guidance regarding descriptive statements.
- The drawings remain the primary and controlling disclosure of the design.

Appendix 2  
(Descriptive Statements Questions and Answers)

Q1: Are descriptive statements required in a design patent application?

A: No. In most cases, the drawings alone are sufficient. Descriptive statements are optional and should be used only when they provide necessary clarification permitted by USPTO practice.

Q2: Can descriptive statements be used to explain what the design does or how it works?

A: No. Functional, structural, and use-based descriptions are prohibited in design patent specifications and will draw examiner objections.

Q3: Is it acceptable to explain what shading or solid lines mean?

A: No. Drafting conventions for solid lines and shading are well understood and do not require explanation. Such statements are routinely objected to as extraneous.

Q4: Can I include orientation disclaimers like “top,” “bottom,” or “left” are for reference only?

A: No. Orientation is determined by the drawings. Orientation disclaimers are unnecessary and often confusing.

Q5: Can descriptive statements be used to reserve rights to amend drawings or claim variations later?

A: No. Statements reserving rights to amend, convert line types, or claim combinations are improper and must be removed.

Q6: May I describe symmetry or identical features in the specification?

A: Generally no. If symmetry or identical features are apparent from the drawings, describing them adds no value and is objectionable.

Q7: Are characteristic feature statements required or recommended?

A: No. They are optional and should be used cautiously, as they may later limit claim scope.

Q8: Can descriptive statements refer to multiple embodiments if only one is shown?

A: No. Statements suggesting multiple or alternative embodiments are prohibited unless the embodiments are actually illustrated (with limited mirror-image exceptions).

Q9: What happens after election of embodiment?

A: All descriptive statements referring to non-elected embodiments or their figures must be removed from the specification.

Q10: Can descriptive statements describe unshown portions of the article?

A: Only in very limited circumstances. MPEP § 1503.01(II)(A)(1) permits 'description of the appearance of portions of the claimed design which are not illustrated in the drawing disclosure,' but such descriptions must be included in the application as originally filed and may not be added later. Additionally, statements disclaiming unshown portions (e.g., "The opposite side is identical" or "Unillustrated interior structure forms no part of the claimed design") are permissible in certain contexts. However, in general, if a portion is not shown, it is inherently unclaimed and typically requires no description.

Q11: Is it acceptable to include statements about scale, size, color, or materials?

A: No. Design patents do not have scale, color limitations, or material limitations unless explicitly claimed and shown. Such statements are unnecessary and objectionable.

Q12: When should descriptive statements be removed entirely?

A: If the drawings fully and clearly disclose the design and the statements do not add permitted clarification, the safest course is to remove all descriptive statements.

### Appendix 3 (Limitations of this ProGuide)

This ProGuide is intended to provide practice-oriented guidance on the permissible use, drafting, and removal of descriptive statements in U.S. design patent specifications under current USPTO practice, including MPEP § 1503.01(II). It is not intended to be exhaustive, nor does it substitute for the MPEP, governing statutes, Federal Circuit precedent, or examiner discretion. The following limitations apply.

#### 1. No Evaluation of Drawing Compliance or Formalities

This ProGuide does not evaluate whether a particular set of drawings complies with USPTO drawing requirements, including issues of line quality, surface shading sufficiency, view completeness, or formal drawing objections. While descriptive statements are discussed in relation to drawing support, this ProGuide does not assess whether the drawings themselves are adequate or correct.

#### 2. No Determination of Claim Scope or Infringement

This ProGuide does not analyze claim scope, infringement risk, or the application of the ordinary observer test. Although descriptive statements can later influence claim construction or enforcement, this ProGuide does not address how any particular statement may affect infringement analysis in litigation.

#### 3. No Validity or Enforceability Opinions

This ProGuide does not opine on the validity, enforceability, or strength of any issued design patent. It does not assess anticipation, obviousness, functionality, indefiniteness, or other substantive validity issues beyond the narrow context of examiner objections to descriptive statements during prosecution.

#### 4. Examiner Discretion and Office Practice May Vary

USPTO examiner practice with respect to descriptive statements is not uniform. Some examiners may tolerate language that others object to, and Office practice may evolve over time. This ProGuide reflects prevailing practice patterns and examiner objections observed in recent prosecutions, but it cannot predict how a particular examiner will treat a specific statement.

#### 5. No Litigation Strategy or Prosecution History Analysis

This ProGuide does not analyze prosecution history disclaimer, prosecution history estoppel, or litigation strategy arising from descriptive statements. Those topics are addressed separately in the ProGuide on Prosecution History Estoppel and Disclaimer, and should not be conflated with the drafting rules discussed here.

#### 6. No Substitute for Independent Legal Judgment

The guidance in this ProGuide is not a substitute for practitioner judgment. Decisions regarding whether to include, amend, or remove descriptive statements must be made in light of the specific application, drawings, prosecution posture, and client objectives.

7. Limited to U.S. Design Patent Practice

This ProGuide is limited to United States design patent practice. It does not address foreign design registration systems, Hague filings, or differences in descriptive statement requirements outside the USPTO.

8. Focused on Specification Language Only

This ProGuide addresses only descriptive statements in the written specification. It does not evaluate titles, claims, application data sheets (ADS), drawing labels, or examiner interview summaries except where those intersect directly with descriptive statement objections.

9. No Guarantee of Examiner Acceptance

Compliance with the principles and examples in this ProGuide does not guarantee allowance, nor does it ensure that an examiner will not object to a particular statement. The ProGuide is intended to reduce risk, not eliminate it.

10. Controlling Authority Governs

In the event of any inconsistency between this ProGuide and the MPEP, statutes, regulations, or binding case law, the controlling authority governs.

Appendix 4  
(Selected MPEP, CFR, and Statutory References)

II. DESCRIPTION No description of the design in the specification beyond a brief description of the drawing is generally necessary, since as a rule the illustration in the drawing views is its own best description. *In re Freeman*, 23 App. D.C. 226 (App. D.C. 1904). While not required, such a description is not prohibited and may be incorporated, at applicant's option, into the specification or may be provided in a separate paper. *Ex parte Spiegel*, 1919 C.D. 112, 268 O.G. 741 (Comm'r Pat. 1919). Descriptions of the figures are not required to be written in any particular format, however, if they do not describe the views of the drawing clearly and accurately, the examiner should object to the unclear and/or inaccurate descriptions and suggest language which is more clearly descriptive of the views.

(A) In addition to the figure descriptions, the following types of statements are permissible in the specification:

(1) Description of the appearance of portions of the claimed design which are not illustrated in the drawing disclosure. Such a description, if provided, must be in the design application as originally filed, and may not be added by way of amendment after the filing of the application as it would be considered new matter.

(2) Description disclaiming portions of the article not shown in the drawing as forming no part of the claimed design.

(3) Statement indicating the purpose of broken lines in the drawing, for example, environmental structure or boundaries that form no part of the design to be patented.

(4) Description denoting the nature and intended use of the claimed design, if not included in the preamble pursuant to 37 CFR 1.154 and MPEP § 1503.01, subsection I.

It is the policy of the Office to attempt to resolve questions about the nature and intended use of the claimed design prior to examination by making a telephone inquiry at the time of initial docketing of the application. This will enable the application to be properly classified and docketed to the appropriate examiner and to be searched when the application comes up for examination in its normal course without the need for a rejection under 35 U.S.C. 112 prior to a search of the prior art. Explanation of the nature and intended use of the article may be added to the specification provided it does not constitute new matter. It may alternately, at applicant's option, be submitted in a separate paper without amendment of the specification

(5) A "characteristic features" statement describing a particular feature of the design that is considered by applicant to be a feature of novelty or nonobviousness over the prior art (37 CFR 1.71(c)).

This type of statement may not serve as a basis for determining patentability by an examiner. In determining the patentability of a design, it is the overall appearance of the claimed design which

must be taken into consideration. *In re Rosen*, 673 F.2d 388, 213 USPQ 347 (CCPA 1982); *In re Leslie*, 547 F.2d 116, 192 USPQ 427 (CCPA 1977).

Furthermore, the inclusion of such a statement in the specification is at the option of applicant and will not be suggested by the examiner.

#### ¶ 15.47 Characteristic Feature Statement

A “characteristic features” statement describing a particular feature of novelty or nonobviousness in the claimed design may be permissible in the specification. Such a statement should be in terms such as “The characteristic feature of the design resides in [1],” or if combined with one of the Figure descriptions, in terms such as “the characteristic feature of which resides in [2].” While consideration of the claim goes to the total or overall appearance, the use of a “characteristic feature” statement may serve later to limit the claim (*McGrady v. Aspenglas Corp.*, 487 F. Supp. 859, 208 USPQ 242 (S.D.N.Y. 1980)).

Examiner Note:

In brackets 1 and 2, insert brief but accurate description of the feature of novelty or nonobviousness of the claimed design.

#### ¶ 15.47.01 Feature Statement Caution

The inclusion of a feature statement in the specification is noted. However, the patentability of the claimed design is not based on the specified feature but rather on a comparison of the overall appearance of the design with the prior art. *In re Leslie*, 547 F.2d 116, 192 USPQ 427 (CCPA 1977).

(B) The following types of statements are not permissible in the specification:

(1) A disclaimer statement directed to any portion of the claimed design that is shown in solid lines in the drawings is not permitted in the specification of an issued design patent. However, the disclaimer statement may be included in the design application as originally filed to provide antecedent basis for a future amendment. *See Ex parte Remington*, 114 O.G. 761, 1905 C.D. 28 (Comm’r Pat. 1905); *In re Blum*, 374 F.2d 904, 153 USPQ 177 (CCPA 1967). *See* MPEP § 2909.02 regarding disclaimer statements in international design applications.

(2) Statements which describe or suggest other embodiments of the claimed design which are not illustrated in the drawing disclosure, except one that is a mirror image of that shown or has a shape and appearance that would be evident from the one shown, are not permitted in the specification of an issued design patent. However, such statements may be included in the design application as originally filed to provide antecedent basis for a future amendment. In addition, statements which attempt to broaden the scope of the claimed design beyond that which is shown in the drawings are not permitted.

(3) Statements describing matters that are directed to function or are unrelated to the design.

#### ¶ 15.41 Functional, Structural Features Not Considered

Attention is directed to the fact that design patent applications are concerned solely with the ornamental appearance of an article of manufacture. The functional and/or structural features stressed by applicant in the papers are of no concern in design cases, and are neither permitted nor required. Function and structure fall under the realm of utility patent applications.

#### ¶ 15.46.01 Impermissible Descriptive Statement

The descriptive statement included in the specification is impermissible because [1]. See MPEP § 1503.01, subsection II. Therefore, the description should be canceled as any description of the design in the specification, other than a brief description of the drawing, is generally not necessary, since as a general rule, the illustration in the drawing views is its own best description.