

DESIGN PATENT PRO

Broken Line Statements in Design Patent Applications

A Practitioner's Guide

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PREVIEW EDITION

This preview contains the Overview, the Quick Start Guide of dos and don'ts, and Parts 1 and 2 (Recommended Forms and Drafting Notes) of the complete 43-page ProGuide. A guide to the remaining parts appears on the final page.

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About the Speaker



Robert G. Oake, Jr. is the founder of Oake Law Office, PLLC, where he focuses on design patent litigation and prosecution. He is a registered patent attorney, board certified in patent litigation by the National Board of Trial Advocacy, and holds a Master of Laws in Patent and Intellectual Property Law. He served as lead counsel for Egyptian Goddess in *Egyptian Goddess, Inc. v. Swisa, Inc.* and maintains the Design Patent Pro Website.

Broken Line Statements in Design Patent Applications
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Overview

These written materials address broken line statements in United States design patent applications, the short feature descriptions that explain what the broken lines in a drawing represent and confirm that the broken-line subject matter forms no part of the claimed design. The governing authority is found in 37 C.F.R. §§ 1.152 and 1.154 and in the Manual of Patent Examining Procedure at §§ 1503.01 and 1503.02. The subject is deceptively simple. Broken lines ordinarily show portions of an article that are not claimed, environment surrounding the article, or the boundaries of the claimed design, and a competent statement can often be written in a single sentence. Yet objections over broken line statements remain among the most common formal rejections in design prosecution, and the wording that satisfies one examiner will sometimes draw an objection from another. Because the single design claim incorporates the drawings, the broken line statement does not merely describe the disclosure; it helps define the metes and bounds of what is claimed.

These materials are organized into four substantive areas, supported by a set of appendices. The first sets out recommended forms for the most common broken line statements, together with drafting notes addressing grammar, word choice, word order, and the recurring problems created by foreign-origin language. The second states the rules that govern broken line statements, more than two dozen in all, covering clarity of claim scope, consistency between the drawings and the statement, the single-meaning requirement for each broken line style, boundary lines, environment versus portions of the article, surface shading, and related matters. The third applies those rules to more than sixty actual examiner rejections and objections drawn from issued and pending applications, pairing each defective statement with a recommended correction and the rules it implicates. The fourth addresses the enforcement and litigation consequences of broken line practice, including the treatment of broken line statements as intrinsic record evidence, prosecution history estoppel, infringement analysis, and validity. The appendices provide an evaluation checklist, a set of questions and answers, a statement of the Material's limitations, and selected statutory, regulatory, and MPEP references.

Three principles run throughout the material that follows and bear emphasis at the outset. First, every broken line statement must do two things: it must expressly identify what the broken lines represent, and it must state that the identified subject matter forms no part of the claimed design. A statement that announces the legal conclusion without identifying what is shown, or that identifies the subject matter without defining its relationship to the claim, is incomplete. Second, the statement must correspond exactly to the drawings. Every style of broken line that appears in the figures must be accounted for, each style must carry a single meaning, and the article must be named by its exact title rather than by a generic term. Third, a broken line statement is substantive rather than formal. Once filed it becomes part of the intrinsic record, and

an imprecise or inconsistent statement can narrow the claim, introduce indefiniteness, or surrender scope in ways the applicant never intended.

The stakes of precise wording are best illustrated by a simple example. The accepted formulation, “the broken lines show portions of the [title] that form no part of the claimed design,” excludes all of the broken-line subject matter from the claim. Rearranged to read “portions of the [title] shown in broken lines form no part of the claimed design,” the same words can be read to exclude only some of the broken-line subject matter, leaving the remainder arguably claimed. A comparable problem arises when the conjunction “and” is substituted for the relative pronoun “that,” because the sentence can then be read to disclaim only the lines themselves rather than the portions of the article they depict. Neither change looks consequential on the page, but each can alter the scope of the claim, and each has in fact drawn an examiner objection. Much of the analysis that follows is devoted to differences of exactly this kind.

Several practical realities raise the cost of getting a broken line statement wrong. The statement enters the intrinsic record and may be relied upon by the examiner, and later by a court, to construe the claim, so an imprecise statement can shape claim scope long after issuance. The direction of a line conversion also matters: converting solid lines to broken lines ordinarily broadens the claim by removing a feature, while converting broken lines to solid lines narrows it by adding one. It is the narrowing direction, typically undertaken to overcome a rejection, that gives rise to prosecution history estoppel or disclaimer, regardless of a stated rationale such as “for clarity.” A statement that contradicts the drawings or fails to account for every broken line style used may render the claim indefinite under 35 U.S.C. § 112. And because broken line treatment is difficult to revise cleanly once prosecution is underway, the most effective practice begins before filing, with a deliberate decision about which portions of the article are claimed and which are disclaimed. The disciplined drafting these materials describe is therefore a practical necessity rather than a matter of style.

Quick Start Guide

DO:

Do expressly identify what the broken lines represent. Broken line statements must clearly state whether the broken lines depict unclaimed portions of the article, environmental structure, boundary lines, or other context, so that claim scope is unambiguous.

Do state that broken lines form no part of the claimed design. Use clear, affirmative language confirming that the broken-line subject matter is excluded from the claim.

Do ensure the broken line statement is consistent with the drawings. The written statement must accurately reflect how broken lines are actually used in the figures; mismatches routinely trigger objections.

Do place the broken line statement in the proper location. Broken line statements belong in the FEATURE DESCRIPTION section, not in the claim, preamble, or figure descriptions.

Do use standardized, examiner-accepted phrasing where possible. Conventional formulations reduce the likelihood of formal objections and unnecessary examiner scrutiny.

Do verify that broken lines do not introduce ambiguity about claim boundaries. If broken lines appear to define edges or contours, the statement must clarify their non-claiming purpose.

Do confirm that any amendment involving broken lines is fully supported by the originally filed drawings. Introducing or converting lines without original support risks new matter rejections.

Do reassess broken line statements after any drawing amendment. Any change to line treatment requires a corresponding review of the broken line statement for accuracy and completeness.

Do treat broken line statements as substantive, not boilerplate. Courts and examiners rely on these statements to determine claim scope; careless drafting can have lasting effects.

Do distinguish between ornamental stitching and structural stitching and select line styles accordingly.

Do consider whether broken lines are necessary at all; in some cases omission of unclaimed features is preferable.

Do verify that boundary lines define only the claimed design and do not create unexplained negative space.

Do ensure that any feature shown in broken lines in one view is shown in broken lines in every view in which it appears.

DON'T:

Don't place broken line statements in the claim. The claim must remain free of descriptive or explanatory text regarding broken lines.

Don't place broken line statements in the preamble or description of figures. Improper placement routinely results in formal objections requiring correction.

Don't use vague or conclusory language. Statements such as "broken lines are for illustration only" without specifying what they depict are insufficient.

Don't assume broken lines automatically exclude subject matter without explanation. Examiners expect an explicit statement identifying what is not claimed and why.

Don't introduce new broken lines during prosecution without careful analysis. Adding broken lines to overcome prior art may be construed as surrendering claim scope.

Don't treat a line conversion as a cosmetic edit. Converting broken lines to solid lines narrows the claim and, when done to overcome a rejection, can create prosecution history estoppel or disclaimer; converting solid lines to broken lines broadens the claim but can raise written-description or new-matter concerns where the originally filed drawings do not support the change.

Don't rely on "for clarity" explanations if the substantive effect is narrowing. Courts evaluate substance over form; the stated reason does not control the legal effect.

Don't leave residual or contradictory broken line statements after amendments. Conflicting descriptions undermine claim clarity and invite additional objections.

Don't use broken lines to disguise functional disclaimers. Broken lines may exclude subject matter, but they cannot be used to reframe functional features improperly.

Don't treat broken line practice as merely formal or stylistic. Broken line usage directly affects claim scope, enforcement, and validity.

Don't use broken lines to depict optional features or alternative embodiments.

Don't rely on broken lines as a substitute for properly cropping views.

Don't assume examiner preferences are uniform across art units; be prepared to justify broken line treatment.

Don't apply surface shading to features shown entirely in broken lines. Shading is a claim-defining element and may imply that unclaimed subject matter forms part of the claimed design.

1. Introduction and Theory

The theory underlying broken line practice in design patent prosecution is relatively simple. Broken lines typically show portions of an article that form no part of the claimed design, unclaimed environment to the article, or boundaries of the claimed design. Broken lines also can represent stitching and fold lines. Despite these relatively simple concepts, numerous objections and rejections continue to issue over broken line statements in design patent applications. These objections and rejections often result from misunderstandings by design patent applicants and the confusion over broken line principles.

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

2. Recommended Forms and Drafting Notes

2.1 Recommended Forms

At a minimum, a broken line statement must identify what is represented by the broken lines and define the relationship to the claimed design. Examples of recommended forms for common broken line statements are shown below.

2.1.1 When broken lines show portions of the [title] that form no part of the claimed design: The broken lines show portions of the [title] that form no part of the claimed design.

2.1.2 When broken lines show environment to the article and form no part of the claimed design: The broken lines show environment to the [title] and form no part of the claimed design.

2.1.3 When the broken lines represent boundaries to the claim: The broken lines show boundaries to the claim and form no part of the claimed design.

2.1.4 When equal-length broken lines show unclaimed portions and a specific figure shows environment: The equal-length broken lines depict portions of the [title] that form no part of the claimed design. In Fig. [X], the equal-length broken lines depict [describe environment, e.g., a leg and foot] that form no part of the claimed design. All broken lines form no part of the claim.

2.2 Drafting Note on Grammar, Brevity, and Word Choice

A typical broken line statement begins with a subject noun phrase (The broken lines), a transitive verb (show), a direct object (portions), and a prepositional phrase (of the [title]) that modifies the direct object. This portion of the sentence identifies what is represented by the broken lines. The statement then typically includes a restrictive clause (that form no part of the claimed design) that begins with a relative pronoun (that). Alternatively, the statement can include language that begins with a conjunction (and). This portion of the sentence defines the relationship of the broken lines to the claimed design.

Many broken line statements contain verbs other than “show.” For example, the verbs “illustrate, depict, represent, indicate, and denote” often are used. Any of these verbs are acceptable. Some advantages of using the verb “show” are that it is a short, simple word and is similar to the word “shown,” as used in the claim statements “as shown,” or “as shown and described.”

Broken line statements often include the prepositional phrase “in the drawings,” or “in the drawing figures” after the subject noun phrase “the broken lines.” This phrase is unnecessary

unless needed to identify a broken line in a particular drawing figure, such as “the broken lines in Fig. 2 show environment to the [title] and form no part of the claimed design.”

The relative pronoun “that” is sometimes replaced with the relative pronoun “which.” This is usually improper because the clause “that form no part of the claimed design” is a restrictive clause that is essential to the meaning of the broken line statement. The use of “which” indicates that the clause is nonrestrictive, or nonessential to the meaning of the statement.

The conjunction “and” is sometimes used instead of the relative pronoun “that” in a statement where the broken lines show portions of the [title]. That is improper. When “and” is used, the statement can be interpreted that only the broken lines form no part of the claimed design and not that the portions of the [title] shown by the broken lines form no part of the claimed design. By the using the relative pronoun “that,” it is clear the portions of the [title] shown by the broken lines form no part of the claimed design.

2.3 Drafting Note on Word Order

The selection and order of words used in a broken line statement are important. Although there is some flexibility in the language that can be chosen, the necessary precision of a broken line statement requires that the language and its sequencing convey a certain meaning. When words are not placed in the proper order, the meaning of the broken line statement can change. For example, a proper broken line statement would be “the broken lines show portions of the [title] that form no part of the claimed design. When the word order is changed to “[p]ortions of the [title] shown in broken lines form no part of the claimed design,” this phrasing could be interpreted to mean that only some of the subject matter shown in broken lines, rather than all broken-line subject matter, is unclaimed, creating ambiguity regarding claim scope. Therefore, some of the broken lines could be claimed according to this improper description.

2.4 Foreign-Origin Caution Note

Broken line statement language from foreign filings often does not comply with USPTO requirements. Common examples include the terms “phantom lines,” “for illustrative purposes only,” “illustrative of,” or “environmental structure” without reference to the article title. Some foreign-origin BLSs also omit the required “that form no part of the claimed design” language or describe unclaimed features as “not part of the invention.” Any such language should be revised to meet USPTO standards under 37 CFR 1.154 and MPEP § 1503.02(III).

2.5 Decision Tree

Does the drawing contain broken lines?

- └ No → Don't include a broken line statement
- └ Yes → Do the broken lines show:
 - └ Parts of the article itself? → "portions of the [title]"
 - └ Separate objects/context? → "environment to the [title]"
 - └ Claim boundaries? → "boundaries" + clarify negative space if needed
 - └ Claimed stitching/folds? → Identify as forming part of the claimed design

└ Multiple types? → Separately describe each type

3. Rules for Broken Line Statements

3.1 Clarity of Claim Scope

A broken line statement must clearly distinguish claimed from unclaimed subject matter so that the scope of the design is definite to the public, the examiner, and the courts.

3.2 Consistency Between Drawings and Statement

The meaning assigned to each type of broken line must be consistent across all drawing figures and must match the written broken line statement.

3.3 Single Purpose per Broken Line Type

Each type of broken line (style, weight, or pattern) should have only one meaning in the application to prevent claim interpretation problems. In certain circumstances, broken lines may depict claimed stitching or fold lines, while other broken lines in the same drawings depict unclaimed subject matter or environment. In such cases, the broken line statement must clearly and separately identify each type and purpose of broken line, referencing the article title, location, or figure as needed, so the scope of the claim is definite.

Rule 3.3(a) Stitching and Fold Lines

Stitching or fold lines must properly be described as such in the broken line statement. When stitching or fold lines depict functional or construction details only, they must be shown in broken lines and identified as unclaimed in the broken line statement. Failure to clearly distinguish ornamental stitching from structural stitching may result in claim ambiguity or improper narrowing.

3.4 Prohibition on Claim Expansion

The broken line statement cannot be used to reserve rights to unclaimed subject matter; it may only disclaim subject matter or explain the purpose of broken lines.

3.5 Alignment with Title

The broken line statement should always reference the article exactly as titled in the application to maintain consistency in classification, search, and claim interpretation.

3.6 Completeness Without Extraneous Detail

Every broken line use must be addressed in the statement, but the statement should not describe features not depicted in the drawings.

ABOUT THE COMPLETE EDITION

Broken Line Statements in Design Patent Applications

A Practitioner's Guide — by Robert G. Oake, Jr.

You have been reading a preview. It contains the Overview, the Quick Start Guide, Part 1 (Introduction and Theory), Part 2 (Recommended Forms and Drafting Notes), and the opening rules of Part 3. The complete ProGuide runs 43 pages:

1. Introduction and Theory

Why broken line statements are substantive rather than formal: the statement enters the intrinsic record and helps define the metes and bounds of the claim.

2. Recommended Forms and Drafting Notes

Model statements for the common cases, with drafting notes on grammar, word choice, word order, foreign-origin language, and a decision tree for choosing the right form. Included in this preview.

3. Rules for Broken Line Statements

Twenty-five rules covering clarity of claim scope, drawing consistency, single meaning per line style, boundary lines, environment versus portions of the article, shading, and more.

4. Application of the Rules in Rejections and Objections

Sixty-three actual examiner rejections and objections from issued and pending applications — each defective statement paired with a recommended correction and the rules it implicates.

5. Enforcement and Practice Notes

The litigation consequences of broken line practice: intrinsic record evidence, prosecution history estoppel, infringement analysis, validity, and pre-filing and continuation strategy.

A. Appendices

A statement-evaluation checklist, thirty-nine questions and answers, a statement of the Material's limitations, and selected statutory, regulatory, and MPEP references.

The complete edition is included with enrollment in the Broken Line Statements in Design Patent Applications CLE course at designpatentpro.com.

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