

Appendices in U.S. Design Patent Applications: Uses, Risks, and What the Prosecution Record Shows

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Cases, MPEP sections, rules, statutes and design application file histories cited in this article link to the documents in ProSearch. A free Design Patent Pro account is all that is needed to open them.

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I. Introduction

Design patent applicants sometimes file, along with the formal drawings, a separate set of images labeled an appendix: CAD renderings, photographs of a prototype, color images, or views of related designs. The file histories examined here show recurring examiner language addressing appendices, but neither that language nor these examples establish an Office-wide policy. How an appendix will be treated remains uncertain. Practitioners file appendices to clarify line drawings,

to preserve support for later continuations, or simply to place more of the design on the record, often without a clear view of how the Office will treat the appendix during examination or how an accused infringer may use it after the patent issues.

This article examines what the law and the prosecution record actually show. Part [II](#) identifies the limited authority for appendices. Part [III](#) describes the purposes appendices serve and the risks attached to each. Part [IV](#) reviews how examiners have handled appendices in particular applications. Part [V](#) addresses written description and priority. Part [VI](#) addresses multiple embodiments and the argument that canceling an appendix operates as an election. Part [VII](#) addresses the enforcement doctrines most likely to be invoked: prosecution history estoppel, prosecution history disclaimer, and disclosure-dedication. Part [VIII](#) considers continuation strategy after [LKQ](#), and Part [IX](#) offers practical recommendations.

Two cautions apply throughout. First, no Federal Circuit, district court, ITC, or Board decision located for this article decides the legal status of an appendix filed with a design application. Second, the prosecution examples come from the file histories of particular applications, reviewed in ProSearch in October 2026. They show how individual examiners responded in those files. They are not statements of Office policy, and other examiners may respond differently.

II. The Limited Source of Authority

A design patent claim is defined by its drawings. The MPEP treats the drawings as the primary disclosure: as a rule, the illustration in the drawing views is its own best description.¹ Infringement is judged from the perspective of the ordinary observer.²

Against that background, the authority for filing anything beyond the drawings and a brief description is thin. The MPEP provides that a description of the design, while not required, “is not prohibited and may be incorporated, at applicant’s option, into the specification or may be provided in a separate paper.”³ That passage concerns descriptive text. The MPEP does not mention appendices by name, and it does not expressly approve image appendices. An appendix of CAD renderings or photographs is therefore a practice-based option rather than one the MPEP authorizes, and each proposed use requires its own assessment.

The MPEP is more specific about what an application may not say. Among impermissible statements it lists “[s]tatements 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.”⁴ By contrast, a description of the appearance of portions of the claimed design that are not illustrated is permitted if it is in the application as originally filed.⁵ A claim that fails these limits may also be indefinite. A design patent is indefinite “if one skilled in the art, viewing the design as would an

ordinary observer, would not understand the scope of the design with reasonable certainty based on the claim and visual disclosure.”⁶ As Part IV shows, these rules frame most of what examiners have done with appendices.

III. Why Practitioners File Appendices, and the Risks of Each Use

Appendices are filed for several distinct purposes. The risk depends less on the label than on what the appendix shows and how the rest of the application refers to it.

CAD renderings and photographs as reference material. Where the formal drawings are line drawings, questions can arise about surface contours, depth transitions, or shading. CAD renderings or photographs of a prototype can show the transitions, proportions, and three-dimensional relationships that the line drawings depict. Used this way, the appendix is reference material. It should not be needed to resolve an ambiguity in the drawings; if it is, the problem lies in the drawings. Nor does reference material carry a categorical assurance that it will not affect scope. An unreferenced appendix is not itself a substitute for the claimed drawing views, but its contents and the prosecution record may be relevant to disputes about what those views disclose. A filed appendix is part of the record, and an accused infringer may rely on appendix images to argue that the claimed design is narrower than the line drawings alone would suggest.

Photographs raise an additional issue. The MPEP states that “[p]hotographs and drawings must not be combined in a submission of the visual disclosure of the claimed design in one application.”⁷ Placing photographs in a separate paper does not necessarily avoid that rule, and whether and how it applies to a particular submission should be checked.

Color and texture. Color images in an appendix carry more risk than CAD or photographic reference material. Color drawings are permitted in design applications, but they must meet the requirements of 37 C.F.R. § 1.84(a)(2), including the required statement in the specification, and color photographs must also satisfy § 1.84(b)(2).⁸ Color images filed alongside black-and-white drawings may draw an objection or invite argument about whether color is part of the claimed design.

Support for later filings. Some practitioners file appendix material to preserve written description support for later amendments, continuations, or divisionals. Appendix material may furnish that support, but only if it was properly part of the original application and clearly conveys possession of the particular later-claimed design. Priority and new matter must be assessed claim by claim. Part V reviews how examiners have treated such claims.

Technical and manufacturing information. Technical specifications may explain physical implementation without defining ornamental scope. Where the specification is silent about the appendix, this material appears to carry limited examination risk, although that assessment rests on observed practice rather than express authority.

Form. Whatever the purpose, the form of the filing matters. Practitioners who file an appendix commonly file it as a separate paper with a clear “APPENDIX” heading, make no reference to it in the specification, and avoid incorporation-by-reference language. No legend placed in the appendix can determine how the appendix will be treated, so whether to include one, for example a legend identifying the appendix as reference material, is best decided case by case.

IV. What Examiners Have Done With Appendices

A. Specification References Were the Usual Trigger

In most of the appendix-related objections and rejections reviewed for this article, the examiner identified a statement in the specification referring to or incorporating the appendix. Two applications filed by the same applicant illustrate the pattern. In Application [29/904,863](#), for a vehicle taillamp, the specification stated that an appendix of digital images was “[i]ncorporated by reference herein.” The examiner treated the appendix as part of the formal disclosure and rejected the claim under § 112(a) and (b), because it was unclear whether the claim covered the appendix images and because the appendix language referred to embodiments and modified forms not shown in the drawings. The examiner recommended canceling the incorporation statement.⁹ The applicant deleted the statement and amended the drawings, but stated that it was “not cancelling the Appendix, which is part of the application file and may be used as a basis for amendments to the drawings during prosecution.” A Notice of Allowance followed.¹⁰ Application [29/903,635](#), for a vehicle headlamp, followed the same course. There the examiner added that “[i]f Applicant’s intent is to claim material that is shown in the appendix, Applicant must amend the drawings/specification to include that material,” and cited 37 C.F.R. § 1.73 and [MPEP § 1503.01](#) for the proposition that patents should be confined in their disclosure to the invention patented.¹¹

Other examiners responded the same way to specification statements describing an appendix as showing other designs. In Application [29/902,119](#), for a graphical user interface, the specification stated that an appendix depicting display screens incorporating the design was included with the filing and that the paragraph was “to be removed once the application is in a condition for allowance.” The examiner objected “because statements which describe or suggest other embodiments of the claimed design not shown in the drawings are not permitted” and required the statement to be canceled. The applicant canceled it, and the application issued as D1,110,338.¹² In Application [29/695,608](#), for a cooking appliance, the specification stated that the applicant

considered the disclosure to include an appendix of 40 additional figures, and reserved the right to amend the drawings based on it. The examiner rejected the claim under § 112(a) and (b), finding that the statement attempted “to broaden the claim’s scope to include undefined types of other designs that cannot be determined from the drawings.”¹³

The appendix’s own language can also draw criticism. In Application [29/946,074](#), for a beverage container cap, the appendix contained 32 unclaimed figures, and the specification stated that “[a]dditional views and embodiments” of the design were shown in it. The examiner found that the statement broadened the claim to designs not shown. The examiner separately identified language in the appendix itself as an “impermissible disclaimer that is considered indefinite and non-enabled,” which “places the drawings and Specification in conflict.” The examiner noted that the appendix “may form antecedent basis for certain amendments” but “may not constitute a part of the disclosure,” and that the applicant “may cancel the Appendix.” The applicant removed the reference to the appendix from the specification; the file does not show that the appendix itself was canceled. The record therefore does not establish that deleting the specification reference alone would have cured every concern the examiner identified. The application issued as D1,110,110.¹⁴

B. An Unreferenced Appendix Is Not Immune

One file shows that an appendix can draw an objection even without a specification reference. In Application [29/660,112](#), for a fluid applicator tip, the specification as it appears in the file does not mention the appendix. The examiner nonetheless stated: “The application is improper because it contains appendices. The appendices in the application must be cancelled.” The office action gives no further reason. The applicant canceled the appendix, and the application was later abandoned for failure to reply to a later Office letter.¹⁵ The example is a single file, and the examiner’s reasoning is not stated, but it is enough to show that omitting a specification reference does not guarantee that an appendix will pass without objection.

C. Appendices Noted Without Objection

In other files, examiners acknowledged an appendix and moved on. In Application [29/917,737](#), for a vaping device, the examiner stated that the appendix “is understood to form no part of the claim or its disclosure” and that, “although the appendix may form antecedent basis for certain amendments to the application, it may not constitute a part of the drawing disclosure.” The examiner raised no objection based on the appendix, and the application issued as D1,110,595.¹⁶ Similar acknowledgment language appears in other file histories examined for this article. Its use in those files illustrates an examiner practice, not a rule governing the status or legal effect of every appendix. In Application [29/929,866](#), which had no appendix, the examiner advised that “[a] photo showing the details in the unclaimed areas may be filed as an appendix but should not be included in the specification.”¹⁷ And in Application [29/989,952](#), which had an appendix of CAD

images of the same design, the examiner canceled by examiner's amendment a specification paragraph describing the appendix, because "the appendix will not be part of the published patent." The application issued as D1,142,316.¹⁸

D. Appendices Deleted Voluntarily

Some applicants removed appendices on their own. In Application [29/881,173](#), the application as filed included 168 figures and an appendix, incorporated by reference, of alternative figures of electronic devices, stands, and mounts. By a preliminary amendment, the applicant canceled Figures 1 through 160 and deleted the appendix. The examiner acknowledged the amendment as received after the filing date but before examination, noted that it was therefore "NOT part of the original disclosure," and raised no appendix issue. The application issued as D1,110,313.¹⁹ Similarly, in Application [29/776,949](#), for an electronic device with a graphical user interface, the applicant replaced 125 figures with five and canceled the appendix by preliminary amendment, and the application issued as D1,110,332.²⁰ In both cases the deletion was voluntary, but the deleted material remains in the file history.

V. Appendices as Support for Amendments, Continuations, and Priority

The most important question about an appendix may be whether it can later support a claim the drawings do not. The governing cases address drawings, not appendices. In *In re Daniels*, the Federal Circuit looked to the drawings of an earlier design application to decide whether they described the design claimed in a continuation, and held that they did, so the continuation was entitled to the earlier filing date.²¹ In *In re Owens*, the court held that disclosure of a whole design does not necessarily show possession of a newly bounded part of it.²² And in *Vas-Cath*, the court held that drawings in an earlier design application can, depending on what they convey to a skilled artisan, provide written description support for later claims.²³ None of these decisions decides whether material filed as an appendix is part of the relevant disclosure, and no reported decision located for this article addresses that question. In one non-precedential decision, the Board referred to a color image "originally appearing in an Appendix to the application as originally filed" in describing the claimed design while reversing an obviousness rejection, but it did not decide the appendix's status.²⁴

Examiners, however, have treated appendix images as support in particular cases. In Application [29/962,418](#), for a garment, the examiner found that "[b]asis for a continuation under 35 U.S.C. 120 is supported by the appendix originally filed in" the parent application, while noting that "[t]he question of patentability rests upon that which is shown and described in the drawing disclosure and specification, not what is shown and described within the appendix." The application issued as D1,087,532.²⁵ In Application [29/961,689](#), for an automobile, amended drawings adding contouring

to the side doors were found “supported by the appendix (12/18/2023) filed in the parent application,” and the application issued as D1,123,720.²⁶ In Application [29/725,758](#), for a welding machine, the examiner accepted removal of a detail as “supported by the appendix dated 02/27/2020 as not being visible in the appendix views.”²⁷ And in Application [29/936,079](#), also for a vaping device, proposed figure amendments were “found to be supported by the appendix and acceptable by the examiner, though no exact agreements were made,” at an interview; the application issued as D1,135,082.²⁸ These are examiner determinations, not holdings, and each turned on what the particular appendix showed.

Examiners have also refused appendix-based support. In Application [29/883,057](#), the applicant added three embodiments by preliminary amendment, arguing that a transparent window shown in the appendix supported them. The examiner disagreed: the appendix showed the window only on two other embodiments, and “the appendix does not show this feature applied to such designs as embodiments four, five and six.” The examiner concluded that “applying such a ‘feature’ to other embodiments/designs that were not disclosed in either the original papers or the appendix is not supported.” The applicant canceled the added figures, and the application issued as D1,094,862.²⁹ The reasoning parallels *Owens*: an appendix supports what it shows, not a recombination of what it shows. And in Application [29/695,608](#), after the applicant removed its references to a 40-figure appendix and amended the drawings to remove broken-line features, the examiner objected to the amendments as new matter because there was “no support in the original disclosure that permits the complete removal of broken line features from the drawing disclosure.”³⁰ The examiner did not decide that no appendix image could ever support such an amendment, but the appendix did not save this one.

Three questions should be kept separate. The first is whether the existing claim includes appendix material. An appendix ordinarily does not itself define the existing claim, but referring to or incorporating it in the specification may create a dispute or rejection about claim scope, as the GM files show. The second is whether appendix material can provide antecedent basis or written description support for a later amendment or claim. The answer is possibly, assessed claim by claim against what the appendix actually shows. The third is whether a particular amendment is permissible. An amendment may not add new matter, whatever the appendix shows, and incorporating appendix content into the specification or drawings is not a general cure for a deficient drawing disclosure. Possible support for a later claim is not a determination that the existing claim includes the appendix, or that a particular amendment will be entered.

VI. Multiple Embodiments and the “Implicit Election” Argument

A design application may show more than one embodiment if the embodiments involve a single inventive concept.³¹ The Federal Circuit has reaffirmed that “[s]o long as the scope of the invention is clear with reasonable certainty to an ordinary observer, a design patent can disclose multiple embodiments within its single claim and can use multiple drawings to do so.”³² Embodiments that are patentably distinct belong in separate applications. A practitioner considering an appendix that would depict other embodiments should therefore decide before filing whether those embodiments are patentably indistinct variations that could be shown in the formal drawings, or distinct designs better pursued in a separate application. An appendix is a poor substitute for either choice.

When an appendix depicting other designs is canceled in response to an examiner objection, without a formal restriction requirement, an accused infringer may argue that the applicant’s acquiescence functioned as an implicit election, limiting the claim to the remaining drawings. That is a possible litigating argument, not an established doctrine. No reported decision has adopted it, and none of the file histories reviewed for this article shows such an election. In Application [29/902,119](#), for example, the applicant canceled a specification statement about the appendix in response to an objection, but the election in that case was made in response to a formal restriction requirement directed to embodiments in the drawings.³³ The closest authority is *Pacific Coast Marine*, discussed in Part [VII](#), which applied prosecution history estoppel principles where embodiments were canceled in response to a restriction requirement. Whether cancellation of an unreferenced appendix in response to an objection to form is a surrender “for reasons of patentability” is an open question.

VII. Enforcement: Estoppel, Disclaimer, and Dedication

A. Prosecution History Estoppel

The Federal Circuit has held that prosecution history estoppel principles apply to design patents. Whether estoppel bars a claim of infringement depends on “(1) whether there was a surrender; (2) whether it was for reasons of patentability; and (3) whether the accused design is within the scope of the surrender.”³⁴ In *Pacific Coast Marine*, the patentee canceled embodiments in response to a restriction requirement, and the court held that estoppel principles applied, but it reversed the judgment of noninfringement because the accused three-hole design was not within the surrender. In *Advantek*, the court likewise found no estoppel where the accused design embodied the elected design. Neither case involved an appendix. The risk for appendix practice is concentrated in appendices that disclose alternative embodiments and are later canceled without being pursued in a separate filing.

B. Prosecution History Disclaimer

Prosecution history disclaimer also applies to design patents, and it “can occur through claim amendments or arguments made to the PTO.”³⁵ In *Top Brand*, the patentee’s arguments distinguishing a prior art reference surrendered claim scope it could not later recapture. The prosecution record can also limit scope in other ways; in *Curver*, amendments to the title, claim, and figure descriptions limited the design to the article recited.³⁶ Neither case involved an appendix, but *Top Brand* has direct practical significance: arguments about what an appendix shows, or about why appendix content differs from prior art, should be made with the expectation that they may later be read as a disavowal.

C. Disclosure-Dedication

An accused infringer may also argue that design subject matter disclosed in an appendix but never claimed was dedicated to the public. The disclosure-dedication doctrine developed in utility patent law as a limit on the doctrine of equivalents, and the Federal Circuit has not applied it to design patent appendices.³⁷ Its applicability to design appendices remains unestablished. The argument would likely be stronger the more clearly the appendix depicts a standalone design alternative that was canceled, abandoned, or simply never pursued.

A patentee could respond that disclosure-dedication developed as a limit on recapturing unclaimed subject matter through the doctrine of equivalents, whereas design-patent infringement is assessed under the ordinary-observer test.³⁸ The patentee could also argue that the doctrine requires a sufficiently specific disclosure of an identifiable, unclaimed alternative, and that material appearing only in an appendix, never incorporated into the claimed drawings and later removed after an objection, does not necessarily meet that requirement.³⁹ A further response would distinguish removal to address an objection to the filing’s form from the surrender of a claimed drawing embodiment to secure a patent or an unambiguous argument distinguishing prior art.⁴⁰ None of those responses resolves the status of a design-application appendix as a matter of law. Their strength would depend on what the appendix disclosed, what the applicant said and did during prosecution, and the infringement theory asserted.

VIII. Continuations, Divisionals, and Obviousness After LKQ

For alternative designs with independent commercial value, continuation or divisional applications supported by separate drawing disclosures generally provide stronger and cleaner protection than an appendix. Practitioners pursuing that route should account for the changed obviousness standard. In *LKQ*, the en banc Federal Circuit overruled the *Rosen-Durling* test, including its

requirements that a primary reference be “basically the same” as the claimed design and that secondary references be “so related” to the primary reference, and held that design patent obviousness is governed by the same flexible *Graham* factors applied in utility patent practice.⁴¹

LKQ did not address double patenting or appendix-derived continuations, so its effect on appendix strategy is a question to evaluate rather than a settled consequence. If a continuation is entitled to the parent’s filing date for the particular claimed design, the parent’s own drawings are not intervening prior art against that claim. Whether an appendix supports that entitlement must be assessed separately. Even so, a continuation directed to an appendix design that is a visible variation of the parent’s design may face a nonstatutory double patenting rejection, which for designs asks whether the two designs are patentably distinct.⁴² Application 29/961,689 illustrates the point. There the examiner accepted amended drawings adding side-door contouring supported by an appendix filed in the parent application, and in the same action provisionally rejected the claim for nonstatutory double patenting over a co-pending application, citing “the contour lines included in the side doors of the vehicle” as an example of differences that were “minimal to the overall design.”⁴³ The safe harbor of 35 U.S.C. § 121 against double patenting is tied to the statutory restriction and divisional requirements, so it should not be assumed for a voluntary continuation.⁴⁴ Third-party prior art may also support a more readily constructed obviousness rejection under *LKQ* than under prior law, although the same flexibility may give applicants broader grounds to distinguish prior art combinations. Early prior art searching against proposed continuation claims is advisable.

IX. Practical Recommendations

The file histories and authorities reviewed here suggest the following practices.

1. Use an appendix only for an identifiable purpose, and assess the risk of that purpose before filing.
2. Do not refer to the appendix in the specification or claim, and do not use incorporation-by-reference language. In the files reviewed, specification references were the usual trigger for objections and rejections.
3. Do not rely on any legend in the appendix to control its legal effect.
4. Prefer reference material showing the same design as the formal drawings. Treat color images and photographs with particular care, and check the drawing rules that may apply to them.
5. If the appendix would depict other embodiments, decide before filing whether they belong in the formal drawings or in a separate application.

6. Treat appendix material as possible, not assured, support for later claims, and assess priority and new matter claim by claim against what the appendix actually shows.
7. Before canceling appendix content with independent commercial value, evaluate whether a continuation or divisional should be filed, and treat the cancellation as potentially substantive rather than clerical.
8. Make arguments about appendix content with the expectation that they may later be read as a disclaimer.

X. Conclusion

An appendix is neither categorically forbidden nor assured of acceptance. The MPEP permits certain descriptive material in a separate paper but does not expressly authorize image appendices. In the particular files reviewed here, some examiners acknowledged appendices without objection, and others accepted appendix images as support for amendments or continuation priority. At the same time, specification references to appendices have repeatedly drawn objections and rejections, at least one examiner required cancellation of an unreferenced appendix, and no court has decided what legal status an appendix has. Until one does, the prudent course is to treat an appendix as part of the record that may help or hurt, to keep it out of the specification, and to protect commercially significant alternative designs through the formal drawings or separate applications rather than through an appendix.

Notes

1. [MPEP § 1503.01](#), subsection II (citing *In re Freeman*, 23 App. D.C. 226 (App. D.C. 1904)).
2. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665 (Fed. Cir. 2008) (en banc).
3. [MPEP § 1503.01](#), subsection II (citing *Ex parte Spiegel*, 1919 C.D. 112, 268 O.G. 741 (Comm'r Pat. 1919)).
4. [MPEP § 1503.01](#), subsection II; *see also* [35 U.S.C. § 112](#); [MPEP § 1504.04](#).
5. [MPEP § 1503.01](#), subsection II.
6. *In re Maatita*, 900 F.3d 1369 (Fed. Cir. 2018).
7. [MPEP § 1503.02](#), subsection V; *see also* [37 C.F.R. § 1.84\(b\)](#).
8. [37 C.F.R. § 1.84\(a\)\(2\)](#), (b)(2); [MPEP § 1503.02](#), subsection V.
9. U.S. Design Application No. [29/904,863](#), ProSearch file history at 23, 27, 31.
10. *Id.* at 2, 11.
11. U.S. Design Application No. [29/903,635](#), ProSearch file history at 4, 13, 29.
12. U.S. Design Application No. [29/902,119](#), ProSearch file history at 2, 14, 56, 130.
13. U.S. Design Application No. [29/695,608](#), ProSearch file history at 44, 45.
14. U.S. Design Application No. [29/946,074](#), ProSearch file history at 2, 11, 26, 28, 29.

15. U.S. Design Application No. [29/660,112](#), ProSearch file history at 2, 39, 47, 48 (abandoned).
16. U.S. Design Application No. [29/917,737](#), ProSearch file history at 2, 35.
17. U.S. Design Application No. [29/929,866](#), ProSearch file history at 56.
18. U.S. Design Application No. [29/989,952](#), ProSearch file history at 2, 9.
19. U.S. Design Application No. [29/881,173](#), ProSearch file history at 2, 27, 43, 56.
20. U.S. Design Application No. [29/776,949](#), ProSearch file history at 2, 176, 185.
21. *In re Daniels*, 144 F.3d 1452 (Fed. Cir. 1998).
22. *In re Owens*, 710 F.3d 1362 (Fed. Cir. 2013).
23. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555 (Fed. Cir. 1991).
24. *Ex parte Carrigan*, Appeal No. 2021-001189, slip op. at 9 (PTAB 2021) (Application [29/606,389](#)).
25. U.S. Design Application No. [29/962,418](#), ProSearch file history at 2, 20.
26. U.S. Design Application No. [29/961,689](#), ProSearch file history at 2, 18.
27. U.S. Design Application No. [29/725,758](#), ProSearch file history at 5, 6.
28. U.S. Design Application No. [29/936,079](#), ProSearch file history at 2, 21.
29. U.S. Design Application No. [29/883,057](#), ProSearch file history at 2, 14, 53.
30. U.S. Design Application No. [29/695,608](#), ProSearch file history at 6, 21, 30.
31. *In re Rubinfeld*, 270 F.2d 391 (CCPA 1959); [MPEP § 1504.05](#).
32. *Maatita*, 900 F.3d 1369.
33. U.S. Design Application No. [29/902,119](#), ProSearch file history at 56.
34. *Pacific Coast Marine Windshields Ltd. v. Malibu Boats, LLC*, 739 F.3d 694 (Fed. Cir. 2014); *Advantek Marketing, Inc. v. Shanghai Walk-Long Tools Co.*, 898 F.3d 1210 (Fed. Cir. 2018) (quoting *Pacific Coast Marine*).
35. *Top Brand LLC v. Cozy Comfort Co.*, 143 F.4th 1349 (Fed. Cir. 2025).
36. *Curver Luxembourg, SARL v. Home Expressions Inc.*, 938 F.3d 1334 (Fed. Cir. 2019).
37. *Johnson & Johnston Assocs. Inc. v. R.E. Service Co.*, 285 F.3d 1046 (Fed. Cir. 2002) (en banc); *Maxwell v. J. Baker, Inc.*, 86 F.3d 1098 (Fed. Cir. 1996).
38. See *Egyptian Goddess*, 543 F.3d 665.
39. See *PSC Computer Prods., Inc. v. Foxconn Int'l, Inc.*, 355 F.3d 1353 (Fed. Cir. 2004).
40. Compare *Pacific Coast Marine*, 739 F.3d 694, and *Top Brand*, 143 F.4th 1349.
41. *LKQ Corp. v. GM Global Technology Operations LLC*, 102 F.4th 1280 (Fed. Cir. 2024) (en banc).
42. [MPEP § 1504.06](#).
43. U.S. Design Application No. [29/961,689](#), ProSearch file history at 18.
44. [MPEP § 804.01](#).