

Design Patent ProGuide – Claims

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

Contents

Quick Start Guide

1. Introduction and Theory

2. Recommended Form

3. Rules and Guidance for Claims

3.1 A Design Claim Is Limited to a Specific Article of Manufacture

3.2 Only One Claim Is Permitted in a Design Patent Application

3.3 Multiple Embodiments Not Patentably Distinct Allowed in a Single Claim

3.4 The Title and Claim Must Correspond

3.5 “As Shown” vs. “As Shown and Described” Is Determined by the Specification

3.6 Match the Pronoun (“I claim” or “We claim”) to the Inventors

3.7 Examiner Discretion Is Broad but Not Unlimited

3.8 Open-Ended Language Identifying the Article Is Improper

3.9 The Claim Must Use “For,” Not “Of”

3.10 Use of the Indefinite Article “a” is Preferred

3.11 Identify the Article Clearly, Not by Its Function

3.12 The Claim Must Not Recite Environmental Structure as Part of the Article

3.13 A Claimed Design May Be Embodied in a Portion of an Article

3.14 Claim Language Cannot Substitute for a Clear Visual Disclosure

3.15 The Claim Must Be Conformed After Any Title Amendment

3.16 Do Not Rely on a Foreign Priority Document to Supply the Claimed Design

3.17 Claim Must Not Implicitly Expand the Article Beyond the Drawings

3.18 Claim Language Cannot Rely on Examiner Assumptions About Intended Use

3.19 Check the Article Name When Drawings Use Broken Lines

4. Application of the Rules in Rejections and Objections

4.1 Using the incorrect formal phrase regarding the specification content

4.2 Using incorrect inventor pronouns. Use “we claim” for multiple inventors or “I claim” for a single inventor

4.3 Identifying an improper or overly broad article of manufacture

4.4 Including functional or use-based language

- 4.5 Improperly introducing environmental or contextual limitations
- 4.6 Using “or portion thereof” instead of clearly identifying the claimed design
- 4.7 Claim language that is inconsistent with the title
- 4.8 Using open-ended or indefinite language
- 4.9 Switching between singular and plural articles
- 4.10 Multiple Embodiments Treated as a Single Inventive Concept (Patentably Indistinct Variations)
- 4.11 Improper to Use “Design of” Instead of “Design for”
- 5. Practice and Enforcement Notes
 - 5.5 Hague Practice Note
- Appendix 1 (Claim Evaluation Checklist)
- Appendix 2 (Claim Questions and Answers)
- Appendix 3 (Limitations of this ProGuide - Claims)
- Appendix 4 (Selected MPEP, CFR, and Statutory References)

Quick Start Guide

DO

Do use the required formal claim format. Always draft the claim as:

“The ornamental design for [the article] as shown,”

or, when appropriate,

“The ornamental design for [the article] as shown and described.”

Do confirm whether “and described” is required. Include “and described” only when the specification contains a proper descriptive statement, modified form, or other descriptive matter beyond the drawings.

Do ensure the claim and title identify the same article. The article named in the claim must correspond to the article named in the title. As a drafting practice, use consistent terminology.

Do clearly identify the article of manufacture. The claim must clearly identify the article or articles to which the design is applied and cannot claim a design in the abstract. A single article name is the preferred drafting approach.

Do keep the claim visually anchored to the drawings. The claim cannot substitute for a clear visual disclosure or cure ambiguity in the drawings. Scope is controlled primarily by what is visually disclosed, although the article named in the claim and proper descriptive matter also bear on scope.

Do use neutral, non-functional article names. Identify the article by what it *is*, not by what it *does* or how it is used.

Do maintain singularity. Design patent applications permit only one claim, and that claim must consistently identify the article or articles to which the design is applied.

Do review the claim whenever drawings or the specification are amended. Even small drawing or specification changes may require corresponding claim correction.

DON'T

Don't claim a design in the abstract. A design cannot be claimed apart from the article to which it is applied.

Don't use functional, use-based, or purpose-driven language. Avoid wording that describes operation ("configured to," "operable to") or suggests that unshown structure is part of the claimed design. A reference to intended use or environment is not automatically improper, and a brief statement of the article's nature and intended use may appear in the description.

Don't use claim wording that implies an unshown combination. Surrounding structure belongs in the drawings (e.g., broken lines) or descriptive statements. A brief phrase naming where the article is used ("for vehicle") should be assessed in context; wording that suggests the claimed design includes unshown structure ("mounted on vehicle") should be avoided.

Don't rely on open-ended or catch-all language. Phrases like "or the like," "or similar article," or "and equivalents" render the claim indefinite when they refer to the article itself ("door or the like"). [MPEP § 1503.01](#) accepts such language only when it is directed to the environment of the article ("door for cabinets, houses, or the like").

Don't switch between singular and plural articles. Inconsistent plurality creates ambiguity and invites objections under [37 C.F.R. § 1.153](#) and, in some cases, § 112(b) rejections.

Don't use "or portion thereof." A claimed design may be embodied in a portion of an article, but the title, claim, drawings, and broken-line statement should make clear which article bears the design and which features are claimed.

Don't attempt to use the claim to fix unclear drawings. Claim language cannot rescue ambiguity, inconsistency, or indefiniteness in the visual disclosure.

Don't describe abstract systems, kits, or functional assemblies. Design patent claims must be directed to a single article of manufacture or a single coordinated set shown as a unified design. Claims that attempt to cover functional systems or unrelated collections of articles are

improper.

Don't assume examiner latitude is unlimited. While examiners afford flexibility in wording, misdescriptive, inaccurate, or unclear claim language will still be objected to or rejected.

1. Introduction and Theory

A design patent claim defines the scope of the patented ornamental design as it is embodied in, or applied to, a specific article of manufacture. Unlike utility patents, which may contain multiple claims of varying scope, a design patent application is limited to a single claim expressed in a standardized formal format. This singularity elevates the importance of precision and consistency in the claim language, particularly as it relates to the article identified in the title and depicted in the drawings.

The claim must be written in formal terms to “The ornamental design for [the article] as shown,” or “as shown and described” when the specification includes proper descriptive statements.

Design patent protection does not extend to a design in the abstract. Rather, the claimed design must be inseparable from the article to which it is applied. Long-standing precedent and current Federal Circuit authority confirm that a design exists only as an ornamental appearance of a specific article of manufacture, not as free-standing surface ornamentation divorced from an article context. As a result, the claim must clearly and accurately identify the article embodying the design, consistent with both the title and the visual disclosure.

The claim operates in close coordination with the drawings. Full lines define the claimed ornamental features, while broken lines serve limited, well-defined purposes and do not alter the fundamental principle that the design is a unitary whole. Because the claim defines “the subject matter which the inventor regards as the invention,” examiners are instructed to afford applicants substantial latitude in claim phrasing. However, that latitude is not unlimited. Claim language that is unclear, inaccurate, internally inconsistent, or misdescriptive of the drawings may give rise to objections or rejections under [35 U.S.C. § 112\(b\)](#) and the applicable regulations.

This ProGuide focuses on how to properly draft, review, and amend design patent claims to ensure formal compliance, consistency with the title and drawings, and resilience against common examiner objections while preserving the broadest defensible scope of protection.

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

2. Recommended Form

The claim must be written in formal terms to “The ornamental design for [the article] as shown,” or “as shown and described” when the specification includes proper descriptive statements.

3. Rules and Guidance for Claims

A careful analysis of design patent prosecution histories reveals that Examiners are not entirely consistent in their application of the rules regarding claims. To acknowledge these inconsistencies and to avoid errors such as representing a variable practice as a mandatory rule, this ProGuide classifies claim rules and requirements into four tiers based on their legal force and consistency of examiner practice. Understanding these tiers helps practitioners identify which requirements are absolute, which allow strategic choices, and how to navigate Examiner discretion effectively.

TIER	DESCRIPTION
MANDATORY	Statutory or regulatory requirements with no flexibility. Violations result in rejection or objection that MUST be cured by amendment. No examiner discretion.
ESTABLISHED PRACTICE	Official USPTO guidance that examiners are instructed to follow consistently. Deviations are rare and typically corrected on appeal or supervisor review.
VARIABLE PRACTICE	Common patterns exist, but examiner interpretation varies within acceptable bounds. Multiple approaches may be acceptable depending on the examiner.
EXAMINER DISCRETION	Outcomes genuinely vary by examiner judgment. Wide range of acceptable approaches exists. Strategic flexibility is greatest here.

3.1 A Design Claim Is Limited to a Specific Article of Manufacture

MANDATORY A design claim must identify a particular article of manufacture and cannot claim a design in the abstract. The ornamental design is legally inseparable from the article named in the claim and title. Claim language that implies a design divorced from a specific article is improper. The requirement is that the article be clearly identified. In [Example 4.3](#) the Examiner suggested, and the Office allowed, a title and claim naming several closely related articles joined by “or.” [Example 4.3](#)

3.2 Only One Claim Is Permitted in a Design Patent Application

MANDATORY A design patent application may include only a single claim. Multiple claims, alternative claim formats, or dependent-style variations are not permitted. All scope must be captured through the drawings, descriptive statements (when appropriate), and the single formal claim.

3.3 Multiple Embodiments Not Patentably Distinct Allowed in a Single Claim

ESTABLISHED PRACTICE A design patent claim may encompass more than one embodiment only if the embodiments are directed to a single inventive concept and are not patentably distinct from one another. Multiple embodiments that are patentably distinct constitute multiple inventions, are subject to restriction, and may not be examined in a single design application (35 U.S.C. § 121; [MPEP § 1504.05](#)). See *In re Rubinfeld*, 270 F.2d 391, 123 USPQ 210 (CCPA 1959); *In re Platner*, 155 USPQ 222 (Comm’r Pat. 1967). [Example 4.10](#)

3.4 The Title and Claim Must Correspond

MANDATORY The title and claim must correspond in identifying the particular article of manufacture. As a drafting practice, use consistent article terminology throughout the title, claim, and specification. An inconsistency that identifies different articles should be corrected; do not treat every minor wording difference as an independent regulatory violation. Examiners do sometimes object to small differences, such as singular versus plural forms, so a consistency check before filing avoids an unnecessary objection. If the title is amended, the preamble and claim should be conformed in the same response. [37 C.F.R. § 1.153\(a\)](#); [MPEP § 1503.01](#), subsections I and III. [Example 4.7](#), [Example 4.9](#)

3.5 “As Shown” vs. “As Shown and Described” Is Determined by the Specification

MANDATORY Use “as shown” only when the specification contains no descriptive matter affecting the scope of the claimed design beyond standard figure descriptions. The phrase “as shown and described” is required whenever the specification contains descriptive matter that forms part of the claimed design beyond the drawings alone. Common examples include statements that identify specific surface treatment, contrast, texture, or color as part of the claimed design. For example, if the specification states that a particular color or contrast feature forms part of the claimed design, the claim should use “as shown and described” to incorporate that descriptive matter. [Example 4.1](#)

3.6 Match the Pronoun (“I claim” or “We claim”) to the Inventors

ESTABLISHED PRACTICE Under USPTO form practice, the claim begins with the pronoun that matches the number of inventors: “I claim” for a single inventor and “We claim” for multiple inventors. The pronoun comes from MPEP form paragraph 15.62, which examiners use to require amendment; [37 C.F.R. § 1.153](#) does not prescribe a pronoun. An examiner may object to a mismatched pronoun and require correction by amendment. A neutral lead-in such as “What is claimed is:” does not reliably avoid the issue. Some examiners have objected to it as improper and required “I claim” or “We claim” (for example, Applications [29/736,146](#) and [29/753,234](#)), while others have themselves amended claims to begin “What is claimed is:” (for example, Applications [29/740,936](#) and [29/652,402](#)). These examples are illustrative only, drawn from a limited search, and are not a survey of examiner practice. [Example 4.2](#)

3.7 Examiner Discretion Is Broad but Not Unlimited

VARIABLE PRACTICE Examiners are instructed to allow substantial latitude in claim wording, recognizing that design claims are inherently concise and standardized. However, amendment may be required when claim language is clearly misdescriptive, inaccurate, or unclear such that it would fail to particularly point out the claimed design under [35 U.S.C. § 112\(b\)](#). [Example 4.3](#)

3.8 Open-Ended Language Identifying the Article Is Improper

MANDATORY Language such as “or the like,” “or similar article,” or other open-ended formulations is improper in design claims when it refers to the article itself (for example, “door or the like”), because it obscures the specific article of manufacture and introduces indefiniteness. Under [MPEP § 1503.01](#), subsection I, the same language directed to the environment of the article (for example, “door for cabinets, houses, or the like”) is not a basis for a [§ 112\(b\)](#) rejection. [Example 4.8](#)

3.9 The Claim Must Use “For,” Not “Of”

MANDATORY The claim must use the phrase “The ornamental design for [article]” as prescribed by regulation. Use of “of” instead of “for” is a formal defect under [37 CFR § 1.153](#), even if the meaning is otherwise clear. [Example 4.11](#)

3.10 Use of the Indefinite Article “a” is Preferred

VARIABLE PRACTICE As a general matter, the indefinite article “a” is preferred in design patent claim drafting. For example, the preferred form is “The ornamental design for a [article] as shown and described.” Although use of the definite article “the” is not always treated as improper, it may

be objected to in some cases because it can suggest that the claim is directed to a specific preexisting object rather than a general article of manufacture.

3.11 Identify the Article Clearly, Not by Its Function

ESTABLISHED PRACTICE Identify the article by a clear, generally understood name. Avoid claim wording that describes operation or suggests that unshown structure is part of the claimed design. A reference to intended use or environment is not automatically improper; assess whether, in context, the title and claim still clearly identify the article. A brief statement of the nature and intended use of the article may be placed in the description. [MPEP § 1503.01](#), subsection I. [Example 4.4](#)

3.12 The Claim Must Not Recite Environmental Structure as Part of the Article

ESTABLISHED PRACTICE The claim should not describe environmental placement, surrounding structure, or interaction with other articles in a way that suggests the claimed design includes structure not shown in the drawings (for example, “Mobile Mapping Device Mounted on Vehicle”). Environmental structure is shown in broken lines or explained in descriptive statements. A short phrase naming the environment in which the article is used (for example, “door for cabinets” or “Mobile Mapping Device for Vehicle”) is generally accepted ([MPEP § 1503.01](#), subsection I). [Example 4.5](#)

3.13 A Claimed Design May Be Embodied in a Portion of an Article

ESTABLISHED PRACTICE A claimed design may be embodied in a portion of an article, including an integral portion that is not separately made or sold. The title, claim, drawings, and broken-line explanation should make clear which article bears the design and which features are claimed. The title may name the entire article even though the full lines claim only a portion of it. Do not use “or portion thereof” as a substitute for identifying the claimed design clearly. *In re Zahn*, 617 F.2d 261, 204 USPQ 988 (CCPA 1980); [MPEP § 1503.01](#), subsection I. [Example 4.6](#)

3.14 Claim Language Cannot Substitute for a Clear Visual Disclosure

MANDATORY Claim language cannot substitute for a sufficiently clear visual disclosure. Where the drawings are ambiguous, inconsistent, or indefinite, assess whether a permissible drawing amendment (one that adds no new matter) is needed in the particular case; changing the claim wording alone will not supply a missing visual disclosure. This does not mean the words of the claim never matter: the article designation and proper descriptive matter may bear on scope. In *Curver*, the article named in the claim limited scope even though no chair appeared in the figures. *Curver Luxembourg, SARL v. Home Expressions Inc.*, 938 F.3d 1334 (Fed. Cir. 2019).

3.15 The Claim Must Be Conformed After Any Title Amendment

MANDATORY When the title of the application is amended, the claim must be amended so that it continues to correspond to the revised title. A claim that no longer corresponds to the title is objectionable under [37 CFR § 1.153](#). [Example 4.7](#)

3.16 Do Not Rely on a Foreign Priority Document to Supply the Claimed Design

ESTABLISHED PRACTICE Do not assume that a foreign priority document, merely because priority is claimed, supplies missing essential disclosure for the U.S. design claim. Check what constitutes the U.S. application's disclosure as filed, including any applicable filing-by-reference or inadvertently omitted-material procedure under 37 C.F.R. § 1.57(a) and (b). Essential material cannot ordinarily be supplied by incorporating a foreign priority document by reference. 37 C.F.R. § 1.57(d).

3.17 Claim Must Not Implicitly Expand the Article Beyond the Drawings

VARIABLE PRACTICE Even when using formally correct claim language, a claim is improper if the named article implicitly suggests a broader or different article than what is actually depicted in the drawings. An examiner may object where the claim terminology reasonably encompasses structures, configurations, or contexts not visually supported.

3.18 Claim Language Cannot Rely on Examiner Assumptions About Intended Use

VARIABLE PRACTICE A design claim may not rely on examiner or reader assumptions regarding intended use, orientation, or installation to reconcile ambiguities between the claim and drawings. If the article name requires assumptions about function or use to make sense of the drawings, the claim is improper. [Example 4.3](#)

3.19 Check the Article Name When Drawings Use Broken Lines

VARIABLE PRACTICE When drawings show surrounding or other portions in broken lines, check that the article name accurately identifies the article to which the partial design is applied. Do not narrow the article name merely because less than the whole article is claimed. *In re Zahn*, 617 F.2d 261 (CCPA 1980).

4. Application of the Rules in Rejections and Objections

Many rejections to design patent claims are common and typically result from language choice that fails to satisfy the formal requirements of [37 CFR § 1.153](#) or fails to maintain consistency with the title and drawings. Common rejections and recommended forms to overcome them are set forth below.

4.1 Using the incorrect formal phrase regarding the specification content

For example, using "as shown" when the specification includes descriptive statements, or "as shown and described" when no descriptive matter is present.

[Rule 3.5](#)

In Application [29/857,618](#), the original claim was for “[t]he ornamental design for a detail bucket assembly, as shown.” The Application included figure descriptions and a broken line statement. The Examiner objected to the claim statement because it did not include the phrase "and described" and stated “[f]or proper form ([37 CFR 1.153](#)), the claim must be amended to read: -- We claim: The ornamental design for Detail Bucket Assembly as shown and described. --” The applicant amended the claim to recite “The ornamental design for a detail bucket assembly, as shown and described.”

4.2 Using incorrect inventor pronouns. Use "we claim" for multiple inventors or "I claim" for a single inventor

[Rule 3.6](#)

In Application [29/883,946](#) the original claim stated “We claim” when there was just a single inventor. The Examiner objected and stated that, “for proper form,” the word “We” must be replaced with “I” (citing [37 CFR 1.153](#)), so that the claim reads “I claim.”

In Application [29/868,084](#) the original claim stated “I claim” when there were multiple inventors. The Examiner objected and stated that, “[f]or clarity and an indication of multiple inventorship,” the claim should be amended to read “We claim.”

Note that if inventorship is corrected during prosecution (for example, through a request under [37 C.F.R. § 1.48](#)), the claim pronoun may need to be amended to reflect the correct number of inventors. A claim that states “We claim” may be improper if inventorship is corrected to a single inventor, and a claim that states “I claim” may be improper if inventorship is corrected to multiple inventors. Whenever inventorship is changed, practitioners should confirm that the claim pronoun remains consistent with the corrected inventorship record.

4.3 Identifying an improper or overly broad article of manufacture

For example, using overly generic or abstract names that create ambiguity as to the specific article depicted in the drawings.

[Rule 3.1](#), [Rule 3.7](#), [Rule 3.18](#)

In Application [29/810,746](#), the Examiner rejected the claim under [35 U.S.C. § 112\(b\)](#) as indefinite because the claim and title failed to clearly identify the specific article of manufacture in which the design was embodied. The Examiner explained that the title wording “Design for Display on a Surface of a Footwear Sole, Insole, Sole Insert, Sock Liner or Sole of a Sock” (and similar variants used throughout the application) created ambiguity as to whether the applicant was claiming:

- (1) a flat design displayed on a surface, or
- (2) a physical three-dimensional article, such as a footwear sole, insole, or sock.

The Examiner further stated that the ambiguity could not be rectified by the specification or drawings because the drawings did not clearly convey dimensionality or contour, and therefore did not clarify whether the claimed subject matter was a two-dimensional image or a three-dimensional physical object. The Examiner concluded that the subject matter was not understood as presented and that the claim was indefinite due to multiple possible interpretations requiring examiner speculation.

In the same action, the Examiner objected that the subject “A Design” or “Design” in the various titles is not an article of manufacture, and suggested amending the title throughout the application to one of three alternatives, each naming several articles joined by “or”: “Display on a Surface of a Footwear Sole, Insole, Sole Insert, Sock Liner or Sole of a Sock,” “Surface of a Footwear Sole, Insole, Sole Insert, Sock Liner or Sole of a Sock,” or “Footwear Sole, Insole, Sole Insert, Sock Liner or Sole of a Sock.” The applicant adopted the second suggestion as the title and deleted the words “Display on” from the claim. Because the claim still referred to a “design for display on” the surface, a later action objected to the claim statement and suggested that it read:

“The ornamental design for a surface of a footwear sole, insole, sole insert, sock liner or sole of a sock as shown and described.”

In its earlier response, the applicant had explained that deletion of the words “Display on” clarified that the claimed design was directed to the surface of the identified article of manufacture, and requested withdrawal of the §112(b) rejection. The applicant later amended the claim to read “The ornamental design for a SURFACE OF A FOOTWEAR SOLE, INSOLE, SOLE INSERT, SOCK LINER OR SOLE OF A SOCK as shown and described.” The Notice of Allowability accepted that amendment, adding only an examiner’s amendment to two figure descriptions, and the application

issued as U.S. Patent No. D1,111,384 (Feb. 10, 2026). Note what this example does and does not show. The defect was wording (“Design for Display on”) that left unclear whether a flat image or a physical article was claimed. The Examiner did not object to a title naming several closely related articles joined by “or”; the Examiner proposed such titles. Whether a title may list alternative articles is a matter of examiner discretion, and a single article name remains the safer choice where one will do.

4.4 Including functional or use-based language

For example, describing what the article does, how it is used, or what it is configured to do.

Rule 3.11

In Application [29/934,280](#), the Examiner rejected the claim under [35 U.S.C. § 112\(b\)](#) as indefinite because the title “Anxiety Relief Toy” was directed to the functional aspect or intended purpose of the article rather than identifying the article itself. The Examiner stated it was uncertain whether the claimed design was directed to a game controller, a toy device, or a rubber simulation of a controller intended to relieve anxiety. The Examiner further stated that the title must identify the article in which the design is embodied by the name generally known and used by the public.

To overcome the rejection, the applicant amended the title throughout the application to “Toy,” thereby removing the functional and intended-use terminology. For correct search and classification, the Examiner asked whether the design was a simulation toy or an actual game controller, and applicant’s counsel confirmed in an interview that it was a simulation and not a controller.

4.5 Improperly introducing environmental or contextual limitations

For example, reciting environmental placement, surrounding structure, or interaction with other objects in the claim.

Rule 3.12

In Application [29/674,643](#), the Examiner objected to the title as being misdescriptive and inaccurate under [MPEP § 1503.01](#), because the title, “Mobile Mapping Device Mounted on Vehicle,” improperly suggested that the claimed design was directed to an assembly including both a mobile mapping device and a vehicle. The Examiner explained that the drawings did not include a vehicle in either solid or broken lines, and therefore the title improperly introduced environmental or contextual structure that was not shown as part of the claimed design.

The applicant amended the title to “Mobile Mapping Device for Vehicle,” which removed the environmental placement language and identified only the claimed article itself.

It is worth noting that the amended title in this example "Mobile Mapping Device for Vehicle" retained a reference to the vehicle as context. MPEP § 1503.01, subsection I, recognizes that a title may refer to the environment of the article (for example, "door for cabinets, houses, or the like"). The Examiner suggested this title. "For Vehicle" describes the intended application of the article rather than incorporating the vehicle into the claimed design. However, this outcome reflects variable examiner practice, and practitioners should not assume that "for [environmental context]" language is universally acceptable. In cases where such phrasing could be read as suggesting that the claimed design is incomplete without the referenced object, an examiner may still object. Where an environment phrase could be read that way, the safer approach is to identify the article by what it is and to show contextual structure in broken lines in the drawings or explain it in descriptive statements in the specification.

4.6 Using “or portion thereof” instead of clearly identifying the claimed design

[Rule 3.13](#)

In Application [29/892,624](#), the original claim statement was “I claim the ornamental design of a child co-walk leash apparatus or portion thereof, as shown and described.” The Examiner objected to the claim statement for multiple reasons, including that the claim improperly attempted to cover an unspecified “portion” of the article. The Examiner explained that, under design patent practice, the claim must be directed to the ornamental design for the article (specifying the name) as shown or as shown and described, and that the claim must be amended to remove “or portion thereof” and conform to proper form.

Separately, the Examiner also objected to the title “Child Co-Walk Leash” because “Child Co-Walk” was treated as a trade name/marketing term and not the name generally known and used by the public. The Examiner suggested generic alternatives, including “Animal Leash” or “Leash.” The applicant amended the title to “Animal Leash” throughout the application.

In the same response, the applicant amended the claim to read “I claim the ornamental design for an animal leash, as shown and described,” removing the “or portion thereof” language, and the claim was allowed.

4.7 Claim language that is inconsistent with the title

For example, the article named in the claim does not match the article named in the title.

[Rule 3.4](#), [Rule 3.15](#)

In Application [29/886,306](#), the applicant’s title and specification consistently identified the article as a “Silicone Cake Pan.” However, the claim recited “Silicone Cake Pans,” which improperly suggested multiple types of silicone cake pans and was inconsistent with the singular title. The

Examiner objected that “[t]he title within the claim suggests multiple types of silicone cake pans,” noted that “[t]here can be only one claim in a design patent application,” and recommended that the claim be amended to recite the singular form “Silicone Cake Pan” for consistency with the title and in accordance with [37 C.F.R. § 1.153](#) and [MPEP § 1503.01](#), subsection III. The applicant subsequently amended the claim statement to replace “Silicone Cake Pans” with “Silicone Cake Pan,” thereby resolving the inconsistency.

4.8 Using open-ended or indefinite language

For example, using phrases such as "or the like" or "or similar article".

[Rule 3.8](#)

In Application [29/781,797](#), the Applicant’s original title and claim language included open-ended and indefinite wording by reciting “Outsole with Wear Off Indication for Footwear, Boot, Shoe, or the Like.” In the Office Action, the Examiner objected to the title and claim on the ground that the phrase “or the Like” suggested an indefinite scope and failed to clearly designate a single identifiable article of manufacture. The Examiner explained that a design patent claim must be directed to a particular article, and that the inclusion of “or the Like” improperly introduced ambiguity as to what article was being claimed.

To overcome the objection and clarify the scope of the claimed article, the Applicant amended the title, specification, and claim to remove the indefinite language “or the Like” and to identify only the article itself. Specifically, the Applicant amended the article designation throughout the application to “Outsole,” eliminating the open-ended environmental language. The Examiner also objected that “Wear off Indication” is not an identifiable article of manufacture, and the Examiner’s suggested titles included “Outsole for Footwear, Boot, or Shoe.” The applicant amended “[w]ithout acquiescing to the objection,” noting that “or the like” was directed to the environment in which the outsole may be present rather than to the article itself. That position is consistent with [MPEP § 1503.01](#), subsection I, although whether such language refers only to the environment depends on context. Amending was the simpler course.

4.9 Switching between singular and plural articles

For example, inconsistent use of singular and plural forms within the application.

[Rule 3.4](#)

In Application No. [29/752,781](#), the applicant originally used inconsistent singular and plural terminology to describe the article of manufacture throughout the application. For example, the claim recited “WE claim the ornamental design for an Insoles as shown and described,” and the

specification similarly stated that the inventors “invented a new design for an Insoles.” However, the drawings disclosed only a single insole, not a pair or set of insoles.

The Examiner objected that the application improperly alternated between plural and singular identification of the article, creating inconsistency and ambiguity as to what was being claimed. The Examiner objected to the title, noting that the application “discloses a single insole, not a pair or set of insoles,” and stated that the title and claim should be amended to the singular form “Insole” for clarity and consistency with the drawing disclosure. The Examiner also called for corresponding amendments to the preamble and figure descriptions, explaining that the plural term “Insoles” was inconsistent with the remainder of the application and should be corrected throughout to the singular “Insole.”

4.10 Multiple Embodiments Treated as a Single Inventive Concept (Patentably Indistinct Variations)

[Rule 3.3](#)

In Application [29/931,148](#), the Examiner determined that the application included multiple embodiments, but that a restriction requirement was not necessary because the embodiments were patentably indistinct. The Examiner identified Embodiment 1 as Figure 1 (a singular flat side of a mattress cover with an organic radial flower pattern and a dark background) and Embodiment 2 as Figure 2 (a singular flat side of a mattress cover with a two-tone organic radial flower pattern and a dark background). The Examiner explained that multiple embodiments may be included in a single design application only if they reflect a single inventive concept and are not patentably distinct, citing *In re Rubinfield*, 270 F.2d 391, 123 USPQ 210 (CCPA 1959) and *In re Platner*, 155 USPQ 222 (Comm’r Pat. 1967). The Examiner concluded that the two embodiments presented overall appearances that were basically the same, with only minor tonal and background pattern differences, and therefore constituted obvious or de minimis variations.

The Examiner further stated that because the embodiments were deemed part of a single inventive concept, any rejection of one embodiment over the prior art would apply equally to the other embodiment, citing *Ex parte Appeal* No. 315-40, 152 USPQ 71 (Bd. App. 1965). The Examiner also warned that no argument asserting patentability based on the differences between the embodiments would be considered once the embodiments had been determined to lack patentable distinction, and that failure to traverse the Examiner’s determination would be treated as an admission that the embodiments were not patentably distinct. Accordingly, the Examiner retained both embodiments for examination in the same application.

4.11 Improper to Use “Design of” Instead of “Design for”

In Application No. 29/873,545, the Examiner objected that the claim was not in proper form because it used the phrase “design of” instead of the required phrase “design for.” The Examiner explained that the claim “is inaccurate and is not in proper form (MPEP 1503.01, subsection III),” because it used “of” instead of “for” and because it began “I claim” although there was more than one inventor. The Examiner directed the applicant to amend the claim for accuracy and proper form and suggested: ‘We claim: the ornamental design for a smoke detector, as shown and described.’ [Rule 3.9](#)

5. Practice and Enforcement Notes

5.1 The notes in this section are general drafting considerations, not case-specific infringement, validity, or amendment advice. Claim language in a design patent rarely drives infringement outcomes in the same manner as utility patent claim construction. However, claim language remains legally significant because it identifies the article of manufacture to which the design is applied. In *Curver Luxembourg, SARL v. Home Expressions, Inc.*, 938 F.3d 1334 (Fed. Cir. 2019), the Federal Circuit held that the article named in the claim and title can limit the scope of the design patent, meaning that a design claimed for one article may not be enforceable against an accused product that is a different type of article, even if the ornamental appearance is otherwise similar. The same principle applies to anticipation. The Board could not disregard a claim’s “lip implant” article designation and treat a similarly shaped art tool as anticipating it. *In re SurgiSil, L.L.P.*, 14 F.4th 1380, 1382 (Fed. Cir. 2021). This has a direct practical consequence. If the claim identifies the article too narrowly, an infringer may avoid liability simply by applying the same design to a different product category. Accordingly, practitioners should treat claim drafting as a scope-preservation exercise rather than a mere formality, selecting the broadest defensible article name that is clearly supported by the drawings and consistent with the title.

5.2 When the claim is amended during prosecution, consider how the change may be used later. An amendment to the article designation, cancellation of embodiments, or argument distinguishing prior art may affect the scope of a resulting design patent. Preserve a clear record of what changed and why, but do not assume that every change surrenders all intervening subject matter or that describing a change as “clarifying” eliminates its potential effect. *Curver* is the most direct authority on the named article: the claim had been amended during prosecution from a furniture part to a chair, and the article named in the claim limited its scope. *Curver Luxembourg, SARL v. Home Expressions Inc.*, 938 F.3d 1334 (Fed. Cir. 2019). Prosecution history estoppel also applies to design patents, but it requires attention to what was surrendered and whether the accused design falls within that surrender. *Pacific Coast Marine Windshields Ltd. v. Malibu Boats, LLC*, 739 F.3d 694 (Fed. Cir. 2014) (reversing a noninfringement judgment because the accused design had not

been shown to fall within the surrendered designs). Clear arguments to the examiner that distinguish prior art can also disclaim design features. *Top Brand LLC v. Cozy Comfort Co.*, 143 F.4th 1349 (Fed. Cir. 2025).

5.3 Practitioners should also avoid using claim language as a substitute for correcting drawing problems. Where the drawings contain inconsistent line work, unclear boundaries, or uncertain dimensionality, amending the claim will not cure the defect and may instead create an additional record of inconsistency that can later be used against the patentee. If the drawings are unclear, the safest prosecution strategy is to correct the drawings first and only then conform the claim to the corrected disclosure.

5.4 Practitioners should recognize that design patent enforcement often depends on the ability to argue that the accused product is the same type of article identified in the claim. Overly specific article naming may unnecessarily narrow enforcement flexibility, while overly broad naming may invite §112(b) indefiniteness objections or §171 challenges that the design is being claimed in the abstract. The best practice is to select the broadest defensible article name that is clearly supported by the drawings and that corresponds to the title. Avoid wording that describes operation or implies an unshown combination, and assess any brief use or environment phrase in context.

5.5 Hague Practice Note

An international design application that designates the United States is subject to the U.S. claim requirement. The claim for the U.S. designation must be in the form set out in 37 C.F.R. § 1.1025 (which mirrors § 1.153) and must correspond with the title and drawings. This requirement applies to the U.S. designation; it does not require the application to use U.S. claim wording for other designated jurisdictions.

Appendix 1 (Claim Evaluation Checklist)

1. Single-Claim Requirement

- ☐ Only one claim is included in the application
- ☐ No alternative, dependent, or multiple claim formats are used

2. Formal Claim Language

- ☐ Claim uses the required formal phrasing (“The ornamental design for...”)
- ☐ Claim ends with “as shown” or “as shown and described,” as appropriate

3. “As Shown” vs. “As Shown and Described”

- ☐ Specification reviewed for descriptive statements or modified forms
- ☐ “And described” included only when required

4. Article of Manufacture

- ☐ Claim identifies a specific article of manufacture
- ☐ Claim does not attempt to cover a design in the abstract

5. Title Consistency

- ☐ Article named in the claim corresponds to the article named in the title
- ☐ Terminology is consistent across the title, claim, and specification

6. Clarity and Definiteness

- ☐ Claim language is clear and not misdescriptive
- ☐ No ambiguous or open-ended phrases (e.g., “or the like,” “or similar”) describing the article itself

7. Relationship to Drawings

- ☐ Claim scope is fully supported by the drawings
- ☐ Claim does not attempt to expand beyond what is visually disclosed

8. Broken Line Principles

- ☐ Claim does not reference broken lines or characterize portions as immaterial or unimportant
- ☐ Solid lines in the drawings define the claimed ornamental features
- ☐ Where broken lines are used to illustrate claimed design features (e.g., stitching lines, fold lines), this use is consistent with applicable USPTO guidance and does not improperly disclaim portions of the design

9. Regulatory Compliance

- ☐ Claim complies with [37 CFR 1.153](#)
- ☐ Claim terminology aligns with [MPEP § 1503.01](#) guidance

Appendix 2 (Claim Questions and Answers)

Q1. How many claims are permitted in a design patent application?

Answer: Only one claim is permitted in a design patent application. Multiple claims, alternative claims, or dependent-style claims are not allowed. All scope must be captured through the drawings and the single formal claim.

Q2. What is the required form of a design patent claim?

Answer: The claim must be in formal terms to: “The ornamental design for [the article] as shown,” or, when appropriate, “The ornamental design for [the article] as shown and described.”

This format is prescribed by regulation and differs from utility patent claim requirements.

Q3. When must the phrase “and described” be included in the claim?

Answer: “And described” must be included when the specification contains a proper descriptive statement of the design, modified forms of the design, or other descriptive matter beyond what is shown in the drawings. If no such descriptive matter is present, the claim should recite “as shown” only.

Q4. Does the claim define the scope of a design patent the same way it does in a utility patent?

Answer: No. While the claim formally defines the invention, the drawings primarily control the scope of a design patent. Claim wording cannot replace an adequate visual disclosure, although the article identified in the claim and proper descriptive matter may affect scope.

Q5. Can a design patent claim cover a design in the abstract?

Answer: No. A design patent claim must be limited to an ornamental design applied to a specific article of manufacture. Designs cannot be claimed independently of an article.

Q6. Must the article named in the claim match the title of the application?

Answer: Yes. The article identified in the claim must correspond to the article identified in the title. Any inconsistency between the title and claim may result in an objection requiring correction.

Q7. How much flexibility does an applicant have in the title and claim language?

Answer: Applicants are afforded substantial latitude in the title and claim language. However, examiners may require amendment if the claim language is clearly misdescriptive, inaccurate, or unclear, such that it would fail to particularly point out the claimed design.

Q8. Is it acceptable to use open-ended language such as “or the like” or “or similar article” in a claim?

Answer: Not when the language refers to the article itself (“door or the like”). Open-ended or ambiguous language of that kind is improper because it obscures the specific article of manufacture and may render the claim indefinite. [MPEP § 1503.01](#) does permit such language when it is directed to the environment of the article (“door for cabinets, houses, or the like”).

Q9. Can broken lines be used in the claim to identify unimportant portions of the design?

Answer: No. Broken lines are not used in the claim itself and cannot be used to characterize portions of the design as immaterial or unimportant. A design is a unitary whole, and all claimed portions contribute to the overall appearance.

Q10. If the drawings are clear, can claim defects be overlooked?

Answer: No. Even when drawings are clear, the claim must still comply with formal requirements, correspond to the title, and accurately identify the article of manufacture. Claim defects are not cured solely by compliant drawings.

Appendix 3 (Limitations of this ProGuide - Claims)

This ProGuide is intended to provide practical guidance on drafting, reviewing, and amending design patent claim language in compliance with USPTO formal requirements and examiner practice. However, this ProGuide is subject to the following limitations.

A. No Substantive Infringement or Validity Analysis

This ProGuide does not analyze claim scope for purposes of infringement, validity, or enforceability. While proper claim drafting is essential to preserving defensible scope, ultimate questions of infringement and validity depend on application of the ordinary observer test, comparison to accused designs, and consideration of prior art, none of which are addressed here. Section 5 notes general drafting considerations drawn from infringement and validity decisions; it is not case-specific infringement or validity advice.

B. No Evaluation of Drawing Sufficiency

This ProGuide does not determine whether the drawings adequately disclose the claimed design. The claim must be supported by compliant drawings, but assessment of drawing sufficiency (including line quality, shading, view completeness, consistency, and compliance with drawing rules) is outside the scope of this guide.

C. No Determination of Proper Article Identification Beyond Formal Consistency

This ProGuide addresses formal consistency between the claim and title but does not determine whether a particular article designation is optimal, strategically desirable, or legally preferable in view of potential prior art, prosecution history estoppel, or enforcement considerations.

D. No Substitution for Examiner Judgment or Office Policy Variations

Although the ProGuide reflects common examiner objections and USPTO practice, individual examiners may apply claim formalities differently or raise objections not captured here. This ProGuide cannot predict or control examiner discretion in marginal or fact-specific situations.

E. No Guidance on Strategic Claim Narrowing or Broadening

This ProGuide does not provide strategic advice on whether to narrow or broaden claim language in response to prior art, restriction practice, or litigation considerations. Apart from the general drafting considerations in Section 5, it focuses on formal correctness and consistency, not case-specific decisions about claim scope or amendments.

F. No Coverage of International or Foreign Claim Practice

This ProGuide is limited to U.S. design patent claim practice. It does not address claim requirements, terminology, or conventions applicable to foreign design systems or international design applications beyond their conformity to U.S. requirements when designating the United States.

G. No Automated Detection of Claim Defects

This ProGuide does not automatically detect claim defects. It is intended as a reference and checklist for practitioner review. Proper application requires human judgment and careful comparison of the claim against the title, drawings, and specification.

H. No Replacement for Governing Statutes, Regulations, or the MPEP

This ProGuide is not a substitute for the governing statutes, regulations, or the Manual of Patent Examining Procedure. In the event of any inconsistency, controlling law, regulations, and official USPTO guidance govern.

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

Design is inseparable from the article to which it is applied and cannot exist alone merely as a scheme of surface ornamentation. It must be a definite, preconceived thing, capable of reproduction and not merely the chance result of a method. See [MPEP § 1502](#). See [In re SurgiSil, L.L.P.](#), 14 F.4th 1380, 1382, 2021 USPQ2d 1008 (Fed. Cir. 2021) (“A design claim is limited to the article of manufacture identified in the claim; it does not broadly cover a design in the abstract.”); [Curver Luxembourg, SARL v. Home Expressions, Inc.](#), 938 F.3d 1334, 1340, 2019 USPQ2d 341902 (Fed. Cir. 2019) (noting “that long-standing precedent, unchallenged regulation, and agency practice all consistently support the view that design patents are granted only for a design applied to an article of manufacture, and not a design per se”).

Design patent applications include only a single claim, while utility patent applications can have multiple claims.

A claim in a specific form is a necessary element of a design patent application. See [MPEP § 1503.01](#), subsection III.

The claim shall be in formal terms to the ornamental design for the article (specifying name) as shown, or as shown and described. More than one claim is neither required nor permitted.

Since [37 CFR 1.153](#) requires that the title must designate the particular article, and since the claim must be in formal terms to the “ornamental design for the article (specifying name) as shown, or as shown and described,” the title and claim must correspond. When the article named in the title does not correspond to the article named in the claim, the examiner should object to the inconsistency under 37 CFR 1.153 and require correction.

However, it is emphasized that, under [35 U.S.C. 112\(b\)](#), the claim defines “the subject matter which the *inventor or joint inventor* regards as the invention” (emphasis added); (or for applications filed prior to September 16, 2012, under the second paragraph of pre-AIA 35 U.S.C. 112 the claim defines “the subject matter which the applicant regards as his invention”), that is, the ornamental design to be embodied in or applied to an article. Thus, the examiner should afford the applicant substantial latitude in the language of the title/claim. The examiner should require amendment of the title/claim if the language is clearly misdescriptive, inaccurate, or unclear (i.e.,

the language would result in a rejection of the claim under 35 U.S.C. 112(b) (or for applications filed prior to September 16, 2012, pre-AIA 35 U.S.C. 112, second paragraph); see [MPEP § 1504.04](#), subsection II). The use of language such as “or the like” or “or similar article” in the title when directed to the environment of the article embodying the design will not be the basis for a rejection of the claim under 35 U.S.C. 112(b).

III. DESIGN CLAIM

The requirements for utility claims specified in 37 CFR 1.75 do not apply to design claims. Instead, the form and content of a claim in a design patent application filed under 35 U.S.C. chapter 16 is set forth in 37 CFR 1.153:

37 CFR 1.153 ... claim...

(a) ... The claim shall be in formal terms to the ornamental design for the article (specifying name) as shown, or as shown and described. More than one claim is neither required nor permitted.

A design patent application may only include a single claim. The single claim should normally be in formal terms to “The ornamental design for (the article which embodies the design or to which it is applied) as shown.” The description of the article in the claim should be consistent in terminology with the title of the invention. See [MPEP § 1503.01](#), subsection I.

When the specification includes a proper descriptive statement of the design (see [MPEP § 1503.01](#), subsection II), or a proper showing of modified forms of the design or other descriptive matter has been included in the specification, the words “and described” must be added to the claim following the term “shown”; i.e., the claim must read “The ornamental design for (the article which embodies the design or to which it is applied) as shown and described.”

Full lines in the drawing show the claimed design. Broken lines are used for numerous purposes. Under some circumstances, broken lines are used to illustrate the claimed design (i.e., stitching and fold lines). Broken lines are not permitted for the purpose of identifying portions of the claimed design which are immaterial or unimportant. See [In re Blum](#), 374 F.2d 904, 907, 153 USPQ 177, 180 (CCPA 1967) (there are “no portions of a design which are ‘immaterial’ or ‘not important.’ A design is a unitary thing and all of its portions are material in that they contribute to the appearance which constitutes the design.”). See also [MPEP § 1503.02](#), subsection III.

The form and content of a claim in an international design application designating the United States is set forth in 37 CFR 1.1025, which mirrors the claim requirements set forth in 37 CFR 1.153. See also [MPEP Chapter 2900](#) for international design applications.

¶ 15.62 Amend Claim “As Shown”

For proper form (37 CFR 1.153 or 37 CFR 1.1025), the claim [1] amended to read: “[2] claim: The ornamental design for [3]as shown.”