

Design Patent ProGuide – Declarations Under 1.130(a)

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Cases, MPEP form paragraphs, statutes and the 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.

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Quick Reference Guide

DO

Treat a § 1.130(a) declaration as an evidentiary document, not an extension of attorney remarks

Explain how the design moved from the inventor to public disclosure

Identify the specific reference being removed as prior art

Explicitly state the publication date and relate it to the effective filing date

Incorporate and explain supporting exhibits within the declaration itself

Explain authorization or control where the disclosure involves third parties or commercial listings

Assume the examiner will not infer missing facts from the record

Have the declaration signed by someone with firsthand knowledge of each fact stated

DON'T

Don't rely on attorney argument to supply facts missing from the declaration

Don't assume common ownership or inventorship alone establishes inventor-originated disclosure

Don't attach exhibits without identifying and explaining them in the declaration

Don't use conclusory statements such as "derived from the inventor" without factual explanation

Don't assume favorable allowance posture cures declaration deficiencies

Don't expect the examiner to infer authorization, timing, or disclosure context

Don't treat § 1.130(a) as a procedural formality

1. Introduction and Theory

Declarations under 37 C.F.R. § 1.130(a) serve a narrow but critical function in design patent prosecution. They provide a statutory mechanism for removing certain disclosures from the prior art where those disclosures originated with the inventor and fall within the applicable grace period. Unlike attorney argument, a declaration under § 1.130(a) operates as evidence and must independently establish the factual basis for the claimed exception.

This ProGuide addresses declarations under 37 C.F.R. § 1.130(a) as applied to design patent applications examined under the America Invents Act (AIA). Under 37 C.F.R. § 1.130(d), the rule applies to an application that contains, or at any time contained, a claim with an effective filing date on or after March 16, 2013, or that at any time contained a specific reference under 35 U.S.C. §§ 120, 121, 365(c), or 386(c) to such an application. Pre-AIA applications are governed by former [35 U.S.C. § 102](#) and by declarations under 37 C.F.R. §§ 1.131 and 1.132, which are not addressed here.

In design patent practice, § 1.130(a) most commonly arises where a design has been publicly disclosed through commercial activity prior to filing, such as through product listings, distributor publications, or licensee activity. In these situations, the declaration must bridge the gap between inventorship and public disclosure by explaining how the design entered the public domain and why that disclosure should be attributed to the inventor.

Examiners evaluate § 1.130(a) declarations as evidence, independently of allowance posture, claim scope, or apparent commercial alignment between the applicant and the cited reference. A fact that appears only in attorney remarks may be given no weight, so a gap in the declaration can lead to an insufficiency finding even where the remarks explain the point.

This ProGuide focuses on how examiners actually apply § 1.130(a) in design cases. It emphasizes evidentiary completeness, disclosure-path explanation, and timing precision, rather than formulaic recitation of statutory language. Sections [4.1](#) to 4.10 discuss ten prosecution histories that all ended with the declaration accepted and a design patent issued; in one (Section [4.1](#)) the first declaration was found insufficient. Sections [4.11](#) to 4.18 discuss eight more in which a declaration was rejected or overlooked before a corrected declaration was accepted. [Appendix 5](#) reports a survey of 20 more prosecution histories, one from each of 20 examiners in 13 art units, in which an examiner found a declaration insufficient. Seventeen involved declarations under § 1.130(a), two involved showings under § 1.130(b), and one involved a related declaration under § 1.132 disputing a publication date. The survey shows which defects examiners cited in those files; it does not show how often declarations fail. Throughout, this ProGuide distinguishes what § 1.130(a) requires from what examiners have asked for in practice. The rule requires facts establishing that

the disclosure was made by an inventor or joint inventor, or that its subject matter was obtained directly or indirectly from one. Authorization, seller identity, dates, and exhibits are ways to prove those facts that examiners often ask for, not separate legal elements in every case.

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

2. Recommended Form

Declarations under 37 C.F.R. § 1.130(a) should be drafted conservatively and with evidentiary precision. Because the declaration is the applicant's evidence, omissions or ambiguities can lead to an insufficiency finding and another round of prosecution.

2.1 Core Elements

A § 1.130(a) declaration typically includes the following. Items 1 to 3 go to what the rule requires: facts establishing that the disclosure was made by an inventor or obtained directly or indirectly from one. Items 4 to 7 are ways to prove those facts or to show that the exception applies, and should be included where the record makes them relevant.

1. Identity and Knowledge of Declarant

A statement identifying the declarant and explaining the basis for the declarant's personal knowledge of the facts stated. The declarant is often the inventor but need not be. Anyone who has knowledge of the facts may sign a § 1.130 declaration, and the applicant or patent owner files it. MPEP 717.01(c).

2. Identification of the Reference

Clear identification of the specific patent, application, or publication relied upon in the rejection.

3. Explanation of Disclosure Origin

A factual explanation that the disclosure was made by the inventor, or of how the subject matter disclosed in the reference was obtained directly or indirectly from the inventor.

4. Authorization or Control

Where applicable, a statement explaining the declarant's authorization, control, or obligation relating to the disclosure (e.g., employment, assignment obligation, license, or distribution authorization).

5. Timing of Disclosure

Where timing is disputed or not clear from the record, a statement of the disclosure date and its source, related to the effective filing date. Section 1.130 is not available for a disclosure made more than one year before the effective filing date. 37 C.F.R. § 1.130(c). (See Rule [3.3](#) for references applied under § 102(a)(2).)

6. Incorporation of Exhibits

Where supporting documents are relied upon, express identification and incorporation of the exhibits. Supporting exhibits should be clearly labeled, specifically referenced in the declaration text, and authenticated by the declarant. The declaration should explain what each exhibit is, how it was created or obtained, and why it supports the asserted disclosure pathway. Exhibits may be attached to the declaration or filed contemporaneously, but the declaration should clearly cross-reference them. Exhibits are not a general requirement of § 1.130(a), but a declaration under § 1.130(b) that relies on an earlier printed publication must be accompanied by a copy of it. 37 C.F.R. § 1.130(b)(1).

7. Online Disclosures and Archived Web Captures

For online disclosures and archived web captures, the declaration should also describe how the exhibit was retrieved and what the declarant personally observed (for example, the URL accessed, the date of access, and the steps taken to obtain an Internet Archive capture or platform timestamp). The declaration should state that the attached screenshot or archive page is a true and accurate copy of what was viewed on that date.

2.2 Drafting Approach

Declarations should be factual, specific, and self-contained. Practitioners should avoid conclusory language, legal argument, or assumptions regarding examiner inferences. Each factual assertion should be supported either by sworn testimony within the declaration or by an incorporated exhibit.

Where possible, the declaration should explain the disclosure pathway in narrative form, sufficient to allow the examiner to understand precisely how the inventor's design entered the public domain.

2.3 Disclosure-Path Narrative Is Strongly Preferred Over Bare Assertions

Declarations that include a brief narrative explaining how the inventor’s design moved from creation to public disclosure tend to be more persuasive than declarations limited to formulaic assertions. This is particularly true where the reference is a third-party publication, marketplace listing, or foreign-origin disclosure.

Effective declarations typically describe:

- the inventor’s role in creating the design;
- the business or manufacturing relationship involved;
- how the design was authorized for publication or sale; and
- the inventor’s awareness or control over that disclosure.

2.4 Identification of the Reference as an “Exception” Is Not Sufficient Without Supporting Facts

Merely labeling a reference as an “exception under § 102(b)(1)(A)” or “inventor-originated” should not be expected, by itself, to satisfy § 1.130(a). The declaration should supply facts, not labels, supporting that conclusion. Some examiners have accepted brief declarations (see Section 4.4), but practitioners should not rely on that and should assume that conclusory legal characterizations unsupported by sworn factual statements may be disregarded.

2.5 Explicit Identification of the Disclosure Medium Is Strongly Favored

Declarations that expressly identify the medium of disclosure (e.g., online product listing, marketplace posting, promotional material) tend to be more readily accepted than declarations that generically refer to “publication” or “disclosure.” Where the disclosure is commercial, identifying the medium helps establish both public accessibility and inventor authorization, and reduces examiner skepticism.

2.6 Declarations Should Not Rely on Examiner Knowledge or Inference

Declarations drafted with the apparent expectation that the examiner will “connect the dots” are vulnerable. Examiners have found declarations insufficient for omitting facts that seemed obvious from the record. (Rule 3.11.)

2.7 Declarations Should Address Disclosure Context, Not Merely Disclosure Identity

Effective declarations do more than identify the reference and the inventor. They explain the context of disclosure, such as product launch, commercialization, or distribution, so the examiner can understand why the disclosure occurred and why it should be attributed to the inventor. Declarations limited to identity matching, without contextual explanation, are more likely to be treated as conclusory.

2.8 Avoid Reliance on Allowance Timing to Supply Missing Facts

Declarations submitted close to allowance must still independently satisfy § 1.130(a). Practitioners should not assume that proximity to allowance, or the absence of examiner pushback, excuses omissions in disclosure pathway, authorization, or timing.

2.9 Declaration Length

While there is no regulatory page limit for § 1.130(a) declarations, practitioners should aim for conciseness balanced with completeness. Declarations longer than 5 pages are seldom necessary and should be used only where the factual complexity genuinely requires extensive explanation. In most cases, 2 to 4 pages of sworn narrative text is sufficient. Supporting exhibits are additional to this page estimate and may run longer depending on the nature of the documentation, such as screenshots, product listings, or authorization agreements. The 2 to 4 page guidance refers to the declaration narrative itself, not the total submission length.

2.10 Sample Declaration Language

DECLARATION UNDER 37 C.F.R. § 1.130(a)

I, [NAME], declare that:

1. I am [the inventor / a joint inventor] of the design claimed in U.S. Design Patent Application No. [APP NO.], filed [DATE]. [If the declarant is not an inventor: I am [TITLE] of [COMPANY].]
2. I have personal knowledge of the facts stated in this declaration because [BASIS, e.g., “I created the design and personally arranged and approved the listing with [COMPANY]”].
3. The cited reference in the Office Action dated [DATE] is [SPECIFIC IDENTIFICATION OF REFERENCE].

4. The subject matter disclosed in [REFERENCE] was [disclosed by me / obtained directly or indirectly from me]. Specifically, [EXPLAIN HOW THE DISCLOSURE OCCURRED AND IDENTIFY THE MEDIUM, e.g., “On [DATE] I sent the drawings of my design to [MANUFACTURER]. Under our manufacturing and distribution agreement dated [DATE], I authorized [COMPANY] to list the product embodying my design for sale on [PLATFORM]. The listing shown in the reference is that authorized listing.”]. Attached as Exhibit A is [DESCRIPTION OF EXHIBIT], which is a true and accurate copy of [WHAT IT IS], obtained by [HOW IT WAS OBTAINED].

[Optional - for multi-author references:]

4a. The reference lists [NAME OF NON-INVENTOR] as a co-author. [Select one:]

- [NAME] is also a joint inventor of the claimed design.

- [NAME] contributed [X] to the publication, but the design features relied upon in the rejection were created by and obtained from me.

5. [If the reference is a third-party publication or listing:] [THIRD PARTY] did not create the design shown in [REFERENCE]. The design shown in [REFERENCE] is the design I created and supplied to [THIRD PARTY] as described in paragraph 4.

6. The disclosure in [REFERENCE] was made on [DATE]. I determined that date from [SOURCE, e.g., “the listing date shown on the platform, a copy of which is attached as Exhibit B”]. The effective filing date of the claimed design is [DATE]; therefore, the one-year grace period began on [DATE]. The disclosure was made within that one-year period.

7. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Signature: _____

[PRINTED NAME], [Inventor / TITLE]

2.11 Decision Tree

Should I file a § 1.130(a) declaration?

1. Was the cited disclosure made by the inventor, or by someone who obtained the design directly or indirectly from the inventor?
 - NO → § 1.130(a) is not available
 - YES → Continue to #2
2. Was the disclosure made one year or less before the effective filing date? (For a reference applied under § 102(a)(2), see Rule [3.3.](#))
 - NO → § 1.130 is not available (37 C.F.R. § 1.130(c)); consider whether a priority or benefit claim gives an earlier effective filing date
 - YES → Continue to #3
3. Is the reference another inventor's U.S. patent or application publication that claims the same or substantially the same design?
 - YES → § 1.130 may not be available; consider a derivation proceeding (37 C.F.R. § 1.130(c); 37 C.F.R. § 42.401)
 - NO → Continue to #4
4. Can I document the disclosure pathway with evidence?
 - NO → § 1.130(a) may be insufficient; consider alternatives
 - YES → Continue to #5
5. Would amendment or argument be equally effective?
 - YES → Consider cost/benefit of alternatives
 - NO → § 1.130(a) is likely appropriate
6. Are foreign applications pending?
 - YES → Consult foreign patent counsel before filing
 - NO → Proceed with § 1.130(a) declaration

3. Rules and Guidance for Declarations Under § 1.130(a)

3.1 Declarations Under § 1.130(a) Are Evidentiary, Not Argumentative

A declaration submitted under 37 C.F.R. § 1.130(a) constitutes substantive evidence, not attorney argument. To be effective, the declaration must independently establish that the disclosure was made by the inventor or a joint inventor, or that the subject matter relied upon in the rejection was obtained directly or indirectly from the inventor or a joint inventor. Statements made solely in attorney remarks, even if supported by attached documents, are not treated as evidence unless the facts are expressly set forth in a sworn declaration. Arguments of counsel cannot take the place of evidence. [Estee Lauder Inc. v. L’Oreal, S.A.](#), 129 F.3d 588, 595 (Fed. Cir. 1997); [In re Geisler](#), 116 F.3d 1465, 1470 (Fed. Cir. 1997).

Practitioners should assume that examiners will distinguish sharply between sworn factual statements and unsworn explanatory argument. Evidence not incorporated into the declaration itself may be disregarded when evaluating whether the statutory requirements of § 1.130(a) have been met.

3.1(a) Distinction from § 1.130(b)

This ProGuide addresses only declarations under 37 C.F.R. § 1.130(a), which disqualify prior art by establishing that the disclosure was made by, or obtained directly or indirectly from, the inventor. Declarations under § 1.130(b) serve a different purpose: they establish that the inventor publicly disclosed the subject matter before the third-party disclosure that is being used as prior art, thereby disqualifying the reference under [35 U.S.C. § 102\(b\)\(1\)\(B\)](#) or [§ 102\(b\)\(2\)\(B\)](#). Declarations under § 1.130(b) are less common in design patent practice and are not addressed in this ProGuide.

Cautionary note. In some cases, the record is unclear whether the third-party disclosure was obtained from the inventor (addressed by § 1.130(a)) or whether it is better characterized as a disclosure that occurred after the inventor’s own public disclosure (addressed by § 1.130(b)). Where the factual posture is uncertain, practitioners should ensure the evidentiary record clearly supports the specific theory being advanced and avoid conclusory assertions that blur the distinction. If necessary to avoid an evidentiary gap, the response should address the applicable pathway with specificity and supporting exhibits. One examiner rejected declarations that invoked both exceptions “simultaneously” (Section [4.12](#)), and another rejected a declaration whose paragraphs asserted the two theories inconsistently (Application [29/832,791](#)), while a third accepted a declaration that offered the two theories expressly “together and in the alternative” (Application [29/929,790](#)). Identify whether the evidence

supports attribution under § 1.130(a), prior public disclosure under § 1.130(b), or both in the alternative. Keep the factual predicates for each theory distinct and avoid contradictory statements. Do not assume that invoking both theories is prohibited.

3.1(b) Terminology Used in This ProGuide

- 'Reference': The prior art document cited by the examiner in a rejection
- 'Disclosure': The act or instance of making subject matter publicly available
- 'Publication': A specific form of disclosure, typically in written, online, or printed form
- 'Declarant': The person executing the § 1.130(a) declaration (often the inventor, but anyone with knowledge of the facts may sign)

3.2 The Declaration Must Establish Inventor-Originated Disclosure

To remove a reference as prior art under 35 U.S.C. § 102(b)(1)(A) (a grace-period disclosure under § 102(a)(1) made by the inventor, or by another who obtained the subject matter directly or indirectly from the inventor) or 35 U.S.C. § 102(b)(2)(A) (a § 102(a)(2) patent or application whose subject matter was obtained directly or indirectly from the inventor), the declaration must affirmatively establish that the subject matter relied upon in the rejection originated with the inventor of the application under examination. This requirement is not satisfied by conclusory statements that the reference is “owned by,” “associated with,” or “related to” the applicant.

The declaration should provide enough facts to establish that the subject matter relied upon was disclosed by an inventor or joint inventor, or was obtained directly or indirectly from one. Where a third-party listing or an attenuated distribution chain makes origin unclear, explain the relevant links and identify supporting records. Authorization, seller identity, and exhibits may help establish that connection, but are not separate requirements in every case. In practice, examiners in several art units use the same two-part statement of what they look for: “1) an unequivocal declaration stating that the design disclosed in the reference was made by the inventor(s), and 2) an explanation of how the discloser came to publish the reference.” (Section 4.7; [Appendix 5](#).)

A declaration may not be needed at all where the reference names the inventor as its only author or source. A grace-period disclosure is not prior art under § 102(a)(1) if it is apparent from the disclosure itself that it is an inventor-originated disclosure. MPEP 2153.01(a). The applicant can point this out in the response. A declaration becomes necessary when the reference names additional persons or does not identify the inventor on its face.

3.2(a) Direct vs. Indirect Disclosure

A disclosure is “made by” the inventor when the inventor personally makes it, such as by publishing or posting the design. A disclosure is made by another who “obtained” the subject matter “directly” from the inventor when the inventor gave the design to the person who disclosed it, such as a licensee who received the drawings from the inventor. The subject matter is obtained “indirectly” when it passed through one or more intermediaries, such as where a manufacturer that received the design from the inventor supplied the product to a distributor that listed it.

To illustrate how indirect disclosure chains operate in practice: an inventor who provides design files to an overseas manufacturer, who in turn supplies the product to a domestic distributor, who then lists the product on an e-commerce platform, has made an indirect disclosure through a multi-step chain. A § 1.130(a) declaration in this scenario should explain each link that is not otherwise clear from the record (the inventor's authorization to the manufacturer, the manufacturer's relationship with the distributor, and the distributor's authority to publish the listing) with sufficient factual specificity. The longer and more attenuated the chain, the more evidentiary detail the declaration will need to supply at each step.

3.2(b) Application to § 103 Rejections

A § 1.130(a) declaration may disqualify a reference used in an obviousness rejection under [35 U.S.C. § 103](#). Where a reference is removed as prior art via § 1.130(a), it cannot be relied upon in a § 103 combination. The declaration should still address each reference relied upon; a blanket statement may not show which disclosure it covers. Practitioners should also note that where a § 103 rejection relies on multiple references and only one is successfully disqualified under § 1.130(a), the rejection may survive on the remaining references. In such cases, the response should either address all cited references with individual declarations, or separately argue patentability over the remaining prior art.

3.3 Timing: The Disclosure Must Fall Within the Exception

For a disclosure applied under § 102(a)(1), the exception in 35 U.S.C. § 102(b)(1)(A) applies only to a disclosure made one year or less before the effective filing date of the claimed design. For a U.S. patent or published application applied under § 102(a)(2), the exception in § 102(b)(2)(A) has no one-year limit of its own; what matters is that the subject matter was obtained directly or indirectly from the inventor. For § 102(a)(2) purposes such a reference is prior art as of its effectively filed date, not its publication or issue date. 35 U.S.C. § 102(d). Separately, 37 C.F.R. § 1.130(c) makes a § 1.130 declaration unavailable when the rejection is based on a

disclosure made more than one year before the effective filing date, and to the extent the subject matter relied upon was publicly disclosed in a patent or publication that issued or published more than a year before the effective filing date, that disclosure is also § 102(a)(1) prior art for which no § 102(b)(1) exception is available. The § 102(a)(2) inquiry into the reference's effectively filed date remains distinct. Where timing is disputed or not clear from the record, the declaration should identify the disclosure date and its source and relate it to the effective filing date. Stating the dates is not an express element of § 1.130(a), and some examiners have accepted a general statement that the disclosure was made less than one year before filing (Section 4.8), but stating them is the safer practice.

Where the disclosure is online, the declaration should identify the date of public availability and explain how that date was determined. Unsupported assumptions regarding publication timing are insufficient.

Best practice. To reduce timing disputes, the declaration should expressly state the effective filing date and explicitly identify the start of the one-year grace period. For example: "The effective filing date is [date]; therefore, the one-year grace period began on [date]. The disclosure occurred on [date], which falls within the one-year period." Doing the calculation for the examiner helps avoid a finding that timing was not established.

3.3(a) Identifying the Correct Effective Filing Date in Priority Chain Applications

Where the application claims priority to or the benefit of an earlier application, the effective filing date for the grace-period analysis is the filing date of the earliest application to which the claimed design is entitled. 35 U.S.C. § 100(i)(1). For a design application, this includes a foreign priority claim (the priority period for designs is six months, 35 U.S.C. § 172), a benefit claim to an earlier U.S. application under 35 U.S.C. §§ 120 and 121, and a priority or benefit claim based on an international design application under 35 U.S.C. § 386. Practitioners should not assume the effective filing date is the filing date of the application under examination, and should not treat a priority or benefit claim alone as conclusive: the claimed design must be entitled to the earlier date, which for a design generally means that the earlier application's drawings support the claimed design under 35 U.S.C. § 112(a). In continuation and divisional applications, the declaration should identify the correct effective filing date and tie the disclosure date of the cited reference to that date. In a continuation-in-part application, the claimed design is entitled to the parent's filing date only if the parent supports it under 35 U.S.C. § 112(a); otherwise the effective filing date is the filing date of the continuation-in-part.

3.4 Supporting Evidence Should Be Incorporated Into the Declaration

Where documents such as screenshots, product listings, authorization agreements, or publication records are relied upon, they should be expressly identified and incorporated into the declaration as exhibits. Merely attaching such materials to the response, or describing them in attorney remarks, risks their being treated as argument rather than evidence. (Sections [4.1](#), [4.12](#).)

The declaration should identify each exhibit by label and explain its relevance to the inventor-originated disclosure. Failure to do so may result in the examiner treating the materials as unsworn argument rather than evidence. The exhibits should also tie together. An authorization signed by someone other than the named inventor or applicant, or naming persons or stores that the declaration does not connect to the listing and to the inventor, has been rejected. (Sections [4.12](#), [4.13](#).) Examiners in other art units have made the same point, rejecting declarations whose supporting screenshots were not identified as exhibits (Application [29/889,299](#)), whose referenced papers were never filed (Application [29/843,204](#)), and responses that offered only attorney argument with no declaration at all (Applications [29/832,791](#), [29/865,475](#)). ([Appendix 5](#).)

3.5 Declarations Under § 1.130(a) Are Reference-Specific

A § 1.130(a) declaration should address the specific reference relied upon in the rejection. Broad statements regarding general ownership, corporate affiliation, or design development history are insufficient unless they are tied directly to the cited reference and its disclosure.

If multiple references are applied, each reference should be addressed individually unless the declaration clearly establishes that the same inventor-originated disclosure applies to all cited references. Declarations that addressed a different listing than the one cited, such as a different ASIN or brand, or a product title that did not match the cited URL, were rejected. (Applications [29/838,729](#), [29/817,374](#).)

3.6 Explain the Chain of Attribution Where Origin Is Not Clear; Common Ownership Alone May Not Suffice

Examiners require a § 1.130(a) declaration to explain the chain by which the reference disclosure is attributable to the inventor, not merely that the applicant and the publisher are related entities. Declarations relying solely on common ownership, assignee identity, or corporate affiliation, without factual explanation of how the disclosure occurred, risk being treated as conclusory.

Where the disclosure arises from third-party publication (e.g., e-commerce listings, distributors, foreign manufacturers, or affiliates) and origin is not otherwise clear, the declaration should explain the relationship connecting the inventor to the public disclosure, such as an authorization, a supply relationship, or employment.

Application 29/937,783 (Section 4.1) illustrates the point. The examiner would not accept the seller's authorization until it was explained and documented in the declaration itself. In the survey reported in Appendix 5, a missing or incomplete explanation of how the seller or other discloser obtained the design, and the lack of an unequivocal statement that the inventor of the application invented the design in the reference, were the two defects examiners cited most often, across many art units. Three examiners in different art units used the same request, that the applicant "explain the relationship between amazon, the seller, the owner of the selling company, and the manager."

3.7 Commercial Product Listings Commonly Draw Requests for the Seller Chain

Most of the declarations reviewed for this ProGuide addressed online retail listings, and most of the insufficiency findings concerned how the seller came to list the product. In such cases examiners commonly ask the declaration to explain how the product entered commerce, for example the inventor's authorization of, or relationship with, the seller. The prosecution histories reviewed do not establish that listings are held to a different or higher legal standard; they show what examiners in those cases asked for.

Absent such explanation, examiners may maintain the rejection even where the inventor is named on the application and the product appears to originate from the same source.

3.8 Do Not Rely on Product Identity Alone

Product identity alone does not show origin: a product that looks the same as the claimed design, or comes from the same commercial source, may still have been designed independently. Examiners have declined to infer inventor origin from those facts without an explanation of how the disclosure came about. This is most often an issue for product listings, catalogs, and marketplace postings.

3.9 § 1.130(a) Declarations Are Evaluated Independently of Allowance Posture

Examiners evaluate § 1.130(a) declarations without regard to whether the application is otherwise allowable. The sufficiency of the declaration is treated as a threshold evidentiary question, and deficiencies are not excused by favorable examination posture.

3.10 Allowability Elsewhere Does Not Cure a Deficient Declaration

Examiners apply § 1.130(a) as an independent evidentiary gatekeeping requirement, even where all other statutory requirements are satisfied and the application is otherwise in condition for allowance. Favorable examination posture does not cure deficiencies in a declaration submitted under § 1.130(a). Practice note: In the prosecution histories reviewed, no examiner excused a

deficient declaration because the application was otherwise ready for allowance. In Application 29/843,204, the applicant filed six declarations on five occasions (one a duplicate of an earlier declaration, and two filed together). The last, which combined the two filed together, was itself first found insufficient and then accepted on reconsideration.

3.11 Apparent Inventor Origin Does Not Excuse the Showing

Examiners have required a declaration that satisfies the rule even where the disclosure appeared facially inventor-originated or commercially aligned with the applicant. They required a full showing even where the cited listing was run by the inventor himself (Application 29/843,204: the declaration “only establishes that the inventor of the application listed the prior art disclosure on-line”) and where the disclosure was the applicant-employer’s own press conference (Application 29/865,475).

3.12 § 1.130(a) vs. Common Ownership Statements Under § 102(b)(2)(C)

Declarations under 37 C.F.R. § 1.130(a) and common ownership statements under 35 U.S.C. § 102(b)(2)(C) serve different functions. A statement under § 102(b)(2)(C) removes a U.S. patent or published application applied under § 102(a)(2) by establishing that the subject matter disclosed and the claimed design, not later than the effective filing date of the claimed design, were owned by the same person or subject to an obligation of assignment to the same person. Under 35 U.S.C. § 102(c), subject matter is also deemed commonly owned for this purpose if the subject matter disclosed was developed and the claimed design was made by or on behalf of parties to a joint research agreement in effect on or before the effective filing date, the claimed design resulted from activities within the scope of that agreement, and the application discloses or is amended to disclose the names of the parties to the agreement. Section 102(b)(2)(C) does not apply to prior art under § 102(a)(1), such as published documents, online disclosures, or commercial product listings.

Where the operative ground is § 102(a)(1), the common-ownership exception in § 102(b)(2)(C) does not remove that ground; evaluate any applicable § 102(b)(1) exception, under § 1.130(a) or § 1.130(b), or another response. Where the reference is an earlier-filed U.S. patent or application applied under § 102(a)(2), both a § 1.130 declaration and a § 102(b)(2)(C) statement may be available. To the extent the subject matter relied upon was publicly disclosed in a publication or patent issued more than one year before the effective filing date, however, that disclosure is also prior art under § 102(a)(1), and neither mechanism removes that ground.

3.13 Formal Requirements for Declarations

All declarations submitted under § 1.130(a) must comply with 37 C.F.R. § 1.68. The declaration must be in writing, must state that all statements made of the declarant's own knowledge are true and that all statements made on information and belief are believed to be true, must acknowledge that willful false statements are punishable under 18 U.S.C. § 1001 and may jeopardize the validity of the application or any patent issuing on it, and must be signed by the declarant. The declaration may be signed by hand; with an S-signature under 37 C.F.R. § 1.4(d)(2), which is the signer's own signature placed between forward slash marks (e.g., /Jane A. Smith/) with the signer's name printed or typed nearby; or, since 2024, with an electronic signature made through third-party document-signing software under 37 C.F.R. § 1.4(d)(4). Examiners have not been consistent about additional language. One examiner required the statement provided by 28 U.S.C. § 1746 ("I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct") and rejected a statement that the declaration was true "to the best of my knowledge" (Sections 4.11, 4.15). Another rejected a § 1746 declaration because it lacked the § 1.68 language (Application 29/832,791), and a third accepted a declaration that was "true and correct to the best of my knowledge and belief" (Application 29/811,982). Adding the § 1746 sentence to the § 1.68 language, and avoiding "best of my knowledge" qualifiers, is a conservative drafting choice rather than a requirement of § 1.130(a).

3.14 Joint Inventor Declarations

Where the application names joint inventors, a § 1.130(a) declaration may be signed by any inventor or joint inventor, or by anyone else with knowledge of the facts. MPEP 717.01(c). The declaration should clearly establish that the disclosure was made by or obtained from at least one of the named inventors. Where the disclosure involves only a subset of the joint inventors, the declaration should explain the contribution of each inventor to the disclosed subject matter.

In joint inventor situations, the declaration should still account for the chain of attribution for the specific disclosure. If the cited reference identifies additional individuals (for example, a publication credited to an inventor and another person), the declaration should explain whether the additional individual is also a joint inventor of the claimed design or, if not, that the portion of the disclosure relied upon in the rejection was obtained directly or indirectly from at least one named inventor. The goal is to eliminate any gap suggesting that the relevant subject matter originated from a non-inventor rather than from the inventor.

3.15 When to Use § 1.130(a)

Practitioners should consider a § 1.130(a) declaration where a cited reference appears to disclose subject matter originating from the inventor, the disclosure occurred within one year of the effective filing date, and the disclosure pathway can be documented with evidence. In many cases, § 1.130(a) is strategically preferable where amendment or argument would unduly narrow the claimed design.

Practitioners should also consider alternatives, including claim amendment, substantive argument, priority or benefit claims under §§ 119 or 120, common ownership statements under § 102(b)(2) (C), where applicable, or, where another inventor's U.S. patent or application claims the same design, a derivation proceeding.

3.16 When NOT to Use § 1.130(a)

Practitioners should consider alternatives to § 1.130(a) when:

1. The declaration would reveal confidential business information
2. The disclosure cannot be adequately documented
3. Amending claims is equally effective and less costly
4. The reference can be distinguished through argument
5. Foreign filing plans have not yet been evaluated in light of the disclosure
6. The disclosure was made more than one year before the effective filing date (§ 1.130 is not available. 37 C.F.R. § 1.130(c))
7. The reference is another inventor's U.S. patent or application publication claiming the same or substantially the same design, and the contention is that its inventor derived the design from the applicant's inventor (a derivation proceeding under 37 C.F.R. § 42.401 may be required. 37 C.F.R. § 1.130(c); MPEP 717.01(d))

In particular, practitioners should consider foreign filing plans before filing a § 1.130(a) declaration. It is the prior disclosure, not the declaration, that may bar protection abroad, but the declaration creates a sworn record of when and how the design was disclosed.

Foreign filing caution: Grace periods for designs differ by jurisdiction. For example, the European Union allows 12 months for registered EU designs, Japan allows one year, and China allows six months only for limited types of disclosure. Some jurisdictions allow none. Where

foreign protection is pending or planned, consult foreign counsel before filing the declaration, and confirm the current law in each jurisdiction.

3.17 Establishing Publication Dates for Online Disclosures

Where the date of an online disclosure matters and is disputed or unclear, the declaration should establish when the material became publicly accessible. Acceptable methods include platform-generated timestamps, dated screenshots, Internet Archive or Wayback Machine captures, and metadata associated with e-commerce listings. The declaration should explain how the date was determined and incorporate supporting documentation as exhibits. Unsupported assertions about online publication dates have been found insufficient (Application [29/822,787](#)). The platform's own records carry more weight than the declarant's reading of a listing. An Amazon "Status Changed Date" did not overcome the "Date First Available" shown on the listing, but an email from Amazon about the listing's dates did. (Section [4.16](#); see also Section [4.5](#).)

3.18 Correcting or Supplementing Insufficient Declarations

Where an examiner finds a § 1.130(a) declaration insufficient, practitioners may file a supplemental or corrected declaration addressing the identified deficiencies. The supplemental declaration should:

- Explicitly reference and incorporate the prior declaration
- Address the specific deficiencies identified by the examiner
- Provide any missing factual information
- Include any additional exhibits needed

There is no statutory limit on supplemental declarations, but repeated supplementation may draw increased scrutiny and should be avoided through careful initial preparation. In the prosecution histories reviewed, an examiner's explanation of why a declaration was insufficient served as a roadmap: each corrected declaration that addressed every listed point was accepted, while corrections that addressed only some points led to further rounds. (Sections [4.11](#) to [4.16](#).) An interview with a draft declaration resolved the issue in several cases (Applications [29/896,527](#), [29/813,167](#), [29/801,253](#)), and in two the examiner reversed an insufficiency finding on reconsideration without a new declaration (Applications [29/820,290](#), [29/843,204](#)).

3.19 Fees

No separate fee is required for filing a § 1.130(a) declaration in response to an Office Action. However, a declaration filed after a final rejection is admitted only on a showing of good and sufficient reasons why it was not presented earlier (37 C.F.R. § 1.116(e)), and one filed after allowance generally requires a request for continued examination and its fee.

3.20 Effect on double patenting

A § 1.130(a) declaration may remove a reference as prior art for purposes of §§ 102 and 103, but it does not eliminate the possibility of a non-statutory obviousness-type double patenting rejection where the rejection is based on commonly owned or commonly inventive subject matter in a patent or application. In that circumstance, a terminal disclaimer may still be required to overcome double patenting, even if § 1.130(a) is successful in removing the reference as prior art.

3.21 Account for All Authorship Appearing on the Reference

When the cited reference names the inventor together with other authors, contributors, or entities, the declaration should account for each of them. Under MPEP 717.01(a)(1), an unequivocal statement from the inventor that he or she invented the subject matter of the disclosure, accompanied by a reasonable explanation of the presence of the additional authors, may be acceptable in the absence of evidence to the contrary. See *In re DeBaun*, 687 F.2d 459 (CCPA 1982); *In re Katz*, 687 F.2d 450 (CCPA 1982). The explanation should state either (i) that the additional person is also a joint inventor of the claimed design, or (ii) what that person contributed and that the design relied upon in the rejection was created by and obtained from the inventor.

Authority: MPEP 717.01(a)(1). In Application [29/970,358](#) (Section [4.9](#)), both joint inventors signed the declaration and explained how the seller received the design.

3.22 The Declarant Should Have Knowledge of the Disclosure Path

A declaration is often executed by an inventor, but anyone with knowledge of the facts may sign it. MPEP 717.01(c). Whoever signs should have firsthand knowledge of the facts stated. Where the disclosure occurred through a corporate entity, distributor, licensee, or online platform, the declaration should either (i) explain the declarant's personal knowledge of those activities, or (ii) be accompanied by a declaration from someone who has that knowledge, such as an officer of the distributor or licensee. Examiners have rejected declarations by an assignee's vice president of engineering (Application 29/813,167: the declaration did not establish "how [he] obtained his personal knowledge of the communication from the inventor") and by its general counsel on "personal information and belief" (Application [29/925,477](#): it did not "definitively connect the

prior art to the inventor”). Several examiners have also stated that the declaration must be signed by the inventor (Applications [29/801,168](#), [29/832,791](#), [29/865,475](#)), although MPEP 717.01(c) does not require that. The safest course is to have an inventor sign, with a company officer adding a separate declaration only for facts the inventor does not know firsthand.

Authority: MPEP 717.01(c). In Application [29/963,465](#) (Section [4.4](#)), the declaration was signed by the assignee’s CEO rather than the inventor.

3.23 Address Independent Third-Party Creation Where Plausible

Where the cited reference is a third-party publication or commercial listing, the declaration should affirmatively negate the possibility that the disclosure resulted from independent third-party creation, by explaining that the third party obtained the design from the inventor. Silence on this point invites the examiner to question the attribution where independent creation is plausible from the face of the reference.

Practice note: The declarations accepted in Applications [29/947,566](#) and [29/985,793](#) (Sections [4.10](#) and [4.2](#)) did this by stating that the inventor authorized the seller’s listing. In Application [29/957,923](#) (Section [4.13](#)), authorization documents naming stores that were not tied to the cited listings were rejected.

4. Applications of Rules and Guidance to Objections and Rejections

4.1 Insufficient Declaration: Exhibits Not Identified in the Declaration Were Treated as Attorney Remarks

In Application [29/937,783](#), the claim was rejected under § 102(a)(1) over an Amazon listing for the “AltitudeCraft Dumbbell to Barbell Converter,” first reviewed on Amazon on July 15, 2023. With its June 11, 2025 reply, the applicant filed a § 1.130(a) declaration in which the inventor stated that he was the inventor of both the claimed design and the AltitudeCraft product. The reply also included a statement from a Product Sales Authorization explaining how the Amazon seller came to publish the design under the AltitudeCraft store name, and inventory management screenshots. The examiner made the rejection final on July 14, 2025. Those documents were “not identified as exhibits attached to the declaration,” so they “can only be construed as part of the attorney-filed remarks and not evidence.” The examiner added that the information in the remarks was “helpful, but is not duplicated in a signed declaration,” and that “the documentation should be explained and labeled within a declaration or affidavit.” In reply to the final rejection, the applicant filed a new declaration with the inventor’s production authorization contract with the seller, and a

certified English translation, attached as exhibits. The examiner then found that the declaration “has sufficiently overcome the rejection under 35 USC 102(a),” and the application issued as Design Patent No. D1,109,828. Rule 3.1. Rule 3.4. Rule 3.6.

4.2 Short Declaration Accepted Where It Named the Seller and Its Authorization (Commercial Product Listing)

In Application 29/985,793, the claim was rejected under § 102(a)(1) over an Amazon product listing (the “LED” reference). The inventor’s one-page declaration stated that he was the inventor of both the claimed design and the LED product; that the product was sold on Amazon by a named store that had been authorized by the applicant and assignee; and that he was an employee of the assignee with an obligation to assign his work to it. The examiner found the declaration “persuasive,” withdrew the rejection, and allowed the claim. The application issued as Design Patent No. D1,109,916. A declaration need not be long if it identifies the reference, the seller, and the authorization connecting the seller to the inventor. Rule 3.2. Rule 3.6. Rule 3.7.

4.3 Declaration Accepted Where the Seller Was the Applicant, Which Obtained the Design From the Inventor

In Application 29/949,595, the claim was rejected under § 102(a)(1) over a commercial product. The response explained, supported by a declaration of attribution signed by the sole inventor, that the cited product was manufactured and sold by the applicant, Spigen Korea Co., Ltd., which obtained the design from the inventor. The examiner found the rejection overcome, and the application issued as Design Patent No. D1,109,308. Even though the seller was the applicant itself, the declaration identified the seller and stated that the seller obtained the design from the inventor, rather than relying on the common identity of applicant and seller. Rule 3.2. Rule 3.6.

4.4 Brief Declaration by the Assignee’s CEO Accepted (YouTube Video, § 103 Rejection)

In Application 29/963,465, the claim was rejected under 35 U.S.C. § 103 over a YouTube video. The declaration was signed by the CEO of the assignee, not the inventor. In six short paragraphs it stated that the application was assigned to the company, that the subject matter of the video “was obtained directly from the inventor,” and, on information and belief, that the video was not prior art under § 102(b)(2)(A). The examiner then allowed the claim, and the application issued as Design Patent No. D1,108,541. The example confirms that a non-inventor with knowledge of the facts may sign. It also shows one examiner accepting a declaration far less detailed than this ProGuide recommends, and one that cited the wrong exception: a YouTube video is a § 102(a)(1) disclosure, so the applicable exception is § 102(b)(1)(A). Practitioners should not count on similar leniency. Rule 3.2(b). Rule 3.22.

4.5 Declaration With Seller Records Accepted; It Also Showed the Listing Postdated the Filing Date

In Application [29/931,350](#), the claim was rejected under § 103 over an Amazon listing for a “Hitfine” charger, which showed a “date first available” of May 31, 2022, in view of a second product listing. The inventor’s declaration stated that the inventor is a supplier to a named company that owns the “Hitfine” Amazon account; that the company obtained the design directly from the inventor; and that, despite the date shown on the storefront, the listing was created on May 22, 2024, after the application’s March 6, 2024 filing date. The declaration cited the seller information identifying the account owner (Exhibit A) and an email from Amazon Services giving the listing’s creation date (Exhibit B). The examiner allowed the claim, and the application issued as Design Patent No. D1,108,353. The example shows the value of platform records for establishing online dates and of identifying the owner behind a storefront name. A disclosure made after the effective filing date is not prior art at all, so the date evidence alone may have been enough. Rule [3.2\(b\)](#). Rule [3.4](#). Rule [3.17](#).

4.6 Foreign Design Patent Removed Where the Priority Chain Brought It Within the Grace Period

In Application [29/997,788](#), filed April 9, 2025, the claim was rejected under § 102(a)(1) over a Chinese design patent (CN308036228S) published May 12, 2023, and under § 102(a)(2) over U.S. Design Patent No. D1,078,018. The applicant explained that the application was a continuation-in-part in a chain going back to an application filed November 16, 2023, so the effective filing date was November 16, 2023, and the Chinese publication was made within one year before it. The Chinese patent named two of the inventors and the same applicant company, and the inventors’ declaration under § 1.130(a) stated that the Chinese disclosure was made by the inventors. The § 102(a)(2) rejection was addressed separately with a common ownership statement under § 102(b)(2)(C). The examiner allowed the claim, and the application issued as Design Patent No. D1,108,605. Measured from the application’s own filing date, the Chinese publication would have been nearly two years earlier, and § 1.130 would not have been available. Rule [3.3\(a\)](#). Rule [3.12](#). Rule [3.14](#).

4.7 Declaration Accepted Although Labeled Under § 1.132 and Citing the Wrong Exception

In Application [29/930,688](#), the claim was rejected under § 102(a)(1) over a video of a hair styling tool posted on the applicant company’s YouTube channel on October 26, 2023, about four months before the March 1, 2024 filing date. In the rejection, the examiner explained that a declaration of attribution must be signed by someone with knowledge of the facts, and requires “1) an unequivocal declaration stating that the design disclosed in the reference was made by the

inventor(s), and 2) an explanation of how the discloser came to publish the reference.” The applicant filed a declaration of the first-named inventor captioned as a declaration under 37 C.F.R. § 1.132, and the remarks relied on § 102(b)(1)(B) rather than § 102(b)(1)(A). The examiner nonetheless found that “the declaration is sufficient,” withdrew the rejection, and allowed the claim. The application issued as Design Patent No. D1,108,154. The examiner’s two-part statement is a useful summary of what examiners look for in a § 1.130(a) declaration. Rule 3.2. Rule 3.3.

4.8 Inventor Declaration Accepted Where the Applicant Published the Listing

In Application [29/940,081](#), the claim was rejected under § 102(a)(1) over an online product listing. The sole inventor’s declaration stated that the applicant, his assignee, published the listing; that the applicant “obtained the subject matter directly from me, the inventor”; and that the listing was published less than one year before the April 30, 2024 filing date. It did not give the exact publication date. The examiner found the declaration “sufficient to overcome the 35 USC 102(a)(1) rejection” and allowed the claim. The application issued as Design Patent No. D1,110,125. Rule 3.2. Rule 3.3. Rule 3.22.

4.9 Joint Inventors’ Declaration Accepted Where It Explained How the Seller Received the Design

In Application [29/970,358](#), the claim was rejected under § 102(a)(1) over an Amazon listing for a Halloween bubble toy. Both joint inventors signed a declaration stating that the subject matter relied upon was made by them; that the product was sold by a named Amazon retailer that received the concept from them; and that one of the inventors is a co-founder of that retailer. The examiner found the declaration “sufficient to overcome the rejection,” withdrew it, and allowed the claim. The application issued as Design Patent No. D1,110,422. Rule 3.14. Rule 3.21.

4.10 Inventor Declaration Accepted Where the Inventor Authorized the Third-Party Seller

In Application [29/947,566](#), the claim was rejected over Amazon listings for dog toys published by a third-party seller in September and October 2023. The inventor’s declaration stated that the listed product was the product he invented and that he directly authorized its disclosure on Amazon. It cited screenshots of the Amazon orders and Seller Central records and a sales authorization certificate, dated October 2, 2023, by which the inventor authorized a named company to sell the product. The examiner allowed the claim, and the application issued as Design Patent No. D1,110,436. The authorization certificate answered the question whether the seller created the design independently. Rule 3.23. Rule 3.6. Rule 3.8.

Sections 4.11 to 4.18 come from applications examined by a single examiner in Art Unit 2924 (pet and bird products). They show the specific defects that led to rejection and how each was corrected. Other examiners may apply these points differently.

4.11 No Unequivocal Statement or Explanation of How the Seller Obtained the Design; “Best of My Knowledge” Rejected

In Application 29/948,784, the examiner made final a § 102(a)(1) rejection because “There is no ‘unequivocal’ statement from the inventor that he/she invented the subject matter of the prior art disclosure, nor is there a reasonable explanation of how the discloser obtained the subject matter in the disclosure from the inventor and came to publish the reference.” The examiner also held that a statement that the declaration “is true and correct to the best of my knowledge” is insufficient. A corrected declaration was accepted, and the application issued as Design Patent No. D1,073,210. Rule 3.2. Rule 3.6. Rule 3.13.

4.12 Unidentified Exhibits, an Authorization Not Signed by the Inventor, and Mixed Exceptions

In Application 29/959,396, the reference was a third-party store’s Amazon listing for an automatic water dispenser. The examiner found declarations filed December 4, 2024 and January 3, 2025 insufficient. The Sales Authorization Certification relied upon was “not signed by the applicant or inventor named in the instant application,” and it was “not identified as an exhibit attached to the declaration; without such identification in the declaration itself, the Certification can only be construed as part of the attorney-filed remarks and not evidence.” The examiner also stated that the applicant “cannot invoke the declaration of attribution exception and the declaration of prior public disclosure exception simultaneously.” Each round corrected only some of these points. When a declaration finally addressed all of them, it was accepted, and the application issued as Design Patent No. D1,076,265. Rule 3.1(a). Rule 3.4. Rule 3.18.

4.13 Authorization Documents Not Tied to the Cited Stores

In Application 29/957,923, the applicant filed authorization documents to show that the stores selling the product obtained it from the inventor. The examiner made the rejection final because “It is unclear how the stores listed within the documents are related to the Non-patent Literature References cited within the rejections, and furthermore how the stores are related to the applicant and inventor of the present disclosure,” and likewise for the persons named in the documents. A corrected declaration was accepted, and the application issued as Design Patent No. D1,077,369. Rule 3.4. Rule 3.6. Rule 3.23.

4.14 Examiner Asked for the Relationship Among the Platform, Seller, Owner, and Manager

In Application [29/984,027](#), the reference was an Amazon listing for a self-cleaning litter box. In making the rejection final, the examiner told the applicant to “explain the relationship between amazon, the seller, the owner of the selling company, and the manager” so as to identify how the product came to be offered on Amazon. The examiner also noted that the copies of the listing attached to the declaration were the examiner’s own, previously provided, and added no evidence. The next declaration explained those relationships and was accepted. The application issued as Design Patent No. D1,097,379. Rule [3.2\(a\)](#). Rule [3.6](#). Rule [3.18](#).

4.15 Penalty Language: Examiner Required the 28 U.S.C. § 1746 Form

In Application [29/945,497](#), the claim was finally rejected under § 102(a)(1) over a dog car seat listing available May 20, 2024, about two weeks before the June 4, 2024 effective filing date. The declaration stated that the declarant “acknowledge[s]” that willful false statements are punishable under 18 U.S.C. § 1001. The examiner held that “The statement that the applicant ‘acknowledge’ the willful false statement is insufficient” and quoted the form of 28 U.S.C. § 1746: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.” A declaration with that statement was accepted, and the application issued as Design Patent No. D1,057,303. Rule [3.13](#).

4.16 Listing Date Dispute: “Status Changed Date” Rejected, Amazon Email Accepted

In Application [29/940,226](#), the reference was an Amazon listing for a pet toothbrush showing a “Date First Available” earlier than the date on which, according to the declarant, the product went on sale. The declarant, as the Amazon merchant’s representative, stated that the product was first published for sale on July 2, 2023, as shown by a “Status Changed Date” in the seller’s records. The examiner found the October 14, 2024 declaration insufficient: “The examiner cannot rely solely on the applicant’s claim of the ‘Status Changed Date’ which is later than the date first available on the physical listing of the article as evidence.” The applicant then filed a declaration attaching email correspondence from Amazon about the listing, and the examiner found the December 2, 2024 submission sufficient and allowed the claim. Rule [3.3](#). Rule [3.17](#).

4.17 Declaration Filed With the Application Did Not Identify the Application

In Application [29/981,624](#), the applicant filed a § 1.130(a) declaration with the application. The examiner found that “The declaration, which was preemptively filed, does not identify the application, or the filing date in the provided fields.” The examiner later found the declaration sufficient, and the application issued as Design Patent No. D1,076,250. Rule [3.13](#).

4.18 Declaration Filed With the Application Overlooked Until the Applicant Pointed to It

In Application [29/975,673](#), the inventor’s declaration and copies of the listing were filed with the application on November 29, 2024. The examiner nonetheless rejected the claim under § 102(a)(1) over the same Amazon listing, posted August 9, 2024. The applicant’s response pointed out that the declaration was already of record, and the examiner then found the declaration “sufficient to overcome the rejection” and allowed the claim. A declaration filed at the outset should be called to the examiner’s attention in the first response. [Appendix 2](#), Q12.

5. Practice and Enforcement Notes

5.1 Declarations under § 1.130(a) are most frequently successful in design patent prosecution when the prior art disclosure arises from e-commerce listings, distributor publications, or licensee activity, provided that the declaration clearly documents the chain of authorization from the inventor to the public disclosure.

Practitioners should treat § 1.130(a) declarations as standalone evidentiary instruments, not as adjuncts to remarks. Examiners have given no weight to explanations found only in remarks, even when those explanations appeared logically compelling. (Sections [4.1](#), [4.12](#); [Appendix 5](#).) If the declaration cannot independently support withdrawal of the rejection, it is likely insufficient.

5.2 Section 1.130(a) declarations are evaluated as evidence, independently of claim allowability or apparent commercial relationships. The standard is the ordinary one for any declaration: whether the facts stated, with any supporting documents, establish inventor origin.

Practitioners should assume that a fact left out of the declaration may not be supplied by inference, record context, or allowance posture, and that a gap may lead to an insufficiency finding.

5.3 This ProGuide addresses declarations under § 1.130(a) in the context of ex parte design patent examination. Although § 1.130(a) may also arise in post-grant proceedings, including inter partes review, post-grant review, or derivation proceedings, procedural requirements and strategic considerations may differ in those contexts.

Appendix 1 (Checklist)

Use the following checklist to evaluate whether a declaration is proper under 37 C.F.R. § 1.130(a):

- ☐ Is the declarant identified, and is the basis for the declarant’s personal knowledge explained?
- ☐ Is the specific reference relied upon in the rejection clearly identified?

- ☐ Does the declaration explain that the disclosure was made by the inventor, or how it was obtained directly or indirectly from the inventor?
- ☐ Is the disclosure mechanism and medium explained (e.g., product listing, distributor publication, licensee activity)?
- ☐ Where origin is not otherwise clear, is the inventor's authorization of, or relationship with, the discloser explained?
- ☐ If the reference names other authors or contributors, is each one accounted for?
- ☐ If the reference is a third-party publication or listing, does the declaration negate independent creation by the third party?
- ☐ Do the names of persons and stores on the exhibits match the listing, and are they tied to the named inventor or applicant?
- ☐ Where timing is disputed or unclear, is the disclosure date stated, with the source of that date?
- ☐ Is the disclosure within the applicable exception (one year or less before the effective filing date for a § 102(a)(1) disclosure; see Rule 3.3 for § 102(a)(2))?
- ☐ If supporting documents are relied on, are they identified, authenticated, and incorporated as exhibits?
- ☐ Does the declaration stand on its own without reliance on attorney remarks?
- ☐ If both § 1.130(a) and § 1.130(b) theories are offered, are they stated in the alternative, with distinct and consistent facts?
- ☐ Does the declaration include the 37 C.F.R. § 1.68 language and a proper signature (and, conservatively, the 28 U.S.C. § 1746 statement)?
- ☐ If filed with the application, does it identify the application unambiguously (title, inventor, docket number, and filing date, or the application number once assigned)?

Appendix 2 (Questions and Answers)

Q1. Can a § 1.130(a) declaration rely on attorney remarks to explain how the disclosure occurred?

A: No. A § 1.130(a) declaration must independently set forth the facts establishing inventor-originated disclosure. Examiners treat factual explanations appearing only in attorney remarks as argument, not evidence. If the disclosure pathway, authorization, or timing is not explained in the sworn declaration itself, the declaration is likely insufficient even if the attorney remarks are detailed and logically persuasive.

Q2. Is common ownership or common inventorship alone sufficient to establish inventor-originated disclosure?

A: No. Common ownership or inventorship, standing alone, does not establish that a reference disclosure was obtained directly or indirectly from the inventor. Where origin is not otherwise clear, the declaration should explain how the disclosure occurred. Declarations that relied solely on corporate affiliation or assignee identity have been treated as conclusory.

Q3. Must the declaration explain how a third party obtained the design if the disclosure appears to come from a related company?

A: Usually. Where the reference disclosure is attributed to a third party, such as a distributor, reseller, manufacturer, or affiliate, and the record does not otherwise show origin, the declaration should explain the relationship between the inventor and that third party. Examiners have declined to infer origin merely because the entities appear commercially aligned.

Q4. Is it sufficient to state that the reference is an “exception under § 102(b)(1)(A)”?

A: No. Labeling a reference as an exception or as inventor-originated does not satisfy § 1.130(a). The declaration should supply factual statements supporting that conclusion, including disclosure origin and, where relevant, authorization and timing. Examiners have disregarded conclusory legal characterizations unsupported by sworn facts.

Q5. Does the declaration need to identify the publication date of the reference?

A: Usually. Where timing is disputed or not clear from the record, the declaration should identify when the disclosure occurred, the source of that date, and its relation to the effective filing date. Stating the dates is not an express element of § 1.130(a), and Section 4.8 reports an accepted declaration that gave no exact date, but omitting them invites a finding that timing was not established.

Q6. Can supporting documents be relied upon if they are attached to the response but not discussed in the declaration?

A: No. Supporting documents should be identified and incorporated into the declaration itself. Documents that are merely attached to the response, without being referenced and explained in the declaration, may be treated as attorney argument rather than evidence.

Q7. Does favorable allowance posture reduce the scrutiny applied to a § 1.130(a) declaration?

A: No. Examiners evaluate § 1.130(a) declarations independently of allowance posture. Even where the design is otherwise allowable, deficiencies in the declaration are not excused. The prior art rejection remains until a sufficient declaration is submitted.

Q8. Are § 1.130(a) declarations more difficult in cases involving commercial product listings?

A: They often take more work. Most of the insufficiency findings reviewed for this ProGuide involved online listings, usually because the declaration did not explain how the seller obtained the design. Where the listing is by a third party, the declaration should explain that link. The histories reviewed do not show a different legal standard for listings.

Q9. An examiner has rejected the claimed design under § 102(a)(2) based on an earlier-filed application by different inventors. Can a terminal disclaimer overcome this rejection?

A: No. Terminal disclaimers are available only to overcome double patenting rejections, not prior art rejections under § 102(a)(2). Because a § 102(a)(2) rejection is a prior art rejection and not a patentable distinctness or double patenting issue, a terminal disclaimer has no legal effect on it. See [In re Bartfeld](#), 925 F.2d 1450 (Fed. Cir. 1991). To overcome a § 102(a)(2) rejection, the available responses include: (1) a § 1.130(a) declaration showing the disclosure was obtained from the inventor; (2) a priority or benefit claim under §§ 119 or 120 that antedates the reference; (3) a § 1.130(b) showing of prior public disclosure; or (4) a § 102(b)(2)(C) common ownership statement, where applicable.

Q10. Can a § 1.130(a) declaration be filed after allowance?

A: Yes, but it should be filed as soon as the basis for the declaration is known. Filing after allowance may require a request for continued examination (RCE) or petition to withdraw from issue, depending on timing.

Q11. What if the inventor has died or is legally incapacitated?

A: The declaration does not have to be signed by the inventor. Anyone who has knowledge of the facts may sign a § 1.130 declaration, and the applicant files it. MPEP 717.01(c). If the inventor has died or is incapacitated, a person with firsthand knowledge of the disclosure, such as a business

partner, a company officer, or the person who handled the listing, may sign. The inventor's legal representative may also sign if he or she has knowledge of the facts.

Q12. Can § 1.130(a) declarations be filed preemptively (before a rejection)?

A: Section 1.130(a) is framed as a response to a rejection, and examiners evaluate a declaration against the reference actually applied. If a known grace-period disclosure names only the inventor as its author or source, it should not be applied at all (MPEP 2153.01(a)). For other known grace-period disclosures, the usual practice is to cite the disclosure in an information disclosure statement and be prepared to file a declaration if the examiner applies it. A declaration filed with the application should identify the application unambiguously using the information then available (title, inventor, docket number, and filing date), and because the examiner may still apply the reference, the first response should point the examiner to it. (Sections [4.17](#), [4.18](#).)

Q13. Does § 1.130(a) apply to foreign prior art?

A: Yes. Section 1.130(a) can disqualify a foreign publication as prior art if the declaration establishes that the publication was made by or obtained from the inventor one year or less before the effective filing date.

Appendix 3 (Limitations)

This ProGuide is intended as a practical resource based on recent design patent prosecution history and does not constitute legal advice. Application of 37 C.F.R. § 1.130(a) is fact-specific, and outcomes may vary depending on examiner, art unit, and the particular disclosure at issue.

This ProGuide does not address declarations under 37 C.F.R. § 1.130(b) or derivation proceedings. It addresses priority claims, benefit claims, and common ownership statements under [35 U.S.C. § 102\(b\)\(2\)\(C\)](#) only as alternatives to § 1.130(a). Practitioners should evaluate whether alternative statutory mechanisms are more appropriate in a given case.

The examples and patterns discussed herein are drawn from design patent applications and reflect observed examiner behavior, not binding precedent. Examiners may deviate from these patterns, and future USPTO guidance or case law may alter current practice. The prosecution histories were found in ProSearch, which consists mostly of issued patents. Applications abandoned after a failed declaration are therefore not represented, and every history reviewed ended in allowance. The histories show which defects examiners cite and how they were corrected, not how often declarations ultimately fail.

This ProGuide addresses the formal requirements for declarations only briefly (Rule 3.13). It does not address formal defects unrelated to substantive sufficiency under § 1.130(a).

Finally, this ProGuide focuses on evidentiary sufficiency under § 1.130(a). It notes foreign filing consequences only as a caution (Rule 3.16) and does not address strategic considerations such as whether to pursue design patent protection after public disclosure or business considerations related to commercialization timing.

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

A. Rules and MPEP Sections

- 37 C.F.R. § 1.130, Affidavit or declaration of attribution or prior public disclosure under the Leahy-Smith America Invents Act
- 37 C.F.R. § 1.68, Declaration in lieu of oath
- 37 C.F.R. § 1.4(d), Signatures
- MPEP 717.01 through 717.01(d), Affidavit or Declaration Under 37 CFR 1.130
- MPEP 2153.01(a), Grace Period Inventor Disclosure Exception

Form paragraphs:

Note on MPEP Citations: The following MPEP form paragraphs were checked against [MPEP § 1504](#) [R-01.2024] in October 2026. Practitioners should verify current versions at www.uspto.gov/patents/laws and consult the latest edition of the MPEP.

¶ 15.15.02.aia 35 U.S.C. 102(a)(2) Provisional rejection – design disclosed in another application with common inventor and/or assignee

The claim is provisionally rejected under 35 U.S.C. 102(a)(2) as being anticipated by copending Application No. [1] which has a common [2] with the instant application.

Because the copending application names another inventor and has an earlier effectively filed date, it would constitute prior art under 35 U.S.C. 102(a)(2), if published under 35 U.S.C. 122(b) or patented. This provisional rejection under 35 U.S.C. 102(a)(2) is based upon a presumption of future publication or patenting of the copending application.

This provisional rejection under 35 U.S.C. 102(a)(2) might be overcome by: (1) a showing under 37 CFR 1.130(a) that the design in the reference was obtained directly or indirectly from the inventor of this application and is thus not prior art under 35 U.S.C. 102(b)(2)(A); (2) perfecting a claim to priority under 35 U.S.C. 119 that antedates the reference by filing a certified priority document in the application that satisfies the enablement and description requirements of 35 U.S.C. 112(a); (3) perfecting the benefit claim under 35 U.S.C. 120 by filing an application data sheet under 37 CFR 1.76 which contains a specific reference to a prior application in accordance with 37 CFR 1.78 and establishing that the prior application satisfies the enablement and description requirements of 35 U.S.C. 112(a); (4) a showing under 37 CFR 1.130(b) of a prior public disclosure under 35 U.S.C. 102(b)(2)(B); or (5) providing a statement pursuant to 35 U.S.C. 102(b)(2)(C) that the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person or subject to a joint research agreement.

This rejection may not be overcome by the filing of a terminal disclaimer. See [In re Bartfeld](#), 925 F.2d 1450, 17 USPQ2d 1885 (Fed. Cir. 1991).

Examiner Note:

1. This form paragraph is used to provisionally reject over a copending application (utility or design) that discloses the claimed invention and would constitute prior art under 35 U.S.C. 102(a)(2) if patented or published under 35 U.S.C. 122. The copending application must have either a common assignee or at least one common inventor.
2. In bracket 2, insert inventor or assignee.
3. For applications claiming priority to, or the benefit of, an application filed before March 16, 2013, this form paragraph must be preceded by form paragraphs 15.10.aia and 15.10.15.
4. This form paragraph should only be used in an application filed on or after March 16, 2013, where the claims are being examined under 35 U.S.C. 102/103 as amended by the AIA.

¶ 15.15.04.aia 35 U.S.C. 102(a)(2) rejection – design disclosed in a patent

The claim is rejected under 35 U.S.C. 102(a)(2) as being anticipated by patent [1].

Because the patent names another inventor and has an earlier effectively filed date, it constitutes prior art under 35 U.S.C. 102(a)(2).

This rejection under 35 U.S.C. 102(a)(2) might be overcome by: (1) a showing under 37 CFR 1.130(a) that the disclosure in the reference was obtained directly or indirectly from the inventor of this application and is thus not prior art under 35 U.S.C. 102(b)(2)(A); (2) perfecting a claim to priority under 35 U.S.C. 119 that antedates the reference by filing a certified priority document in

the application that satisfies the enablement and description requirements of 35 U.S.C. 112(a); (3) perfecting the benefit claim under 35 U.S.C. 120 by filing an application data sheet under 37 CFR 1.76 which contains a specific reference to a prior application in accordance with 37 CFR 1.78 and establishing that the prior application satisfies the enablement and description requirements of 35 U.S.C. 112(a); (4) a showing under 37 CFR 1.130(b) of a prior public disclosure under 35 U.S.C. 102(b)(2)(B); or (5) providing a statement pursuant to 35 U.S.C. 102(b)(2)(C) that the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person or subject to a joint research agreement.

This rejection may not be overcome by the filing of a terminal disclaimer. See *In re Bartfeld*, 925 F.2d 1450, 17 USPQ2d 1885 (Fed. Cir. 1991).

Examiner Note:

1. This form paragraph should be used when the claimed design in the application being examined is disclosed in the drawings of an earlier-filed design or utility patent. When the design claimed in the application being examined is disclosed in the drawings of an earlier-filed design patent, it would most often be in the form of subcombination subject matter, (part or portion of an article), that is patentably distinct from the claim for the design embodied by the combination or whole article. It may also be unclaimed subject matter depicted in broken lines in the earlier-filed application.
2. In bracket 1, insert number of patent.
3. For applications claiming priority to, or the benefit of, an application filed before March 16, 2013, this form paragraph must be preceded by form paragraphs 15.10.aia and 15.10.15.

¶ 15.19.02.aia Preface 35 U.S.C. 102(a)(2)/103 rejection – Different inventors, common assignee, obvious designs, no evidence of common ownership not later than effective filing date of claimed design

The claim is directed to a design not patentably distinct from the design of commonly assigned [1]. Specifically, the claimed design is different from the one in [2] in that [3]. These differences are considered obvious and do not patentably distinguish the overall appearance of the claimed design over the design in [4].

The commonly assigned [5], discussed above, names another inventor and has an earlier effectively filed date. Therefore, it qualifies as prior art under 35 U.S.C. 102(a)(2) and would form the basis for a rejection of the claimed design in the present application under 35 U.S.C. 103 if the

claimed design and the designed [sic] disclosed were not commonly owned not later than the effective filing date of the claimed design under examination.

This rejection under 35 U.S.C. 102(a)(2)/103 might be overcome by: (1) a showing under 37 CFR 1.130(a) that the design in the reference was obtained directly or indirectly from the inventor or a joint inventor of this application and is thus not prior art under 35 U.S.C. 102(b)(2)(A); (2) perfecting a claim to priority under 35 U.S.C. 119 that antedates the reference by filing a certified priority document in the application that satisfies the enablement and description requirements of 35 U.S.C. 112(a); (3) perfecting the benefit claim under 35 U.S.C. 120 by filing an application data sheet under 37 CFR 1.76 which contains a specific reference to a prior application in accordance with 37 CFR 1.78 and establishing that the prior application satisfies the enablement and description requirements of 35 U.S.C. 112(a); (4) a showing under 37 CFR 1.130(b) of a prior public disclosure under 35 U.S.C. 102(b)(2)(B); or (5) providing a statement pursuant to 35 U.S.C. 102(b)(2)(C) that the design disclosed and the claimed design, not later than the effective filing date of the claimed design, were owned by the same person or subject to an obligation of assignment to the same person or subject to a joint research agreement.

Examiner Note:

1. A nonstatutory double patenting rejection may also be included in the action.
2. In brackets 1, 2, 4, and 5, insert “patent” and number, or “copending application” and serial number.
3. In bracket 3, identify differences between design claimed in present application and that claimed in earlier-filed patent or copending application.
4. This form paragraph should only be used ONCE in an Office action.
5. For applications claiming priority to, or the benefit of, an application filed before March 16, 2013, this form paragraph must be preceded by form paragraphs 15.10.aia and 15.10.15.

¶ 15.19.03.aia 35 U.S.C. 102(a)(2)/103 Provisional Rejection – design disclosed in another application with common inventor and/or assignee

The claim is provisionally rejected under 35 U.S.C. 103 as being obvious over copending Application No. [1] which has a common [2] with the instant application. Because the copending application names another inventor and has an earlier effectively filed date, it would constitute prior art under 35 U.S.C. 102(a)(2) if published under 35 U.S.C. 122(b) or patented. This provisional rejection under 35 U.S.C. 103 is based upon a presumption of future publication or patenting of the conflicting application.

Although the invention is not identically disclosed or described as set forth in 35 U.S.C. 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains, the invention is not patentable.

[3]

This provisional rejection under 35 U.S.C. 102(a)(2) might be overcome by: (1) a showing under 37 CFR 1.130(a) that the design in the reference was obtained directly or indirectly from the inventor or a joint inventor of this application and is thus not prior art under 35 U.S.C. 102(b)(2)(A); (2) perfecting a claim to priority under 35 U.S.C. 119 that antedates the reference by filing a certified priority document in the application that satisfies the enablement and description requirements of 35 U.S.C. 112(a); (3) perfecting the benefit claim under 35 U.S.C. 120 by filing an application data sheet under 37 CFR 1.76 which contains a specific reference to a prior application in accordance with 37 CFR 1.78 and establishing that the prior application satisfies the enablement and description requirements of 35 U.S.C. 112(a); (4) a showing under 37 CFR 1.130(b) of a prior public disclosure under 35 U.S.C. 102(b)(2)(B); or (5) providing a statement pursuant to 35 U.S.C. 102(b)(2)(C) that the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person or subject to a joint research agreement.

Examiner Note:

1. This form paragraph should be used when the claimed design in the application being examined is obvious over subject matter disclosed in the drawings of an earlier-filed design or utility application. The design claimed in the application being examined can be an obvious version of subject matter disclosed in the drawings of an earlier-filed design application. This subject matter may be depicted in broken lines, or may be in the form of a subcombination (part or portion of an article) that is patentably distinct from the claim for the design embodied by the combination or whole article.
2. In brackets 1 and 4, insert serial number of copending application.
3. In bracket 2, insert inventor or assignee.
4. In bracket 3, provide explanation of obviousness including differences.
5. For applications claiming priority to, or the benefit of, an application filed before March 16, 2013, this form paragraph must be preceded by form paragraph 15.10.15.

¶ 15.19.05.aia 35 U.S.C. 102(a)(2)/103 rejection – design disclosed, no common inventors or common assignees

The claim is rejected under 35 U.S.C. 103 as being obvious over [1].

Because the reference names another inventor and has an earlier effectively filed date, it constitutes prior art under 35 U.S.C. 102(a)(2).

Although the invention is not identically disclosed or described as set forth in 35 U.S.C. 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains, the invention is not patentable.

[2]

This rejection under 35 U.S.C. 102(a)(2)/103 might be overcome by: (1) a showing under 37 CFR 1.130(a) that the subject matter disclosed in the copending application was obtained directly or indirectly from the inventor or a joint inventor of this application and is thus not prior art in accordance with 35 U.S.C. 102(b)(2)(A); (2) perfecting a claim to priority under 35 U.S.C. 119 that antedates the reference by filing a certified priority document in the application that satisfies the enablement and description requirements of 35 U.S.C. 112(a); (3) perfecting the benefit claim under 35 U.S.C. 120 by filing an application data sheet under 37 CFR 1.76 which contains a specific reference to a prior application in accordance with 37 CFR 1.78 and establishing that the prior application satisfies the enablement and description requirements of 35 U.S.C. 112(a); or (4) a showing under 37 CFR 1.130(b) of a prior public disclosure under 35 U.S.C. 102(b)(2)(B).

Examiner Note:

1. In bracket 1, insert document number that qualifies as prior art under 35 U.S.C. 102(a)(2).
2. In bracket 2, provide explanation of obviousness including differences.
3. For applications claiming priority to, or the benefit of, an application filed before March 16, 2013, this form paragraph must be preceded by form paragraphs 15.10.aia and 15.10.15.

B. Relevant Case Law

In re Bartfeld, 925 F.2d 1450, 17 USPQ2d 1885 (Fed. Cir. 1991)

- Held that a terminal disclaimer cannot overcome a prior art rejection based on another's patent (there, a rejection under pre-AIA § 102(e)/103)

- Reasoning applies to AIA § 102(a)(2) rejections (see form paragraphs 15.15.02.aia and 15.15.04.aia)

In re DeBaun, 687 F.2d 459, 214 USPQ 933 (CCPA 1982)

- An inventor’s unequivocal declaration that he conceived the subject matter in the reference patent that suggested the claimed invention was sufficient to show that the reference described his own work (cited in MPEP 717.01(a)(1))

In re Katz, 687 F.2d 450, 215 USPQ 14 (CCPA 1982)

- An inventor’s statement that the co-authors of a publication were students working under his direction, and not co-inventors, was sufficient to show that the publication described the inventor’s own work

Estee Lauder Inc. v. L’Oreal, S.A., 129 F.3d 588, 44 USPQ2d 1610 (Fed. Cir. 1997)

- Arguments of counsel cannot take the place of evidence lacking in the record

In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997)

- Attorney argument is not the kind of factual evidence required to rebut a prima facie case

[Note: Case law citations are illustrative. Practitioners should research current binding authority.]

Appendix 5 (Survey of Prosecution Histories)

To test whether the practices described in this ProGuide hold beyond the examples in Section 4, ProSearch was searched (October 2026) for design applications in which an examiner found a declaration insufficient. A keyword search returned candidate files from more than 70 examiners. One application was reviewed from each of 20 of those examiners, in 13 art units (2911, 2914, 2915, 2916, 2917, 2921, 2922, 2923, 2924, 2931, 2932, 2933, 2934). Of the 20, 17 concerned declarations under § 1.130(a); two concerned showings under § 1.130(b) (Applications [29/801,253](#) and [29/821,524](#)); and one concerned a related declaration under § 1.132 disputing a publication date (Application [29/822,787](#)). The counts below are out of all 20; the § 1.132 file is counted only under bare declaration and date dispute.

Findings:

- The two defects cited most often were the absence of an unequivocal statement that the inventor of the application invented the design shown in the reference (8 of 20), and the absence of an explanation of how the seller or other discloser obtained the design (6 of 20).

(Rules 3.2, 3.6.)

- Other recurring defects were exhibits not identified in the declaration, not filed, or offered only through remarks (5); formal defects such as an unsigned declaration, missing § 1.68 language, or a non-inventor signer where the examiner wanted the inventor (5); confusion between § 1.130(a) and § 1.130(b) (6); a bare declaration with no supporting documents (3); and a declaration directed to a different listing than the one cited (3). (Rules 3.1(a), 3.4, 3.5, 3.13, 3.22.)
- Examiners in different art units use the same language: the two-part statement quoted in Rule 3.2, and the request to explain the relationship among the platform, the seller, the selling company's owner, and its manager.
- Examiners are not uniform on formalities or on combining § 1.130(a) and (b) theories, which supports treating the conservative practices in this ProGuide as drafting choices rather than legal requirements. (Rules 3.1(a), 3.13.)
- Every file reviewed ended in allowance. Corrected declarations that answered each point the examiner raised were accepted, often after an interview. (Rule 3.18.) Because the sample was chosen for insufficiency findings and every file ended in allowance, it cannot show how often declarations fail, or whether commercial listings receive closer scrutiny than other disclosures.

Application	Art Unit	Defect found	What fixed it
29/801,168	2932	Not signed by the inventor; no unequivocal statement	Inventor-signed declaration
29/801,253	2916	§ 1.130(b) affidavit where attribution applied	Proper § 1.130(a) declaration with exhibits
29/811,982	2922	Did not explain how the Amazon store acquired the design	Declaration naming store owner; contract; screenshots
29/813,167	2933	Non-inventor officer did not show personal knowledge	Interview; inventor declaration
29/817,374	2923	Declaration not matched to the cited listing	Reference-specific declarations
29/819,687	2915	Unsigned; then no supporting evidence	Declaration with evidence of white label sale
29/820,290	2934	Facts found insufficient	Interview; same declaration accepted
29/821,524	2923	§ 1.130(b) showing not established	Corrected showing
29/822,787	2915	§ 1.132 date assertion without facts (related)	Interview; new declaration

Application	Art Unit	Defect found	What fixed it
29/832,791	2911	Remarks only; contradictory (a)/(b) theories; § 1.68 language	§ 1.130(a) declaration with contract and annual report
29/838,638	2917	Bare declaration, no evidence	Sales authorization certificate and business license
29/838,729	2921	Declaration addressed a different listing (ASIN, brand)	Declaration matching the cited listing
29/843,204	2931	Listing ownership only; no attribution statement; § 1.68; papers not filed	Six declarations on five occasions; last accepted on reconsideration
29/865,475	2922	Attorney argument without a declaration	Inventor declaration
29/884,492	2932	No unequivocal statement tied to the application	Declaration tied to the application
29/889,299	2924	Declaration omitted; exhibits not identified; inventor not tied to references	Declaration tying inventor to the shops
29/891,682	2921	No obtained-from statement; seller chain not explained	Inventor declaration per reference
29/896,527	2921	No obtained-from statement; seller chain not explained	Interview with draft; revised declaration
29/925,477	2914	General counsel on information and belief; no definite link	Argument and inventor declaration
29/929,790	2923	Neither made-by nor obtained-from facts shown	Declaration under (a) and (b) in the alternative