USPTO DESIGN DAY 2008: Designing Tomorrow
6 Art Units and 2 Technical Support Teams:

1 - Director
6 - Supervisory Patent Examiners
2 - Design Practice Specialists
102 - Total Number Examiners
  44 Primary Examiners
  28 Hotelling
  58 Assistant Examiners
1 - Technical Support Team Leader
10 - Technical Support Personnel
2 - Office Managers
<table>
<thead>
<tr>
<th>Step</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing to First Action</td>
<td>11.7 mos.</td>
<td>10.4 mos.</td>
</tr>
<tr>
<td>Filing to Allowance</td>
<td>12.6 mos.</td>
<td>11.6 mos.</td>
</tr>
<tr>
<td>Filing to Issue</td>
<td>18.3 mos.</td>
<td>17.0 mos.</td>
</tr>
</tbody>
</table>

Increase in Filings & Decrease in Pendency

- Filings
- To 1st Action
- To Issue

Pendency

Increase in Filing & Increase in Number of Examiners

Source: Enterprise Data Warehouse and PERFORMANCE AND ACCOUNTABILITY REPORT: FISCAL YEAR 2007
Decrease in Pendency & Increase in Number of Examiners

Pendency

12-Month Filings at FY End vs. 12-Month Filings at End of March

Source: Enterprise Data Warehouse and PERFORMANCE AND ACCOUNTABILITY REPORT: FISCAL YEAR 2007
An advance question indicated an interest in:

- An overview of the training examiners receive.

- They seem to be very different in their likes and dislikes.

- How formal is the training with regard to what can be in the spec and drawings?
They seem to be very different in their likes and dislikes.

- Substantial degree of discretion in formal matters.

- Less discretion in matters of merit.

- Close judgment calls can yield different conclusions.
28 Primary Examiners
19 or more years.

10 train assistant examiners.

16 Primary Examiners
Fewer than 19 years

8 train assistant examiners.

58 Assistant Examiners

Trained by 18 examiners and 8 Supervisors
No new Design Examiners in 2007

- Plain language writing workshop.
- Supplemental training on sufficiency of disclosure.
- Supplemental training on obviousness.
Does the figure below adequately depict the unclaimed right-side ends of the respective horizontal solid lines?
Must another broken line extending between the parallel broken lines be added, in a manner similar to the broken lines shown in the figures below?
The examiner is after clarity.
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The examiner is after clarity.
Recently, I have received a lot of Examiner's Amendments that either delete the sentence, "Any broken line illustration of environmental structure is not part of the design sought to be patented." from the application if there are no broken lines, or replace the sentence with another sentence that more precisely specifies the context of the broken line illustrations and the figures in which they are shown.

Why can't the U.S. Patent Office just accept the quoted sentence?
The Descriptive Statement is incorporated into the claim by the words, “and described.”

Therefore, irrelevant or inaccurate statements are at least objectionable.
Regarding broken lines:

It must be made entirely clear what they **do mean**, or else the claim is indefinite under 35 U.S.C. 112.

It is the examiner's responsibility to obtain such definiteness.

*In re Blum*, 153 USPQ 177 (CCPA 1967)
This example says what the broken lines don’t mean:

"Any broken line illustration of environmental structure is not part of the design sought to be patented"

We need to know what they do mean.
Authorities governing the Descriptive Statement:

- "Dotted and broken lines may mean different things in different circumstances and all we wish to say here is that in each case it must be made entirely clear what they do mean, else the claim is bad for indefiniteness under 35 U.S.C. 112. It is the examiner's responsibility to obtain such definiteness." *In re Blum*, 153 USPQ 177 (CCPA 1967)

- "... nothing should be added to the record that is useless." *Ex parte Spiegel*, 268 O.G. 741, 1919 C.D. 112


- "... patents should be confined in their disclosures to the respective inventions patented." MPEP § 1302.01 37 CFR §§ 1.71 and 1.73,

- MPEP 1503.01(II)
I would like to see some discussion on Indeterminate Break Lines…

…are they acceptable or not…

…do they violates 112?

one examiner allows it…
another rejects it…
Design for an article that claims no particular length is permitted.

Drawing Examples

Indeterminate Length

Note the use of a separation and a bracket to indicate that, the precise length of the molding is not claimed.
Questions on Practice

This is a design for an article that looks like this on one end ...

... and looks like this on the other end.
Questions on Practice

Claiming no particular length for the design for this article, in this way, poses 112 problems.
European associates frequently require the urgent filing of U.S. design patent applications claiming priority from European Industrial Design (EID) registration without time to have formal drawings prepared.

I believe it would be very helpful to have the PTO explain the practical examination problems in providing formal drawings during examination based on (sometimes) poor quality photos from the EID application.
After allowance, **do not** submit corrected drawings as a 312 Amendment unless:

- You disagree with the drawing requirements or
- You are making amendments beyond those required by the examiner.
1. Prepare the drawing sheets according to 37 CFR § 1.121

2. Attach a cover sheet with a heading similar to the following:
   - "Submission of Replacement Drawings" or
   - “Response to Required Drawing Corrections”
3. Mail Post-Allowance Drawings to:

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450

Alexandria, VA 22313-1450

Unless otherwise directed, all post allowance correspondence should be addressed Mail Stop Issue Fee.” MPEP 1306
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Contact Information for
Joel Sincavage at USPTO:

Telephone No.: (571) 272-2610
e-mail address: joel.sincavage@uspto.gov