

Chapter 1500: Design Patents

1501 Statutes and Rules Applicable

1502 Definition of a Design

1502.01 Distinction Between Design and Utility Patents

1503 Elements of a Design Patent Application Filed Under 35 U.S.C. chapter 16

1503.01 Specification

I. PREAMBLE AND TITLE

II. DESCRIPTION

III. DESIGN CLAIM

1503.02 Drawing

I. VIEWS

II. SURFACE SHADING

III. BROKEN LINES

IV. SURFACE TREATMENT

V. PHOTOGRAPHS AND COLOR DRAWINGS

1504 Examination

1504.01 Statutory Subject Matter for Designs

1504.01(a) Computer-Generated Icons

I. GUIDELINES FOR EXAMINATION OF DESIGN PATENT APPLICATIONS FOR COMPUTER-GENERATED ICONS

A. General Principle Governing Compliance With the “Article of Manufacture” Requirement

B. Procedures for Evaluating Whether Design Patent Applications Drawn to Computer-Generated Icons Comply With the “Article of Manufacture” Requirement

II. EFFECT OF THE GUIDELINES ON PENDING DESIGN APPLICATIONS DRAWN TO COMPUTER-GENERATED ICONS

III. TREATMENT OF TYPE FONTS

IV. CHANGEABLE COMPUTER GENERATED ICONS

1504.01(b) Design Comprising Multiple Articles or Multiple Parts Embodied in a Single Article

1504.01(c) Lack of Ornamentality

I. FUNCTIONALITY VS. ORNAMENTALITY

II. ESTABLISHING A PRIMA FACIE BASIS FOR REJECTIONS UNDER 35 U.S.C. 171

III. REJECTIONS MADE UNDER 35 U.S.C. 171

IV. OVERCOMING A 35 U.S.C. 171 REJECTION BASED ON LACK OF ORNAMENTALITY

V. EVALUATION OF EVIDENCE SUBMITTED TO OVERCOME A REJECTION UNDER 35 U.S.C. 171

1504.01(d) Simulation

1504.01(e) Offensive Subject Matter

1504.02 Novelty

1504.03 Nonobviousness

I. GATHERING THE FACTS

A. Scope of the Prior Art

B. Differences Between the Prior Art and the Claimed Design

C. Level of Ordinary Skill in the Art

D. Objective Evidence of Nonobviousness (Secondary Considerations)

II. PRIMA FACIE OBVIOUSNESS

A. Combining Prior Art References

1. Analogous Art

2. Nonanalogous Art

III. REBUTTAL OF THE PRIMA FACIE CASE

1504.04 Considerations Under 35 U.S.C. 112

I. 35 U.S.C. 112(a) and (b)

II. New Matter

III. 35 U.S.C. 112, SECOND PARAGRAPH

1504.05 Restriction

I. INDEPENDENT INVENTIONS

II. DISTINCT INVENTIONS

A. Multiple Embodiments - Difference in Appearance

B. Combination/Subcombination - Difference in Scope

III. TRAVERSAL OF RESTRICTION REQUIREMENT

1504.06 Double Patenting

I. "SAME INVENTION" DOUBLE PATENTING REJECTIONS

II. NONSTATUTORY DOUBLE PATENTING REJECTIONS

1504.10 Priority Under 35 U.S.C. 119(a)-(d)

1504.20 Benefit Under 35 U.S.C. 120

1504.30 Expedited Examination

1505 Allowance and Term of Design Patent

1509 Reissue of a Design Patent

1510 Reexamination

1511 Protest

1512 Relationship Between Design Patent, Copyright, and Trademark

I. DESIGN PATENT/COPYRIGHT OVERLAP

II. INCLUSION OF COPYRIGHT NOTICE

III. DESIGN PATENT/TRADEMARK OVERLAP

IV. INCLUSION OF TRADEMARKS IN DESIGN PATENT APPLICATIONS

1513 Miscellaneous