

## DESIGN PATENTS

**§ 1.151 Rules applicable.**

The rules relating to applications for patents for other inventions or discoveries are also applicable to applications for patents for designs except as otherwise provided.

(35 U.S.C. 171)

**§ 1.152 Design drawings.**

(a) The design must be represented by a drawing that complies with the requirements of § 1.84, and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the design.

(1) Appropriate and adequate surface shading should be used to show the character or contour of the surfaces represented. Solid black surface shading is not permitted except when used to represent the color black as well as color contrast. Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces which cannot be seen through opaque materials. Alternate positions of a design component, illustrated by full and broken lines in the same view are not permitted in a design drawing.

(2) Color photographs and color drawings are not permitted in design applications in the absence of a grantable petition pursuant to § 1.84(a)(2). Photographs and ink drawings are not permitted to be combined as formal drawings in one application. Photographs submitted in lieu of ink drawings in design patent applications must comply with § 1.84(b) and must not disclose environmental structure but must be limited to the design for the article claimed.

(b) Any detail shown in the ink or color drawings or photographs (formal or informal) deposited with the original application papers constitutes an integral part of the disclosed and claimed design, except as otherwise provided in this paragraph. This detail may include, but is not limited to, color or contrast, graphic or written indicia, including identifying indicia of a proprietary nature, surface ornamentation on an article, or any combination thereof.

(1) When any detail shown in informal drawings or photographs does not constitute an integral part of the disclosed and claimed design, a specific disclaimer must appear in the original application papers either in the specification or directly on the drawings or photographs. This specific disclaimer in the original application papers will provide antecedent basis for the omission of the disclaimed detail(s) in later-filed drawings or photographs.

(2) When informal color drawings or photographs are deposited with the original application papers without a disclaimer pursuant to paragraph (b)(1) of this section, formal color drawings or photographs, or a black and white drawing lined to represent color, will be required.

[62 FR 53195, Oct. 10, 1997]

**§ 1.153 Title, description and claim, oath or declaration.**

(a) The title of the design must designate the particular article. No description, other than a reference to the drawing, is ordinarily required. The claim shall be in formal terms to the ornamental design for the article (specifying name) as shown, or as shown and described. More than one claim is neither required nor permitted.

(b) The oath or declaration required of the applicant must comply with § 1.63.

(35 U.S.C. 6, Pub. L. 97-247)

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 18503, Dec. 29, 1964; 48 FR 2712, Jan. 20, 1983]

**§ 1.154 Arrangement of application elements.**

(a) The elements of the design application, if applicable, should appear in the following order:

(1) Design Application Transmittal Form.

(2) Fee Transmittal Form.

(3) Preamble, stating name of the applicant, title of the design, and a brief description of the nature and intended use of the article in which the design is embodied.

(4) Cross-reference to related applications.

§ 1.155

37 CFR Ch. I (7-1-99 Edition)

- (5) Statement regarding federally sponsored research or development.
- (6) Description of the figure or figures of the drawing.
- (7) Feature Description.
- (8) A single claim.
- (9) Drawings or photographs.
- (10) Executed oath or declaration (See § 1.153(b)).
- (b) [Reserved]

[61 FR 42806, Aug. 19, 1996, as amended at 62 FR 53196, Oct. 10, 1997]

**§ 1.155 Issue of design patents.**

If, on examination, it appears that the applicant is entitled to a design patent under the law, a notice of allowance will be sent to the applicant, or applicant's attorney or agent, calling for the payment of the issue fee (§ 1.18(b)). If this issue fee is not paid within three months of the date of the notice of allowance, the application shall be regarded as abandoned.

[62 FR 53196, Oct. 10, 1997]

PLANT PATENTS

**§ 1.161 Rules applicable.**

The rules relating to applications for patent for other inventions or discoveries are also applicable to applications for patents for plants except as otherwise provided.

**§ 1.162 Applicant, oath or declaration.**

The applicant for a plant patent must be the person who has invented or discovered and asexually reproduced the new and distinct variety of plant for which a patent is sought (or as provided in §§ 1.42, 1.43, and 1.47). The oath or declaration required of the applicant, in addition to the averments required by § 1.63, must state that he or she has asexually reproduced the plant. Where the plant is a newly found plant the oath or declaration must also state that it was found in a cultivated area.

(35 U.S.C. 6, Pub. L. 97-247)

[48 FR 2713, Jan. 20, 1983]

**§ 1.163 Specification and arrangement of application elements.**

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteris-

tics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

(b) Two copies of the specification (including the claim) must be submitted, but only one signed oath or declaration is required.

(c) The elements of the plant application, if applicable, should appear in the following order:

- (1) Plant Application Transmittal Form.
- (2) Fee Transmittal Form.
- (3) Title of the invention.
- (4) Cross-reference to related applications.
- (5) Statement regarding federally sponsored research or development.
- (6) Background of the invention.
- (7) Brief summary of the invention.
- (8) Brief description of the drawing.
- (9) Detailed Botanical Description.
- (10) A single claim.
- (11) Abstract of the Disclosure.
- (12) Drawings (in duplicate).
- (13) Executed oath or declaration.
- (14) Plant color coding sheet.

(d) A plant color coding sheet as used in this section means a sheet that specifies a color coding system as designated in a color dictionary, and lists every plant structure to which color is a distinguishing feature and the corresponding color code which best represents that plant structure.

(35 U.S.C. 112, 162; 35 U.S.C. 6, Pub. L. 97-247)

[24 FR 10332, Dec. 22, 1959, as amended at 48 FR 2713, Jan. 20, 1983; 61 FR 42806, Aug. 19, 1996; 62 FR 53196, Oct. 10, 1997]

**§ 1.164 Claim.**

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

(35 U.S.C. 162)