



USPTO DESIGN DAY 2008:

Designing Tomorrow

FORWARD THINKING
ORNAMENTAL
CUTTING EDGE
novel
distinct
patentable
creative
imaginative
marketable
INNOVATIVE



Tech Center 2900

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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



Pendency

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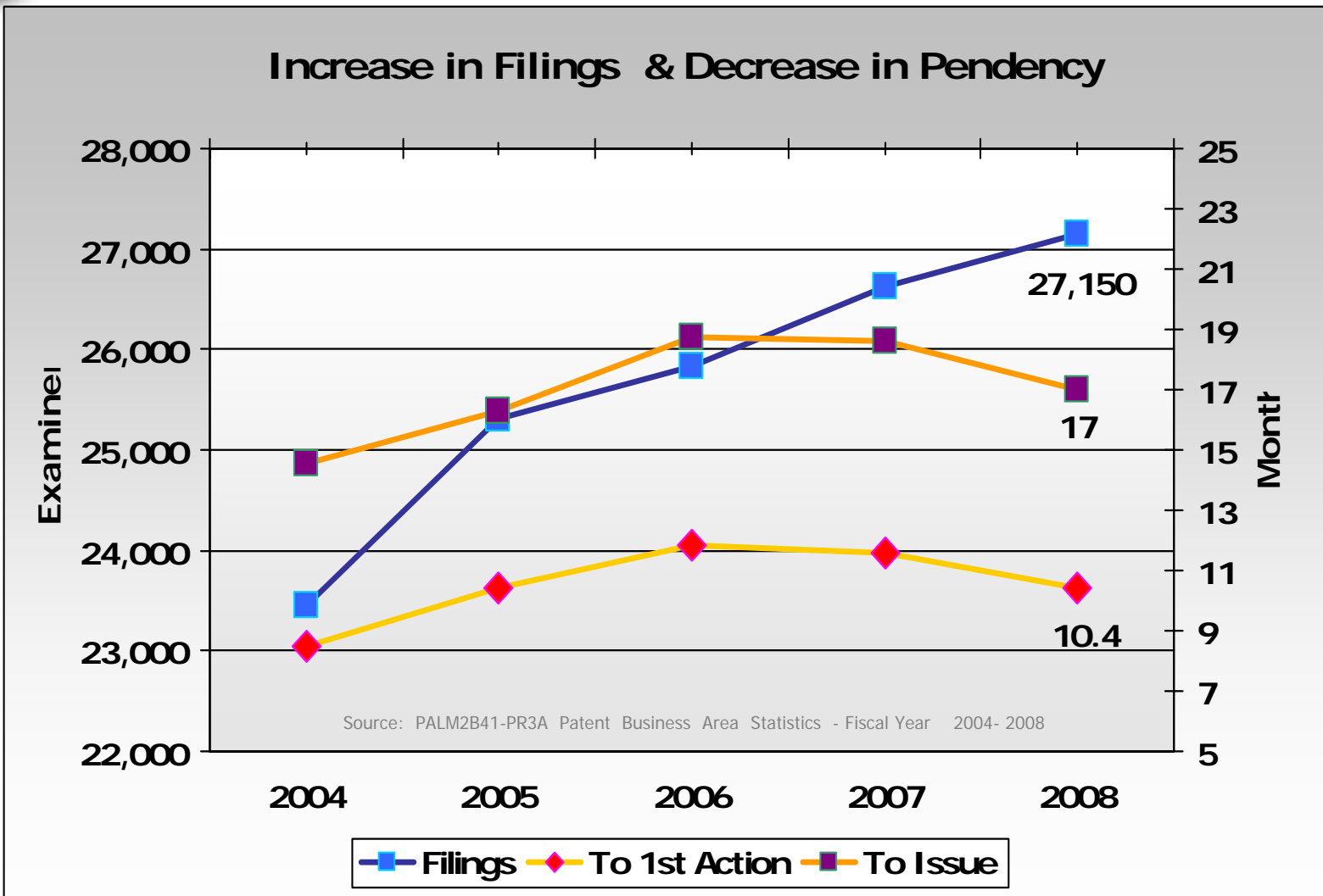
	<u>2007</u>	<u>2008</u>
Filing to First Action	11.7 mos.	<u>10.4 mos.</u>
Filing to Allowance	12.6 mos.	<u>11.6 mos.</u>
Filing to Issue	18.3 mos.	<u>17.0 mos.</u>

Source: PALM2B41-PR3A Patent Business Area Statistics - Fiscal Year 2007-2008



Pendency

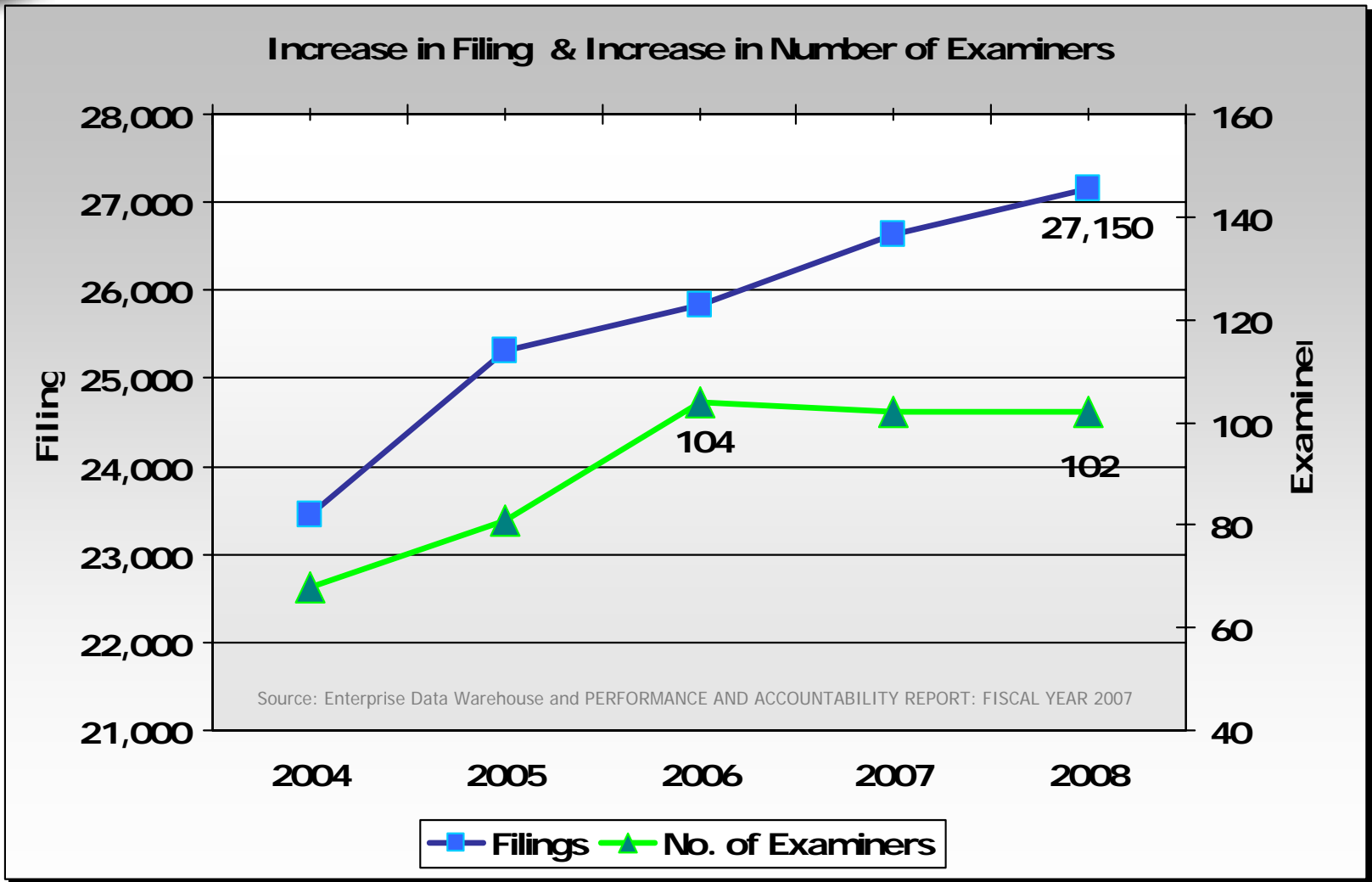
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Pendency

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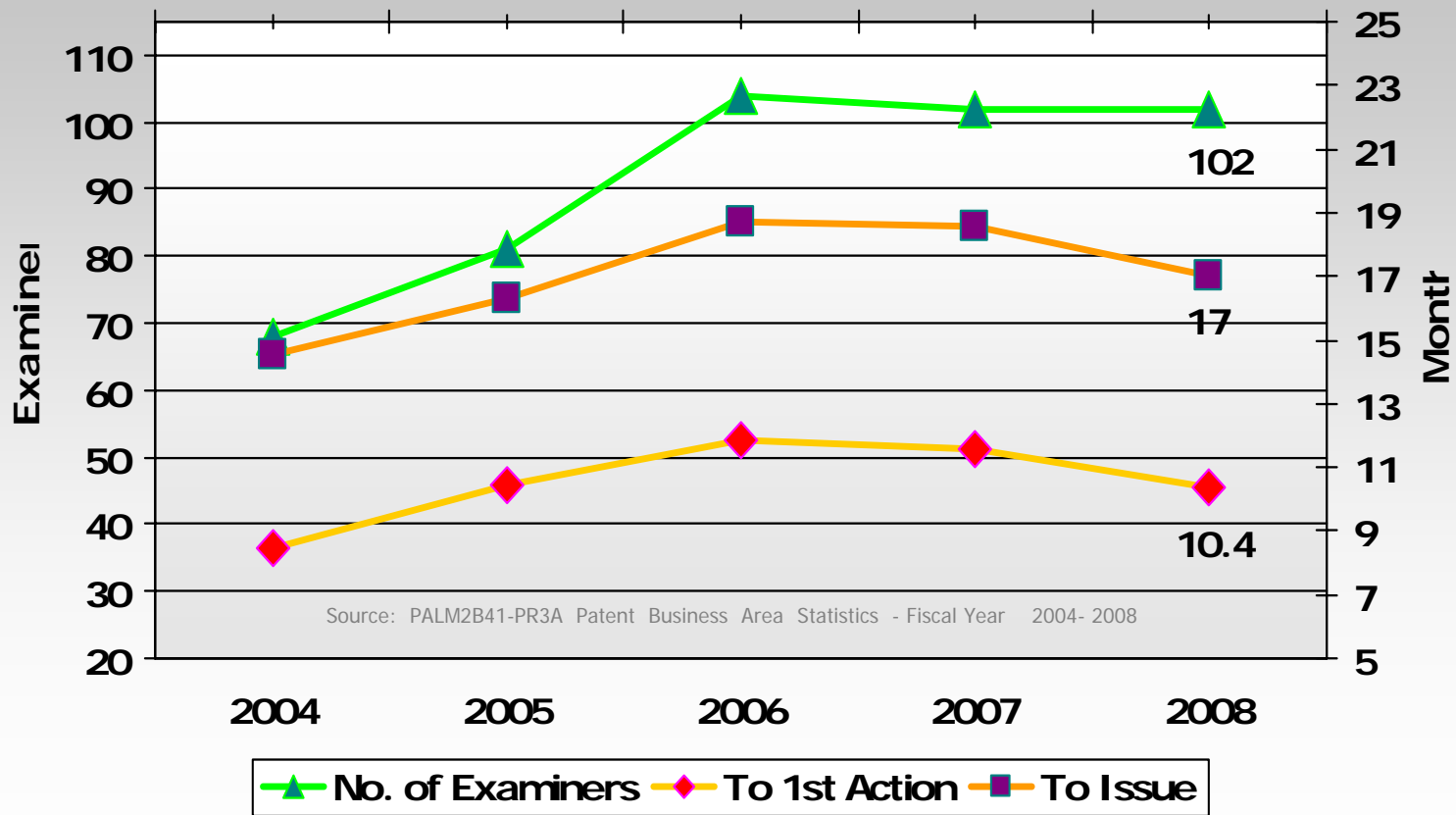




Pendency

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Decrease in Pendency & Increase in Number of Examiners

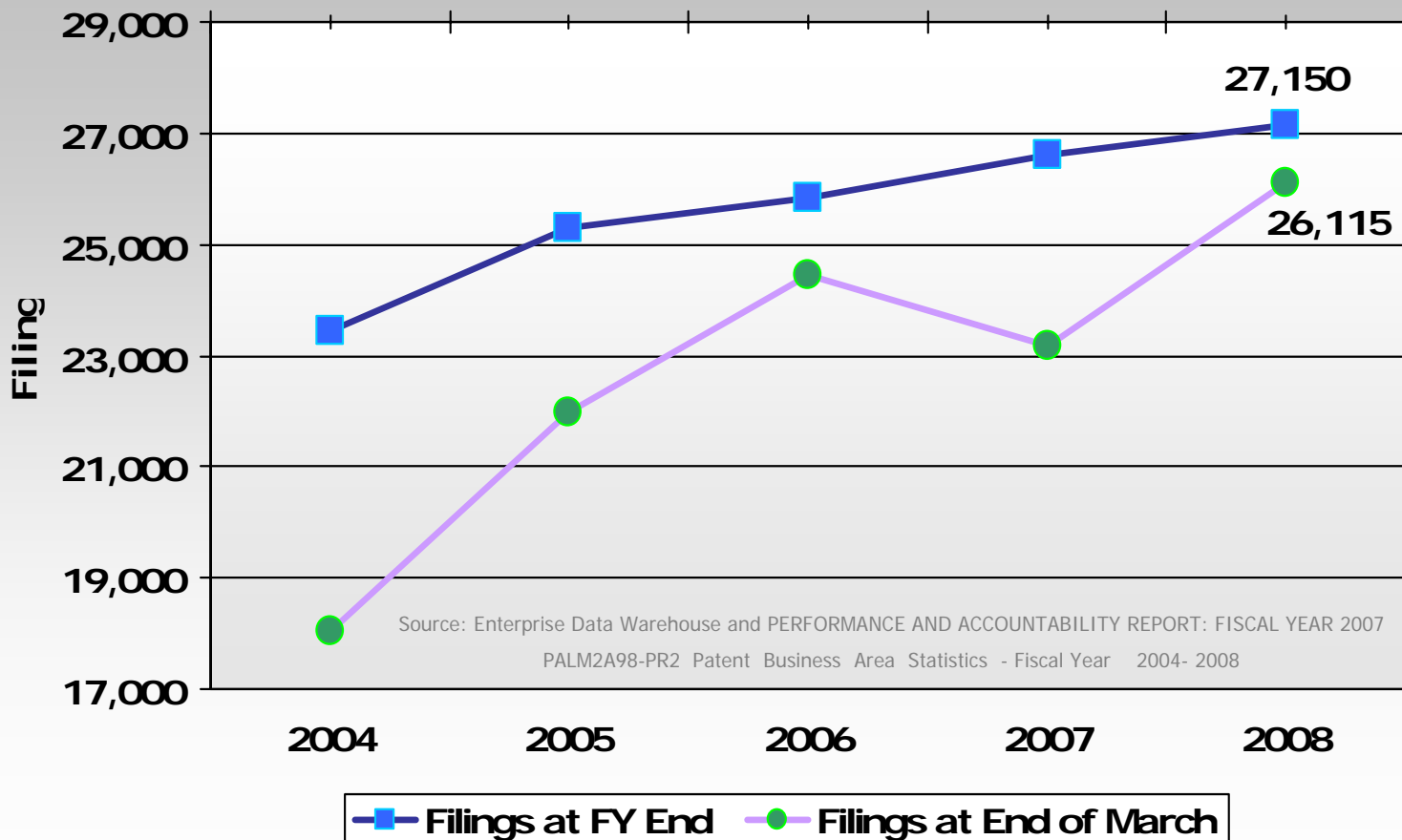




Pendency

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





Training

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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?



Training

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- ❖ 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.



Training

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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

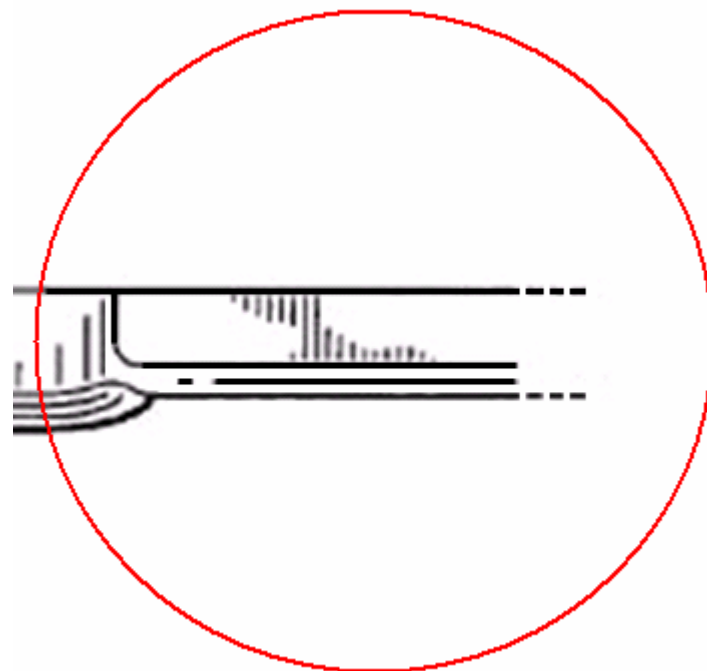
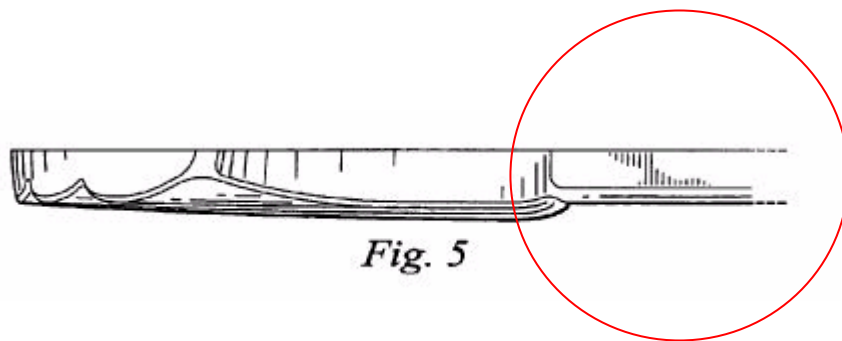
- Plain language writing workshop.
- Office of Patent Quality Assurance.
- Supplemental training on sufficiency of disclosure.
- Supplemental training on obviousness.



Questions on Practice

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Q Does the figure below adequately depict the unclaimed right-side ends of the respective horizontal solid lines?





Q 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?

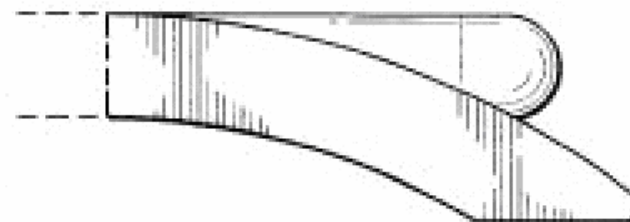


Fig. 4

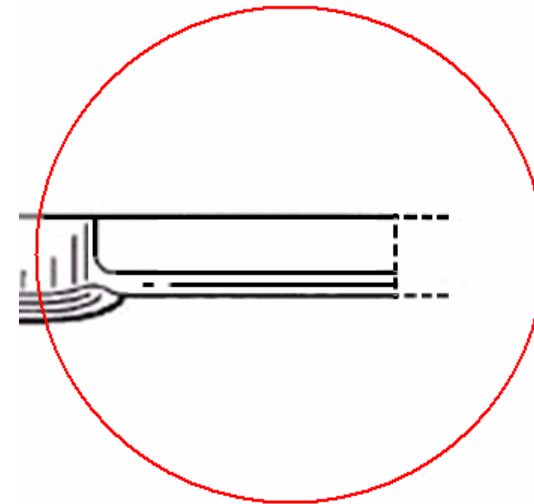
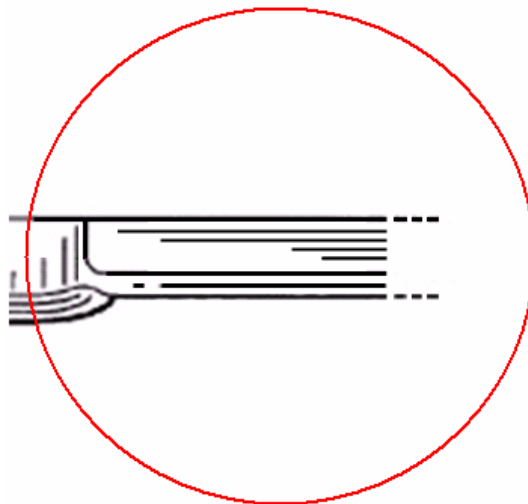
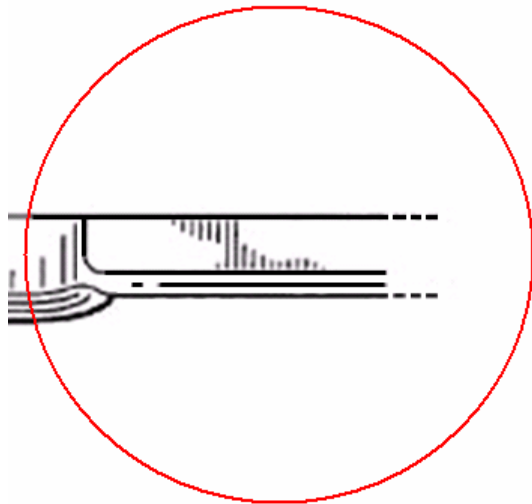
Fig. 3



Questions on Practice

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The examiner is after clarity.





Questions on Practice

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The examiner is after clarity.



Fig. 4

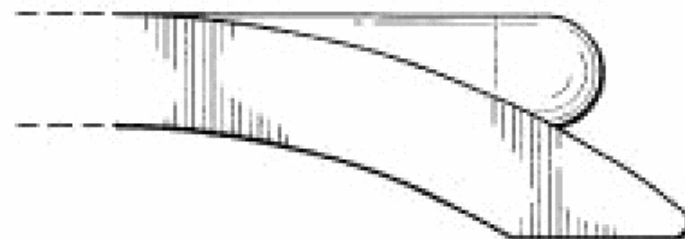


Fig. 3



Questions on Practice

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The examiner is after clarity.



Fig. 4



Fig. 3



Q 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?



Questions on Practice

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The Descriptive Statement is incorporated into the claim by the words, “and described.”

Therefore, irrelevant or inaccurate statements are at least objectionable.



Questions on Practice

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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)



Questions on Practice

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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
- "... superadded verbal description is generally useless and oftentimes confusing." *In re Freeman*, 109 O.G. 1904 C.D. 619, 23 App. D.C. 226
- "...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)



- Q** 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...



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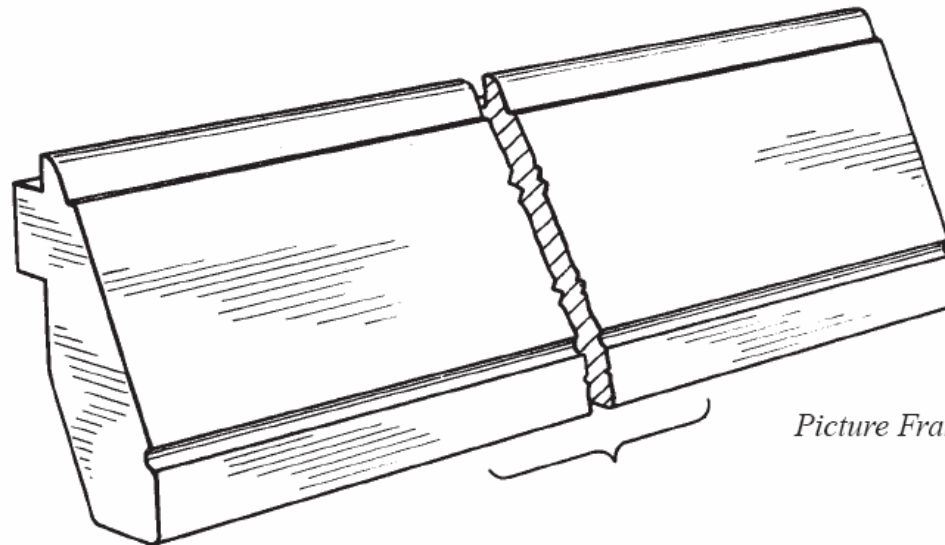
Design for an article that claims no particular length is permitted.

A Guide To Filing A Design Patent Application

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.



Picture Frame Molding

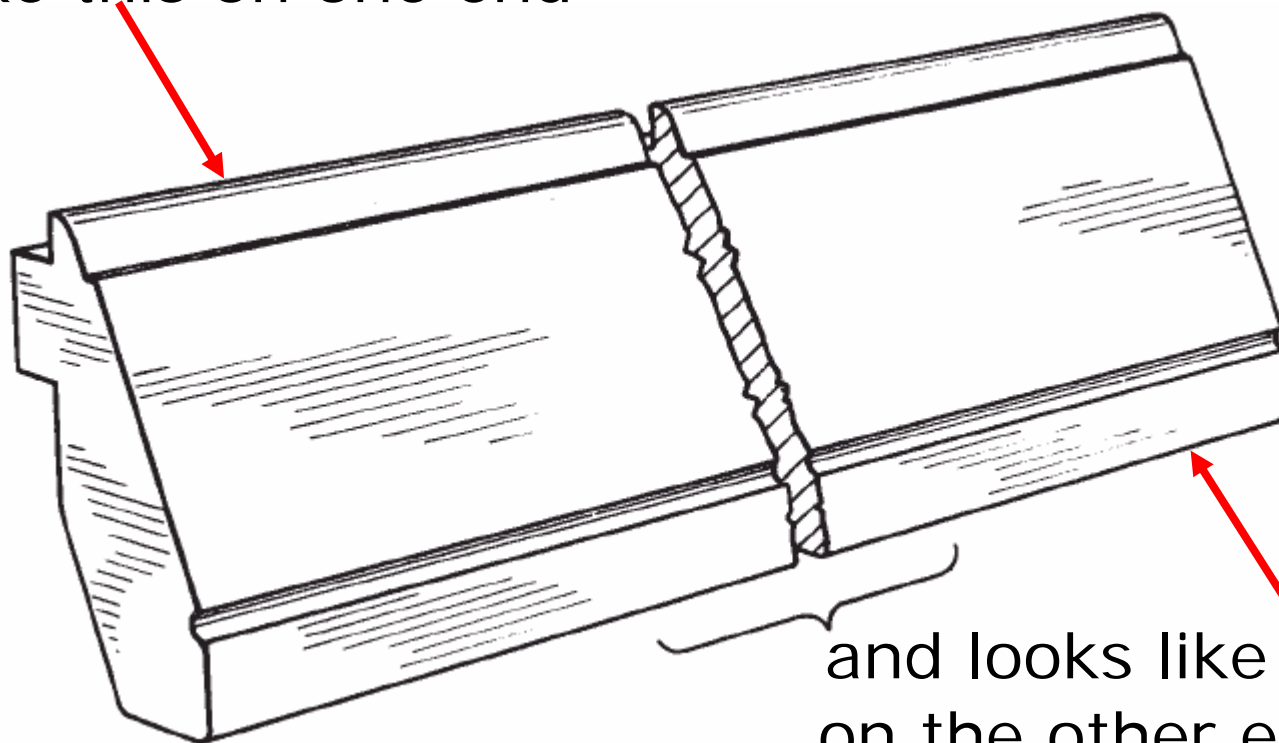


Questions on Practice

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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

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Claiming no particular length for the design for this article, in this way, poses 112 problems.

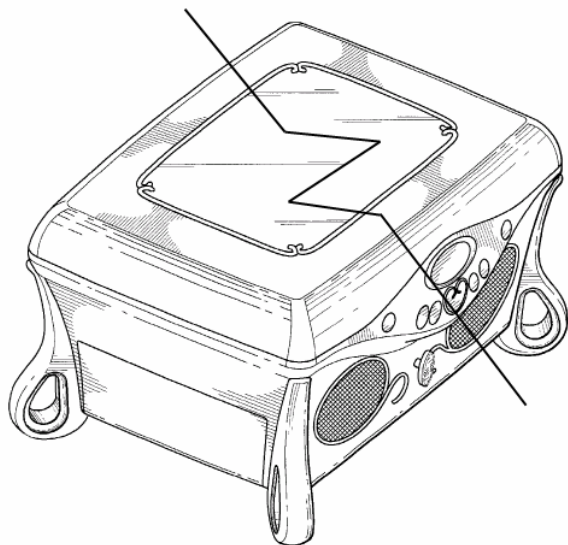


FIG. 1

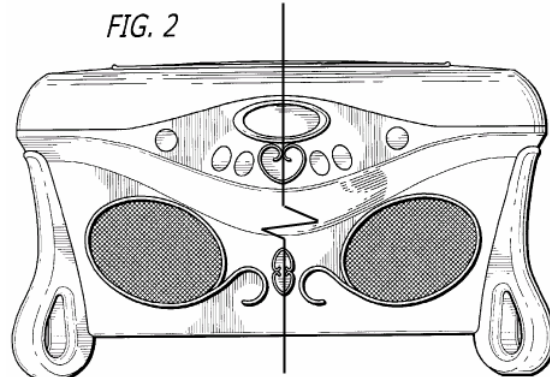


FIG. 2

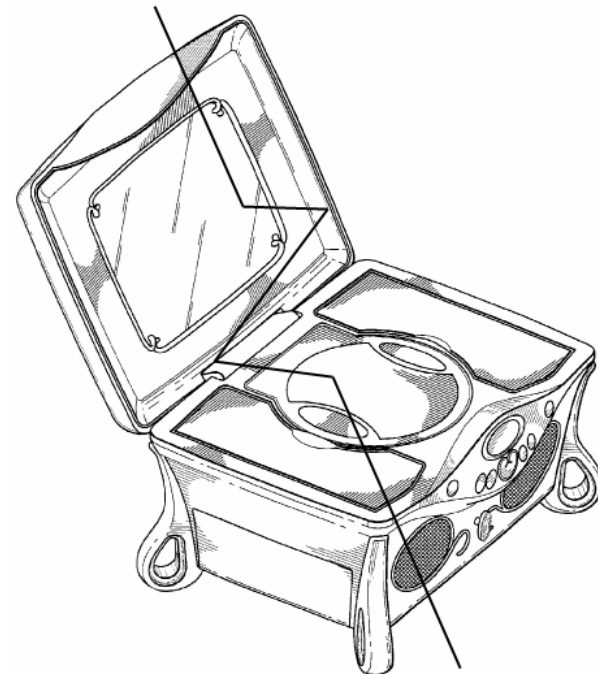


FIG. 8



- Q 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.



Drawings after Allowance

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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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- **Search Templates by Class**

<http://www.uspto.gov/web/patents/searchtemplates/class.htm>

The background of the slide features a close-up, slightly blurred image of the American flag waving. The stars and stripes are visible, with the red and white stripes curving across the frame. The overall color palette is dominated by the blue of the flag's field and the white of the stars, set against a dark blue background with a subtle grid pattern.

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Contact Information for

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