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BRPTO publishes a technical note on industrial design examination procedures

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On May 27, 2024, the Brazilian PTO issued Technical Note #01/2024, describing procedures for conducting substantive analysis of industrial designs. The technical note addresses the official correction only of formal data in industrial design applications in order to expedite prosecution procedures. The note establishes that the elements in the Substantive Examination must follow the current Industrial Design Manual.

Substantive Examination

Substantive examination focuses on the industrial design for which protection is sought. The exam covers registrability, industrial design unity, data analysis, and figure representation. Industrial design data includes product indication, field of application, specification, claim, description, figure numbers, and their legends/captions.

The specification must present the scope of the application through elements such as the product indication and the list of figures. This portion is not mandatory in the application for industrial design registration. The claim must present the protection of the industrial design filed. This part is a mandatory element of the application. The description provides text information that contributes to the understanding of the characteristics of the ornamental configuration of the industrial design. This document may include, among other information: (i) a description of the industrial design configuration and/or the elements that constitute this configuration; (ii) clarifications regarding the representation resources used in the figures; and (iii) the claim of views omitted from the figure set filed.

Examination of Representation

At any time during the substantive examination, data relating to the industrial design may be corrected - or excluded ex officio – when merely formal errors are identified in: the numbering of figures; figure captions indication and/or classification of the product; specification; claim; and description.

The ex officio correction will only be carried out in cases where the industrial design represented in the figures and the rest of data allow:

- a) the unequivocal identification of a purely formal error; and
- b) the due correction or exclusion of the data to allow it to be adapted to the industrial design represented in the figures, with the rest of data and the rules in force.

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If there is no obvious proof of a simple formal error, an office action requesting clarifications and/or examination of industrial design data will be issued. The examiner may, on their own initiative and based on information obtained from the applicant or other data related to the industrial design, include an additional classification for better cataloging of the design's field of application, specify whether the product is two-dimensional or three-dimensional, provide information that clarifies the scope of the claimed subject matter, and include other data considered necessary for the understanding of the industrial design.

The specification, claim, or description (or even excerpts from these documents) may be excluded or changed ex officio if they contain information different from what is shown in the figures, such as technical-functional characteristics of the product, commercial name, code indication or production or marketing numbering, or even a description of operating or manufacturing methods. The exclusion or change of these documents will be fully documented in the final decision order on the application.

Please click on the links below to access the full text of the technical note:

- [Technical Note on Industrial Design Examination Procedures.](#)
- [Technical Note INPI/CPAPD No. 01/2024.](#)