

“The Industrial Property Rights System in Japan”

Chapter 4. The Design System in Japan

In this chapter we'll introduce the Japanese Design System.

The purpose of the Design Law is stipulated in Article 1: “Through promoting the protection and the utilization of designs, to encourage creation of designs, and thereby to contribute to the development of industry”.

The Design Law protects those design aspects of an article, including the shapes, patterns or colors, that create an aesthetic impression via the sense of sight, so certain elements must be satisfied.

Regarded as “an article”

The subject matter of protection of the Design Right under the Design Law are “articles”, which are defined as “corporeal things and movable properties”.

Consisting solely of a shape that is inseparable from the article

Creates a visually aesthetic impression

The article must be visually recognizable. The term “aesthetic impression” means that it does not require a high level of aesthetic appeal, such as that found in a work of art.

However, not all applications submitted to the Patent Office are necessarily registered as a design right, even if they are suitable subject matters of protection under the Design Law. A set of prescribed requirements must be fulfilled in order to obtain a design registration.

Industrially applicable

First, it must be possible for the design to be utilized industrially and mass-produced.

Novelty

The design must not be identical with or similar to part of a design described in the statement of another application filed prior to the filing of the application for design registration, nor publicly known in Japan or abroad.

Similarly, prior to filing, there should have been no publications containing the design or digital information about the design on the Internet.

If the created design has been publicly announced before applying for design registration, through publication in a catalog, for example, the design is basically regarded as lacking “novelty”.

“Similarity of design” is determined by comparing the article’s shape, utilization, function, and so on, with those of others.

Creativity

Granting a right to a design that can be easily created may not contribute to the development of industry, even if it has novelty. For this reason, an ornamental motif on a substantial structure such as Tokyo Skytree, for example, does not satisfy the requirements since it’s considered that anyone could easily think of creating such a design.

Does not contravene public order or morality

In addition, designs that contravene public order or morality, or that include the Japanese national flag or Imperial chrysanthemum crest, will not obtain design registration.

Prior application

Where two or more applications for design registration have been filed for identical or similar designs on different dates, only the applicant who filed the application for design registration first will be entitled to obtain registration of a design.

One application per design

It is necessary to file an application for each design; you cannot apply for the registration of more than one design in one application. Moreover, a design registration is made for each article, so separate applications are required for different articles.

In the same way as for patent and trademark rights, a design right can only be granted after an application document has been submitted to the Patent Office and a substantive examination has been carried out by an examiner.

With a view to accelerating the acquisition of design rights, some States implement the policy of not carrying out a substantive examination. A policy of examination has, however, been adopted to

stabilize design rights in Japan, where frequent conflicts after registration hinder the development of industry.

The duration of a design right is 20 years from the date of its establishment registration.

To meet social needs and help promote the reinforcement and good use of design protection rights in society, the Japan Patent Office provides various types of registration applications.

Partial design system

As these examples show, part of an article can be protected as a “partial design”. When a design refers to a particular part of an article which could not be properly assessed if the article were registered as a “whole design”, it’s more effective to file for protection as a “partial design”.

If part of the article can be physically separated and become an individual product in the market, it’s protected as a “part” or an “accessory”.

Recently, there have been many skillful imitations of only parts of articles rather than the articles in their entirety. The claim is made that they are not imitations since the whole shape of the articles are dissimilar. It’s possible to acquire a “partial design right” to counter this kind of infringement.

For example, Chorittai Mask, three-dimensional nonwoven fabric masks, shown here, are health-related products produced under thorough quality control. Efforts are being made to counter low-quality imitations that could cause health damage to consumers by registering the masks for design registration, including partial design rights.

Detailed parts of the masks, such as the sections over the nose and around the ears, are protected by partial design rights.

Other types of special design registration

Besides partial design registration, there are several types of special design registration.

Under the Design Law, for example, a graphic image on a screen that is provided for use in the operation of an article to enable it to perform its functions is subject to protection as “a constituent part of the design”.

When a design is created, more than one design with many variations may be produced from one concept. The design rights for these similar designs can be granted as “related designs”, but only if the application is filed by the same person.

There are also cases of “secret designs” where the applicant may request that details of the design, such as drawings, be kept secret for a certain period if their corporate strategy so requires.

The Hague Agreement Concerning the International Registration of Industrial Designs (The Hague Agreement)

The Hague Agreement Concerning the International Deposit of Industrial Designs provides a mechanism for applying for and registering an industrial design. This has benefits such as simplifying the application procedure and reducing costs, since the procedure for designated contracting member countries can be carried out by means of a single application to WIPO, rather than having to apply to each country individually.

Under the Hague Agreement, more than one design can be included in a single application. This is a major difference from Japan’s Design Law, in which each design requires a separate application.

Along with the recent globalization of corporate activities, however, there is an increasing need in society for accession to the international application system.

Discussions are now taking place in Japan regarding whether or not to join the Hague Agreement and the Locarno Agreement, which establishes an international classification for industrial designs.

End of Chapter 4