Chapter II Finding of the Design in an Application for Design Registration

The finding of the design in an application for design registration should be made by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application predicated on the ordinary skill in the art of the design, with regard to the following points.

This is because the Design Act provides that, when a person requesting a design registration files an application for design registration, the applicant must state necessary matters in the application, represent the design for which the design registration is requested in drawings, etc. attached to the application, and submit them to the Commissioner of the Patent Office (Article 6 of the Design Act) and that the scope of a registered design must be determined based upon the statement in the application and the design represented in the drawings, etc. attached to the application (Article 24 of the Design Act).

Consequently, documents that are not categorized as an application or drawings, etc. attached to the application, such as a feature statement, a priority certificate or a certificate for receiving application of the provision of Article 4(2) of the Design Act, are not used as information that serves as the basis for finding the design in an application for design registration.

Further, in a case where reference views in drawings, etc. attached to the application shows a shape, a pattern, or a color different from those shown in a set of drawings and the other required drawings, the different elements themselves are not taken into consideration in finding the form of the design of the application.

(1) Article to the design

The usage and function of the article to the design should be found based on the purpose of use, conditions of use, etc. of the article.

In the case of an application for design registration filed for an article that does not fall under any of the items of the classification of articles listed in the right-hand column of Appended Table 1 of the Ordinance for Enforcement of the Design Act (hereinafter referred to as “Appended Table 1”), the usage and function should be found based on the explanation which can help in understanding the article, such as the purpose of use or the state of use of the article, stated in the column of “Description of Article to the Design” in the application. (Form No. 2 Note (39) of the Ordinance for Enforcement of the Design Act)

(2) Shapes, patterns or colors, or any combination thereof (Note) of an article to the design

The form of the article to the design should be found.
(Note)
Hereinafter referred to as the “form,” except in the following: Part II “Requirements for Design Registration,” Chapter III “Creative Difficulty”; Part VII “Individual Applications for Design Registration,” Chapter I “Partial Design,” 71.4.3 “Creative Difficulty”; and Part VII, Chapter II “Design for a Set of Articles,” 72.1.1.3 “The set of articles is coordinated as a whole” and 72.1.1.3.1 “Categories of constituent articles that are found to be coordinated as a whole.”