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 what kind of form (Note) was created for an article with what kind of function and usage.

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, the design for which the design registration is requested is determined based on the content of the statement in the application and what is represented in the drawings, etc. attached to the application, and therefore, the form of the part that is not disclosed (excluding forms for which indication of views are omitted by including a description stating that the views are identical to or mirror images of other views) shall not be handled as the form of the part for which design registration is requested. In a case where a shape, a pattern, or a color shown in the “reference views” in drawings, etc. attached to the application is different from those shown in a set of drawings and the other required drawings, such shape, pattern, or color shall not be taken into consideration in finding the form of the design in the application (for design registration).

Also, 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 to be used as information that serves as the basis for finding the design in an application for design registration.

(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.”