

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

1. Outline

The finding of the filed design should be made by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application based on the ordinary skill in the art of the design, with regard to what kind of shape, patterns, or colors, or any combination thereof^(Note) was created for an article, etc. 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 design represented in the statement in the application and 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 shape, etc. of the part that is not disclosed (excluding shapes, etc. 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 shape, etc. of the part for which design registration is requested.

In cases where a shape, pattern, or color in a drawing represented as a “reference view” in drawings, etc. attached to the application is different from those shown in a set of drawings and other necessary drawings, such shape, pattern, or color shall not be taken into consideration in finding the shape, etc. of the design in the application. In addition, any part that is only disclosed in a drawing represented as a “reference view” without being disclosed in a set of drawings and other necessary drawings shall not be handled as a part for which the design registration is requested.

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 provisions of Article 4, paragraph (2) of the Design Act, are not to be used as information that serves as the basis for finding the filed design.

(Note)

Hereinafter referred to as the “shape, etc.,” except in 3.3 “The set of articles is coordinated as a whole” in Part IV, Chapter III “Design for a Set of Articles.”