

Chapter II Filing an Application for Each Design

1. Outline

Article 7 of the Design Act provides that an application for design registration must be filed for each design.

Specific procedures are entrusted to the Ordinance for Enforcement of the Design Act. The Ordinance permits the procedure of filing applications for multiple designs in a single application, but provides that each application must only contain one design (one application per design).

By establishing one design right for one design, the “one application per design” requirement gives consideration to procedural expediency and convenience in the event of an infringement dispute, namely, clarifying the contents of the right and securing its stability, and preventing unnecessary disputes.

On the other hand, even if two or more designs are included in a single application, as long as the specific design is identifiable and there is no substantive deficiency, such an application constitutes a mere formal deficiency that different applications for design registration should have been filed for two or more designs which do not fulfill the requirement of one application per design. Accordingly, where an application for design registration does not comply with the “one application per design” requirement, registering that application as it is does not directly harm the interests of third parties in a substantial way. Therefore, failure to fulfill the requirements of Article 7 of the Design Act does constitute a reason for refusal, but does not constitute a reason for invalidation. Considering these circumstances, the examiner should not make an unnecessarily strict determination on the requirement that a single application may not contain two or more designs.

In addition to the above requirement, the Ordinance also prescribes a requirement that the article to the design, the usage of the building or graphic image to the design, a set of articles or interior must be clear so that a single design right does not become too broad in content.

In determining whether or not a filed design complies with this requirement, the examiner should make a comprehensive determination not only of the statement in the column of “Article to the Design” of the application, but also of statements in other columns of the application and of drawings, etc. attached to the application, and where the usage and function of the article, etc. to the design for which design registration is requested can be clearly recognized, the examiner should determine that the filed design complies with this requirement.

2. Determination on whether or not the application for design registration has been filed for each design

If the application for design registration falls under any of the following, for example, the examiner should determine that the application contains two or more designs and does not fall under an application for design registration filed for each design:

- (1) Where two or more articles, etc. are stated together in the column of “Article to

the Design” of the application

- (2) Where two or more articles, etc. are represented in the drawings, etc.
(including cases where multiple articles, etc. are arranged in the drawings, etc.)
However, this excludes cases where the application for design registration is filed for a design for a set of articles or for an interior design.
- (3) Where a single article, etc. contains two or more physically separate “parts for which the design registration is requested”

2.1 Determination as to whether two or more articles, etc. are represented

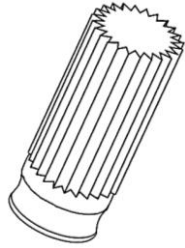
Where an article, etc. to the design is represented by multiple constituent objects in drawings, etc., the examiner should determine whether or not the filed design pertains to two or more articles, etc. as follows.

- (1) Concept in determining whether constituent objects are categorized as two or more articles, etc.
 - (i) Even in cases where multiple constituent objects are represented in the drawings, etc., if all of these constituent objects are commonly essential for performing a specific single usage and function, the examiner should determine that the filed design is for a single article, etc.
 - (ii) Even where their connection is not strong, if the following apply, the examiner should determine whether or not they constitute a single article, etc. by also complementarily considering such aspects.
 - (a) Where all of the constituent objects physically constitute a single bundle, or where they are coordinated as a single shape, etc. such as the case where they have been created in an integrated manner with close relevance in shape, etc.
 - (b) Where all of the constituent objects could be commonly used in an integrated manner
 - (iii) Where multiple constituent objects are not found to have any connection with each other for performing a specific single usage and function, the examiner should determine that they constitute two or more articles, etc.
However, where the constituent objects could be commonly distributed in an integrated manner, and all constituent objects are created in an integrated manner with close relevance in shape, etc., the examiner should determine that they constitute a single article, etc.

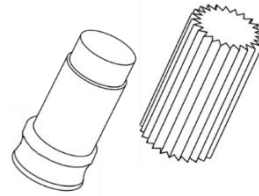
(2) Examples of subject matters determined to be a single article, etc.

[Case example 1] “Solid glue with a container”

[Perspective view]



[Perspective view with the lid off]

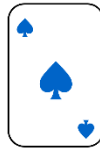
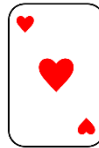
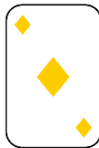


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* In general, solid glue needs to be kept in a container so that it can be applied without getting on the user's hands and prevented from drying out when stored. Since solid glue and a container with a lid are commonly accepted as essential for performing the usage and function of the solid glue, the examiner should determine that they constitute a single article.

[Case example 2] “Playing cards”

[Surface view 1]



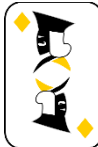
[Surface view 2]



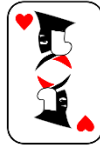
[Back side view]



[Surface view 3]



[Surface view 4]



[Surface view 5]

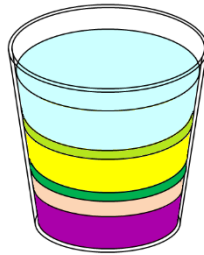


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* Playing cards are widely known as a card game consisting of four suits—hearts, diamonds, clubs, and spades—with 13 cards in each suit (consisting of number cards from 1 to 10 and picture cards jack, queen, and king), plus joker cards. Since all of these cards are commonly essential for performing the usage and function of the playing cards, the examiner should determine that they constitute a single article.

[Case example 3] “Jelly with a container”

[Perspective view]

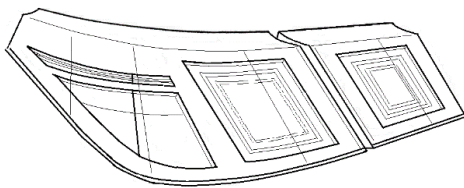


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

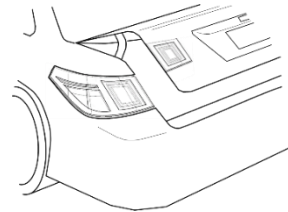
* Since jelly can be removed from a container and put in a bowl, etc., jelly with a container cannot necessarily be regarded as essential for performing a specific single usage and function; but complementarily considering that the transparent container and the multicolored jelly, which is visible from outside the container, have been created in an integrated manner, that they are commonly manufactured and distributed in the market in an integrated manner, and that they also exist in an integrated manner when served, the examiner should determine that they constitute a single article.

[Case example 4] “Tail lamp for a passenger car”

[Perspective view]



[Reference view showing the tail lamp installed on a vehicle]

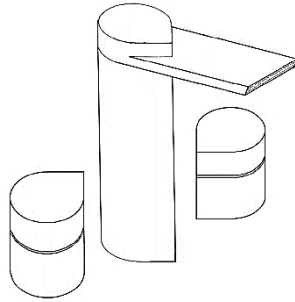


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* The tail lamp for a vehicle is physically separated into a component attached to the trunk and a component attached to the vehicle body. However, these two components are commonly recognized as a single unified tail lamp for a vehicle, and both components are essential for performing the usage and function of a tail lamp for a passenger car, so the examiner should determine that they constitute a single article.

[Case example 5] “Mixing faucet”

[Perspective view]

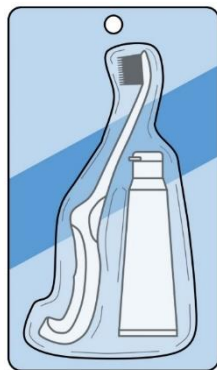


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* The mixing faucet is physically separated into a spout and two handles. However, since these three components are commonly recognized as a single unified mixing faucet, and all components are essential for performing the usage and function of a mixing faucet, and since they have a single coordinated form, the examiner should determine that they constitute a single article.

[Case example 6] “Toothbrush with toothpaste and a packaging container”

[Front view]

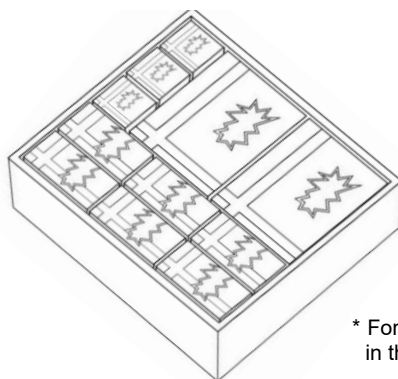


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* Toothpaste and a packaging container are represented along with a toothbrush. Since the toothpaste and the packaging container could be commonly distributed in an integrated manner with the toothbrush, and since all constituent objects are created in an integrated manner with close relevance in shape, etc., the examiner should determine that they constitute a single article.

[Case example 7] “Assorted cookies and table plate with packaging container”

[Perspective view]



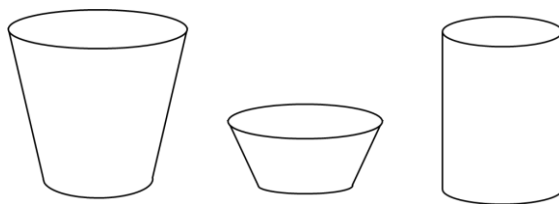
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* Although multiple constituent objects are represented, since they could be commonly distributed in an integrated manner, and since all constituent objects are created in an integrated manner with close relevance in shape, etc., the examiner should determine that they constitute a single article.

(3) Examples of subject matters determined to be two or more articles, etc.

[Case example] “Cups”

[Perspective view]



* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* Since these multiple cups are not found to be commonly essential for performing a specific single usage and function, and since none of them can be described as creations with a single coordinated form, the examiner should determine that they constitute two or more articles.

2.2 Where a single article, etc. contains two or more physically separate “parts for which the design registration is requested”

In an application requesting design registration for part of an article, etc., where a single article, etc. contains two or more physically separate “parts for which the design registration is requested,” the examiner should, in principle, not find it to be an application for design registration filed for each design.

Nevertheless, if the filed design falls under any of the following, the examiner should treat subject matter that includes two or more physically separate “parts for which the design registration is requested” as one design.

- (1) Where there is unity in shape, etc.
- (2) Where there is unity in function
- (3) Where a part that performs a certain usage and function, or a part that is coordinated in shape, etc. is in “any other parts”

- (4) Where the part for which the design registration is requested is divided by an undisclosed part and represented in a physically separated state in the drawing

2.2.1 Where there is unity in shape, etc.

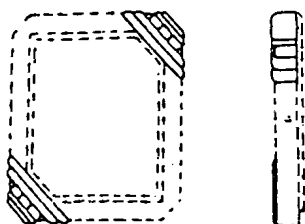
Even where two or more “parts for which the design registration is requested” are physically separate, if they are created with relevance to each other, such as shapes, etc. in mirror images or shapes, etc. that constitute a set, the examiner should determine that there is unity in shape, etc. and should treat them as one design.

Examples of subject matters determined to constitute one design

[Case example] “T-shirt”



[Case example] “Watch casing”

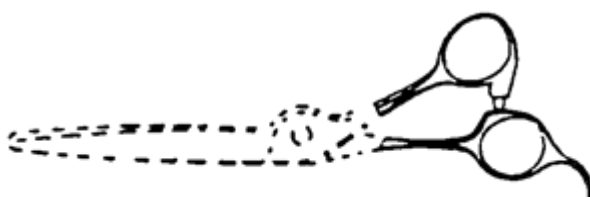


2.2.2 Where there is unity in function

Even where two or more “parts for which the design registration is requested” are physically separate, if they are created in an integrated manner because they perform one function as a whole, the examiner should determine that there is unity in function and should treat them as one design.

Examples of subject matters determined to constitute one design

[Case example] “Hairdressing scissors”



[Case example] “Mobile phone”

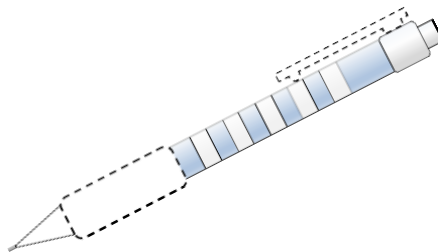


2.2.3 Where a part that performs a certain usage and function, or a part that is coordinated in shape, etc. is in “any other parts”

Even where a design contains two or more physically separate “parts for which the design registration is requested,” if a part that performs a certain usage and function, or a part that is coordinated in shape, etc. is in “any other parts,” the examiner should treat them as one design.

Example of subject matters determined to constitute one design

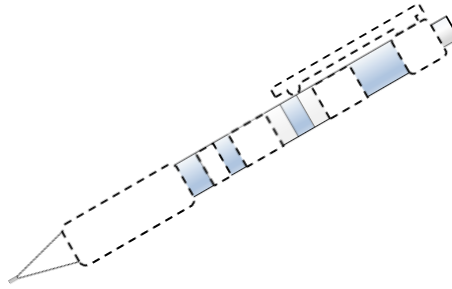
[Case example] “Mechanical pencil”



On the other hand, where the part for which the design registration is requested is physically separated into many parts, and is not coordinated as a single design that can become subject to comparison when comparing with another design, the examiner should not treat them as one design.

Example of subject matters determined to constitute two or more designs

[Case example] “Mechanical pencil”



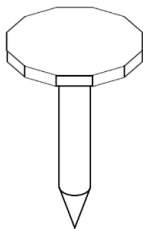
2.2.4 Where the part for which the design registration is requested is separated by an undisclosed part and represented in a physically separated state in the drawing

Even where a design contains two or more physically separate “parts for which the design registration is requested,” if they are separated by an undisclosed part and the parts for which the design registration is requested are only represented in a physically separated state in drawings, the examiner should treat them as one design.

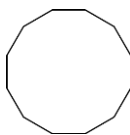
Example of subject matters determined to constitute one design

[Case example] “Nail”

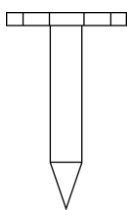
[Perspective view]



[Top view]



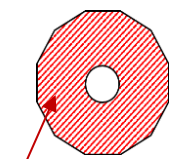
[Front view]



[Description of Article to the Design] (No description)

[Description of the Design] The rear view, right side view and left side view are omitted as they are identical with the front view.

[Bottom view]



This area is not disclosed in the drawing

A bottom view is not provided, and the red shaded area is not disclosed, therefore it is a “part which is not the part for which the design registration is requested.”

Consequently, the head and the body of the nail are represented in the drawing as two or more physically separate “parts for which the design registration is requested,” but in such case they are determined to constitute one design.

3. Determination of clarity of the usage and function of an article, etc. to the design

3.1 Basic concept in determining clarity of the usage and function of an article, etc. to the design

The design for which design registration is requested must have a clear usage and function of the article, etc. to the design.

Where the usage and function of the article, etc. to the design is unclear, or where it is indefinite as it could contain many articles, etc., the examiner should determine that the filed design does not comply with this requirement.

While taking into consideration the general rule that the “article to the design, or the usage of the building or graphic image to the design,” which is provided in Article 6 of the Design Act as a matter to be stated in an application, should be made clear in the statement in the column of “Article to the Design” of the application, the examiner should determine whether the filed design complies with this requirement by piecing together not only the statement in the column of “Article to the Design” of the application, but also other statements in the application and drawings, etc. attached to the application.

3.2 Examples where the usage and function of the article, etc. to the design are unclear

Where the application for design registration falls under the following, the examiner should determine that the usage and function of the article, etc. to the design are unclear in the filed design.

- (1) Examples where the statement in the column of “Article to the Design” of the application falls under the following
 - a. A statement that is not used as a general name in Japanese (or in English in the case of an international application for design registration) in the art of the design
(Examples: A statement in a language other than Japanese (or English in the case of an international application for design registration), an abbreviated name that is not yet recognized widely as a general name, a statement with a proper name, such as a trademark or trade name.
However, in the case of a statement in Japanese, even if it includes an alphabetic abbreviation (e.g. “LED,” “DVD,” etc.), as long as it is used as a general name, the examiner should still treat such statements as reasonable.)
 - b. A statement in which the usage and function can in no way be identified
(Examples: “Article,” “thing”)

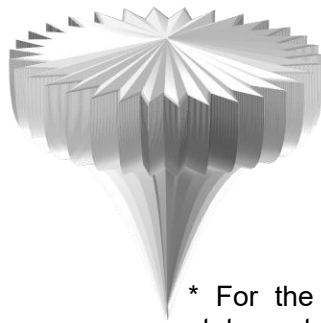
- (2) Examples where the usage and function of the article, etc. in the filed design cannot be clearly identified even after making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application

[Case example 1]

[Article to the Design] Industrial component

[Description of Article to the Design] (No description)

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

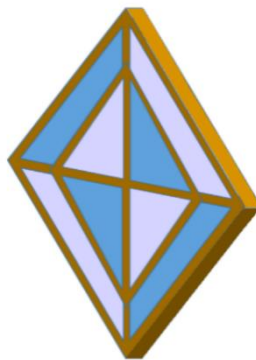
In this case example, the statement in the column of “Article to the Design” is unclear, and even taking the statements in the drawing into account, it is not possible to clearly identify the usage and function of the article, etc. to the design in this design.

[Case example 2]

[Article to the Design] Decorative component

[Description of Article to the Design] (No description)

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

In this case example, the statement in the column of “Article to the Design” is unclear, and even taking the statements in the drawing into account, the usage and function—such as what the article decorates—are unclear, and it is not possible to clearly identify the article, etc. to the design in this design.

[Case example 3]

[Article to the Design] Supporting frame

[Description of Article to the Design] (No description)

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

In this case example, the statement in the column of “Article to the Design” is unclear, and even taking the statements in the drawing into account, the usage and function—such as what the frame supports and for what purpose—are unclear, and it is not possible to clearly identify the usage and function of the article, etc. to the design in this design.

3.3 Examples where the usage and function of the article, etc. to the design are clear

(1) Examples of appropriate statements in the column of “Article to the Design” of the application

For example, see the “Examples of Articles, etc. to the Design” attached to the Guide for making Applications and Drawings for Design Registration.

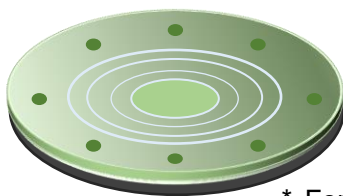
(2) Examples where the usage and function of the article, etc. in the filed design cannot be clearly identified from statements in the column of “Article to the Design” of the application alone, but where the usage and function can be clearly identified by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application

[Case example 1]

[Article to the Design] Tableware

[Description of Article to the Design] The article in this application is a table plate.

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

In this case example, the statements in the columns of “Article to the Design” and “Description of Article to the Design” are not inconsistent with the statements in the drawing, and by piecing each of these together, it is possible to clearly identify the usage and function of the article, etc. to the design in this design.

[Case example 2]

[Article to the Design] Footwear

[Description of Article to the Design] (No description)

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

In this case example, the statement in the column of “Article to the Design” is not inconsistent with the statements in the drawing, and by piecing each of these together, it is possible to clearly identify the usage and function of the article, etc. to the design in this design.

4. Procedure of examination for determining clarity of the usage and function of an article, etc. to the design

4.1 Relationship with the provisions of the main clause of Article 3 of the Design Act

Where a filed design falls under both a reason for refusal under Article 7 of the Design Act due to the usage and function of the article, etc. to the design being unclear and a reason for refusal under the main clause of Article 3 of the Design Act due to the design not being an industrially applicable design, the examiner should give notice of reasons for refusal under the main clause of Article 3.