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22 Relevant provisions

Design Act

Article 3 (1) A creator of a design that is industrially applicable may be entitled to obtain a design registration for the said design, except for the following:

(i) Designs that were publicly known in Japan or a foreign country, prior to the filing of the application for design registration;

(ii) Designs that were described in a distributed publication, or designs that were made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the application for design registration; or

(iii) Designs similar to those prescribed in the preceding two items.

(Paragraph (2) omitted)

22.1 Provisions of the items of Article 3(1) of the Design Act

Even where subject matter for which an application for design registration is filed is an industrially applicable design, subject matter that is categorized as the design set forth in Article 3(1)(i) or (ii) of the Design Act (hereinafter referred to as a "publicly known design") or as a design similar to a publicly known design lacks novelty, and therefore may not be registered.

In other words, a design that was publicly known in Japan or a foreign country, prior to the filing of the application for design registration, or a design that was described in a distributed publication, or a design that was made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the application for design registration, will be regarded as lacking novelty even if it was originally created and published by the creator, and the creator may not obtain a design registration by filing an application for design registration with regard to subject matter that is identical or similar to that design.

22.1.1 Article 3(1)(i) of the Design Act

Designs that were publicly known in Japan or a foreign country, prior to the filing of the application for design registration

22.1.1.1 Prior to the filing of the application for design registration

"Prior to the filing of the application for design registration" takes into consideration the exact time of the filing, (Note) unlike the date of the filing of an application for design registration (Articles 9 and 10 of the Design Act, etc.) which is determined on a daily basis.

Therefore, for example, if a design becomes publicly known in Japan or a foreign country in the morning, and an application for design registration
registration is filed for that design in the afternoon of the same day, the design in the application for design registration is categorized as a design that was publicly known prior to the filing of the application for design registration.

(Note)
In the case of a "design that was publicly known in a foreign country," the exact time at which the design became publicly known in the country or region is converted into Japan time to make the determination.

22.1.1.2 Designs that were publicly known
A design that was publicly known refers to a design whose contents became known in reality to unspecified persons as a design that is not kept secret.

22.1.1.3 Design that is not treated as a design that was publicly known
(1) Registered design prior to the date of publication of the Registered Design Bulletin
A registered design prior to the date of publication of the Registered Design Bulletin thereof is generally not treated as a design that was publicly known even if establishment of the design right has been registered, because there is doubt that it can be used as information that serves as the basis for application of Article 3(1)(i) of the Design Act as a design that is publicly known.

22.1.1.4 Handling of the case where a design is categorized as a design that was publicly known
Where a design is categorized as a design that was publicly known, all of the following must be presented to the applicant in a concrete manner.

(1) The article to the design that was publicly known and its form
(2) The fact that the above design became known in reality to unspecified persons as a design that is not kept secret

22.1.2 Article 3(1)(ii) of the Design Act
Designs that were described in a distributed publication, or designs that were made publicly available through an electric telecommunication line in Japan or
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a foreign country, prior to the filing of the application for design registration

22.1.2.1 Prior to the filing of the application for design registration

"Prior to the filing of the application for design registration" takes into consideration the exact time of the filing, unlike the date of the filing of an application for design registration (Articles 9 and 10 of the Design Act, etc.) which is determined on a daily basis.

Therefore, for example, if a design was described in a distributed publication, or was made publicly available through an electric telecommunication line in Japan or a foreign country in the morning, and an application for design registration is filed for that design in the afternoon of the same day, the design in the application for design registration is categorized as a design that was described in a distributed publication, or was made publicly available through an electric telecommunication line prior to the filing of the application for design registration.

(Note)

In the case of a “design that was described in a distributed publication, or a design that was made publicly available through an electric telecommunication line in a foreign country,” the exact time at which the publication in which the design was described was distributed or the exact time at which the design was made publicly available through an electric telecommunication line in the country or region is converted into Japan time to make the determination.

22.1.2.2 Distribution

Distribution refers to the situation where a publication is made available for unspecified persons to see, and it does not require a fact that someone has seen the publication in reality.

22.1.2.3 Publication

A publication refers to a document, drawing or other similar medium for communicating information (such as a CD-ROM Design Bulletin, book, magazine, newspaper, catalog or pamphlet), which has been reproduced for the purpose of disclosing the contents through distribution to the general public.
22.1.2.4 Handling of the time of distribution of a publication

(1) Where a publication has a statement of the time of publication or an acceptance seal

(i) Where there is no acceptance seal, but the date of publication is indicated, that date is adopted.

   If the date of publication indicates only the year of publication or the month and year of publication, the time of publication is presumed to be as follows.
   i. Only the year of publication: the last day of that year
   ii. Only the month and year of publication: the last day of that month of the year

(ii) If there are both the date of publication and the acceptance seal, the earlier date will be adopted.

(iii) If there is no statement of the date of publication, but there is an acceptance seal, that date will be adopted.

(Note)

An acceptance seal is a seal affixed by an organization that has accepted the publication (Design Division of the JPO, former Document Section of the Design Division of the JPO, National Center for Industrial Property Information and Training, former independent administrative institution National Center for Industrial Property Information, former National Center for Industrial Property Information, former Industrial Property Library) on the cover page, etc. of the publication with a clear indication of the accepting organization and the date of acceptance in order to specify the fact of acceptance.

(2) Where a publication neither has a statement of the time of publication nor an acceptance seal

(i) If there is another publication containing a review, extract or catalog of said publication, the time of distribution of said publication is assumed from the time of publication of such other publication.

(ii) If said publication has a second edition or a reprint edition which contains a statement of the time of publication of the first edition, the date is presumed to be the time of distribution of said publication.

(iii) If there is any other appropriate clue, the time of distribution of said publication is presumed or found based on such clue.
22.1.2.5 **Determination of the relationship between the time of filing of the application for design registration and the time of distribution of the publication**

(1) Where the date of filing of the application for design registration and the date adopted as the time of distribution of the publication are different

   It is sufficient to determine which is earlier based on their dates, and there is no need to make the determination by further finding or presuming their exact times.

(2) Where the date of filing of the application for design registration and the date adopted as the time of distribution of the publication are the same

   Unless it is clear that the time of the filing of the application for design registration is later than the time of distribution of the publication, the time of distribution of the publication is not judged to be earlier than the filing of the application for design registration.

22.1.2.6 **Design described in a publication**

A design described in a publication can be used as information that serves as the basis for determination of novelty if it has been sufficiently represented to a comparable level when determining whether or not the design in an application for design registration is identical or similar to the design described in a publication.

(1) Examples of designs that can be used as information that serves as the basis for determination of novelty

   (i) A design described in a publication which is represented by a perspective view and therefore the forms of its rear surface, bottom surface, etc. are not represented, or a design described in a publication a part of which is not represented, but where the specific form of the non-disclosed part can be presumed due to such reason as that the entire form of the design is more or less fixed by the characteristics of the article

   (ii) Not only a design for an article described in a publication, but also a design for an article included in and not similar to said article (for example, the design for a component of said article) where the specific form of the design itself can be identified

   (iii) A design for which the specific form of the article to the design
can be identified in “any other part,” other than the “part for which the design registration is requested,” of a partial design published in a Design Bulletin

22.1.2.7 Design that is made publicly available through an electric telecommunication line

(1) Line
A line generally means a transmission channel that allows for two-way communication, consisting of a round trip communication path. Broadcasting that can only transmit information one-way (excluding cable television, etc. which transmit communication in two directions) is not included in a line.

(2) Public
Public refers to unspecified persons in general society.

(3) Made publicly available
Made publicly available refers to the situation where a design is made available for unspecified persons in general society to see, and it does not require a fact that someone has accessed the design in reality. For example, a design is made publicly available if links to the design are provided on the Internet, the design is registered with a search engine,\(^1\) or its address\(^2\) is provided by means for communicating information to the general public (for example, a newspaper, magazine, etc. that is widely known to the public), and if no restriction is imposed on public access to the design.

(Note 1)
A search engine refers to a site that plays the role similar to a database for searching for a desired site on the Internet.

(Note 2)
An address refers to the location of an Internet service that is indicated by notation called a uniform resource locator (URL). It is generally indicated in such a manner as http://xxx.or.jp.

(4) Time at which a design is made publicly available
Finding of the fact that the design was made publicly available through an electric telecommunication line prior to the filing of the
application for design registration will be sufficient.

22.1.2.8 Handling of design information made available to the public through the Internet in examination

In order to cite design information made available to the public through the Internet (hereinafter referred to as “electronic design information”) as a design that was made publicly available through an electric telecommunication line, the information must satisfy all of the following requirements.

(1) The electronic design information to be cited was publicly available information prior to the filing of the application for design registration

(2) The electronic design information to be cited was published with the same contents prior to the filing of the application for design registration

22.1.2.8.1 The electronic design information to be cited was publicly available information prior to the filing of the application for design registration

Information published on the Internet is normally information that is made publicly available, since it can be accessed by unspecified persons, and has the equivalent power to disseminate information as information described in a distributed publication.

Even where a password is needed or a fee is charged for accessing the website, as long as the information is published on the Internet, its existence and location are disclosed to the general public, and it is accessible by unspecified persons, it can be regarded as information that is made publicly available.

(1) Examples of electronic design information that is found to be information that is made publicly available

(i) Searchable information that is registered with a search engine or information whose existence and location are disclosed to the general public (for example, where a link to the information is provided on a website of a related academic society or in an online news article, etc. or the existence and location of the information are provided by means for communicating information to the general public)
public such as a newspaper, magazine, etc.)

(ii) Information that requires a password but can be accessed by unspecified persons by merely entering the password (in this case, whether or not a fee is charged for acquiring the password is irrelevant; if any person can acquire the password and access the information without discrimination by following some kind of procedure, it is information that is made publicly available)

(iii) Information that is published on a charged website but can be accessed by unspecified persons by merely paying a fee (in this case, if any person can access the website without discrimination by paying a fee, it is information that is made publicly available)

(2) Examples of electronic design information that is not found to be information that is made publicly available

Information published on the Internet is not regarded as being made publicly available if it falls under any of the following.

(i) Information that is published on the Internet, but since its address is not disclosed, cannot be accessed except accidentally

(ii) Information that can only be accessed by members, etc. of a specific organization or company, and that is treated as confidential information (for example, an intra-company system that can only be used by employees)

(iii) Information of which contents are coded in a manner that normally cannot be deciphered (except for the case where any person can acquire a tool for deciphering the code by some kind of means, whether or not a fee is charged therefor)

(iv) Information that has not been published for a period sufficient for the general public to see the information (for example, information that was published on the Internet for only a short time)
22.1.2.8.2 The electronic design information to be cited was published with the same contents prior to the filing of the application for design registration

(1) Matter of the date and time of publication\(^{\text{Note}}\) of the electronic design information to be cited and alteration of the contents thereof

Since information published on the Internet is easy to alter, there is always the question of whether the electronic design information to be cited was published with the same contents at the indicated date and time of publication.

Even if the indicated date and time of publication of the electronic design information to be cited was prior to the filing of the application for design registration when the examiner discovered the electronic design information, the possibility that such indication itself has been altered cannot be fully eliminated.

\(^{\text{Note}}\)
With regard to the indication of the date and time of publication, the time in the country or region where the information on the Internet was published on the website is converted into Japan time to make the determination.

(2) Response to the matter of the date and time of publication of the electronic design information to be cited and alteration of the contents thereof

With regard to a website for which there is considered to be very little doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication, the information is cited by presuming that the contents that were published at the time when the examiner accessed the information are those that were published at the date and time of publication indicated on the website.

Where there is doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication, whether or not the information can be cited will be investigated.
Information will not be cited if it is published on a website that is unlikely to clear the doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication.

(3) Examples of websites for which there is considered to be very little doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication

Such doubt is considered to be very little for electronic design information published on the following websites, because the contact information for inquiring about the information is normally clear.

(i) Website of a publishing company that has published printed publications, etc. for many years (website publishing electronic information of a newspaper, magazine, etc.)
(ii) Website of an academic institution (website of an academic society, university, etc.)
(iii) Website of an international institution (website of such bodies as a standards organization)
(iv) Website of a public institution (website of a ministry or agency)

Information on these websites will not be cited, in principle, where there is no indication of the date and time of publication, but it may be cited if proof of the date and time of publication of the information on the website and of the contents of the information can be obtained from the person who has authority and responsibility over publication, preservation, etc. of the published electronic design information.

(4) Response to the case where there is doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication

Where the examiner determines that there is such doubt with regard to the electronic design information to be cited, the examiner will inquire with the contact point indicated in the contact information, etc. about whether or not the
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information has been altered, and examine such doubt.  
If the doubt is not cleared as a result of examination, the  
information will not be cited.

(5) Handling of a website that is unlikely to clear the doubt that  
the electronic design information to be cited was published  
with the same contents at the indicated date and time of  
publishation  
Information published on a website for which contact  
information is unknown and which does not indicate the  
date and time of publication of the information will not be  
cited because the doubt is unlikely to be cleared.

22.1.2.9 Design published on the Internet as electronic design  
information  
Equivalent to a design described in a publication, a design published  
on the Internet as electronic design information can be used as  
information that serves as the basis for determination of novelty if it has  
been sufficiently represented to a comparable level when determining  
whether or not the design in an application for design registration is  
identical or similar to the design published on the Internet. (See  
22.1.2.6 “Design described in a publication” above)

22.1.3 Article 3(1)(iii) of the Design Act  
Designs similar to those prescribed in the preceding two items

22.1.3.1 Determination of similarity between designs  
Determination of similarity between designs refers to determination  
as to whether designs are similar or not in terms of aesthetic impression  
as viewed from the standpoint of consumers (including traders) (with  
regard to the determining entity, see 22.1.3.1.1).  
The approaches for determining similarity explained below indicate  
the basic concept concerning the method of extracting and comparing  
the design characteristics, that is, the elements forming the aesthetic  
impression of the design, which are necessary for ensuring objective  
determination of similarity in design examination.

22.1.3.1.1 Determining entity  
In determination of similarity between designs, the  
determining entity will be consumers (including traders) (Article
24(2) of the Design Act; since “consumers” as referred to in this provision is a concept that includes traders, they will be referred to as “consumers (including traders)” here who are appropriate persons according to the actual status of transactions and distribution of the article.

While the entity determining similarity between designs upon determination of novelty is not clearly provided in the Design Act, because Article 24(2) of the Design Act, which provides for the scope of a registered design, states “whether a registered design is identical or similar to another design shall be determined based upon the aesthetic impression that the designs would create through the eyes of their consumers,” the entity determining similarity between designs upon determination of novelty will also be consumers (including traders).

Although determination of similarity between designs largely depends on human senses, the determination will be made based on the objective impression that consumers (including traders) will have when the designs are observed, while eliminating the subject perspective of the creator in creating the design.

**22.1.3.1.2 Approaches of determination of similarity between designs**

(1) **Viewpoints of determination of similarity between designs**

In design examination, the determination of similarity is made from the viewpoints set forth in (a) through (e) below.

(a) Finding of the articles to the design of the two designs to be compared and determination of similarity
(b) Finding of the forms of the two designs to be compared
(c) Finding of common points and different points in the forms
(d) Individual evaluation of common points and different points in the forms
(e) Determination of similarity of entire designs
(2) Finding of the article to the design of the two designs to be compared and determination of similarity

The usage and function of the articles to the design of the two articles are found based on the purpose of use, state of use, etc. of the articles.

Since a design is the form of an article, similarity between designs assumes that the usage and function of the articles to the design of the two designs to be compared are identical or similar. Here, “the usage and function of the articles to the design of the two designs to be compared are identical or similar” does not require judgment of similarity based on a comparison of the detailed usage and function of the articles, and it is sufficient to determine that there is similarity in the usage and function of the articles if the articles have commonality in their usage (purpose of use, state of use, etc.) and function within the extent of assessing the value of the forms represented in the specific articles.

Where there is no commonality in the usage (purpose of use, state of use, etc.) and function of the articles to the design, the designs are not similar.

The “Classification of Articles” shown in the right-hand column of Appended Table 1 of the Ordinance for Enforcement of the Design Act as specified by the Ordinance of the Ministry of Economy, Trade and Industry merely indicates specific examples of the classification of articles to be described in the application, and does not directly provide the similarity or non-similarity of articles.

(3) Finding of the forms of the two designs to be compared and finding of common points and different points in the forms

i. Observation by the naked eye

Observation is basically made through visual observation by the naked eye (however, even where the form cannot be recognized by the naked eye, if it is an ordinary practice to make magnified observation upon trading, it is treated equivalent to a form that can be recognized by the naked eye). This is because an article is normally observed by the naked eye, and the
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aesthetic impression made by the entire form that can be recognized by the naked eye affects the selection and purchase of the article to the design. Where the form of the entire article to the design can be recognized by the naked eye, but the form of a part of the article is too fine to be recognized by the naked eye, only the form that can be recognized by the naked eye is found to be the form of the design in determining similarity.

ii. Observation method

Determination of similarity between designs is made by an observation method that is normally used when observing the article to the design.

For example, in the case of the design of a writing tool that can be visually observed by actually holding it in the hand both at the time of purchase and at the time of use, the entire design is observed with the same weight, but in the case of the design of a television receiver whose rear surface and bottom surface are not seen in a normally installed state, observation is made by placing weight mainly on the front surface, side surface and top surface directions.

iii. Finding of the forms

The form of the entire article to the design (also referred to as the fundamental form or the basic constitution upon taking a general overview of the design) and the form of each part are found.

iv. Finding of common points and different points in the forms

The common points and different points in the forms of the entire articles to the design (basic constitution) and the forms of each part of the two designs are found.

(4) Individual evaluation of common points and different points in the forms

With regard to the forms of the common points and
different points, the following are conducted: i. finding of whether or not the forms are parts that draw attention when comparatively observed and evaluation of the extent to which they draw attention; and ii. evaluation of the extent to which the forms draw attention in comparison to prior designs.

By considering the extent to which the forms of the common points and different points draw attention from the viewpoints of i. and ii., the degree of influence that each common point and different point has on the aesthetic impression of the entire design will be determined.

i. Finding and evaluation of whether or not the forms are parts that draw attention when comparatively observed

Whether or not the form of each common point and different point draws attention when comparatively observed and the extent to which they draw attention are found and evaluated based on the following:
- the largeness/smallness of the proportion of the part in the entire design; and
- whether the part has a large influence on the visual impression considering the characteristics of the article to the design.

While the specific evaluation method and evaluation results differ for individual designs, the following can be said in general.

(a) Evaluation of the proportion of the part in the entire design

If a part pertaining to a common point or different point between the filed design and the cited design takes up a large proportion in the entire article to the design, the extent to which that part draws attention is large, compared to the case where such proportion is small.

The form of the entire article to the design (basic constitution) can be regarded as the fundamental form of the design, so it normally has the largest
influence on the visual impression.

(b) Evaluation of the difference in the sizes of the articles

Even if the sizes of the articles to the design (including the scope of the normal size that is found where there is no explanation of the size) of the two designs are different, the difference does not draw strong attention unless it affects the finding of the usage and function of the articles.

(c) Evaluation of whether or not the part is easily observed based on the characteristics of the articles

A design has a part that is easily observed and a part that is not easily observed when making visual observation. If the form of a common point or different point is the form of an easily observed part, it is likely to draw attention.

An easily observed part is extracted by finding (1) whether or not the part is easy to see when selecting or purchasing the article to the design, and (2) whether or not it is a part which consumers (including traders) observe with interest, based on the use (purpose of use, state of use, etc.) and function, size, etc. of the article to the design.

However, even where the form is a part thus extracted, it is not taken into consideration as a design characteristic if the form is solely based on functional necessity.

(d) Evaluation of the internal forms of the article

Since designs should be compared mainly with regard to the forms of parts that are eye-catching when observing the articles to the design, determination of similarity is made based on the outer appearance of the articles to the design, and their internal forms which are not seen upon use are not taken into consideration as a design characteristic.
If the internal forms can be observed, the forms that are eye-catching upon use are the parts that are likely to draw attention.

For example, in the case of the design of a refrigerator, the state of the door open is one of the forms upon use, but since the usage and function of a refrigerator are to cool and store food, etc. inside with the door closed, it is normally visually observed with the door closed. Therefore, in such a case, the outer appearance with the door closed draws more attention than the internal form. On the other hand, in the case of the design of a bathroom, etc. which a human enters inside to use, the internal form will be the part that draws attention.

(e) Evaluation of the form that is visually observed only upon distribution of the article

In the case of an article a part of which is no longer in sight when used or installed (such as a fence a part of which is buried in soil, or a lighting apparatus a part of which is hidden in the wall or the ceiling), the part that is visually observed only upon distribution of the article draws less attention than the other parts, in principle.

However, where the forms of such other parts have little influence on the aesthetic impression of the entire design, such as being ordinary forms, the part that is visually observed only upon distribution of the article may become relatively more important in the entire design, and may affect the similarity upon making the final determination of similarity of the entire designs.

ii. Evaluation in comparison with prior designs

Evaluation is made on whether or not the form of each common point or different point between the filed design and the cited design is likely to draw attention when
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compared with prior designs. Whether or not the form is likely to draw attention depends on the number of publicly known designs having the same form, how much different the form depends on other generally seen forms, or the level of the creative value of the form.

(a) Evaluation of common points based on prior design searches

Where the form of each common point between the filed design and the cited design is an ordinary mode that is regularly seen in other prior designs, the form cannot be regarded as a characteristic form. Therefore, such form draws less attention than a form that is also seen in other prior designs but which is not an ordinary mode that is regularly seen.

In either case, an ordinary form or a publicly known form is not simply excluded from the basis of determination.

(b) Evaluation of different points based on prior design searches

Where the form of each different point that is found through comparison between the filed design and the cited design is a novel form that is not seen in other prior designs and is found to have a high creative value, that form gives a strong impression of being different from conventional forms, and draws strong attention. Where the form of each different point is an ordinary mode that is regularly seen in other prior designs, that form cannot draw strong attention. However, in some cases, the form of a combination of an ordinary mode and a publicly known form could draw attention.

iii. Handling of a form that has a functional meaning and a form resulting from the material of the article

A form that has a functional meaning and a form resulting from the material of the article are generally handled as follows.
(a) Evaluation of a functional shape

Where there is formative freedom in meeting the functional demands and the shape is not inevitable, the formative characteristics of that shape will be taken into consideration. However, a design consisting solely of shapes that are indispensable for securing the functions of the article is not protected, because it would mean granting an exclusive right for a creation of a technical idea, which is not intended to be protected under the Design Act (Article 5(iii) of the Design Act).

Also, even if a slight difference in shape which does not have a large influence on the visual impression was substantially involved with functions, such difference is not regarded as particularly important.

(b) Evaluation of a pattern that incorporates a consideration to meet the functional demands of the article

In addition to patterns simply for the purpose of decoration (such as the pattern applied to the surface of a table plate), it has become relatively common in recent years for the mode of the input/operating part on the surface of an article to be a flat figure, etc. that does not accompany a bumpy three-dimensional shape. The design characteristics of a pattern that has a certain function in relation to the article to such design is evaluated after understanding the meaning of the pattern, that is, what is intended by the pattern and what kind of function the pattern plays in relation to the usage and function of the article, and the pattern is evaluated as equivalent to the case of a shape.

(c) Evaluation of a pattern or color arising from the material of the article

The pattern or color to be truly taken into consideration as a constituent element of a design is the pattern or color that is represented based on a
creative act of the creator of the design. However, where the design represented by the drawings, etc. attached to the application is found to be represented by the natural pattern or color of the material that is normally used for manufacturing the article to the design, that pattern or color is ordinary in the field of the article and has very little influence on the aesthetic impression of the entire design.

(5) Determination of similarity of entire designs

Determination is made on whether or not the designs create different aesthetic impressions on consumers (including traders) when all common points and different points between the two designs are comprehensively observed as entire designs, based on the individual evaluation of each common point and different point in the forms of the two designs.

Since elements of an entire design are combined with organic linkage between them, similarity cannot be determined by merely individually evaluating each common point and different point. Evaluation must be made on what kind of influence the common points and different points have on the similarity of the aesthetic impressions of the entire designs, when comprehensively examining the common points and different points while also paying attention to the combination of the respective forms.

The basic concept is as follows.

i. Comprehensive determination on the common points and different points

Whether or not a certain common point or different point becomes the most important element in determining similarity is decided by its relative relationship with the other common points and different points. When considering the degree of influence that a certain common point or different point has on the determination of similarity, if the other common points and different points have little influence on the aesthetic impressions of the entire designs, said common point or different point will have a relatively large influence on the
determination of similarity. On the other hand, if there is another common point or different point that has the same degree of or a larger influence on the aesthetic impressions of the entire designs, said common point or different point will have a relatively small influence on the determination of similarity.

ii. Form of the entire article to the design (basic constitution)

The form of the entire article to the design (basic constitution) can be regarded as the fundamental form of the design, and it has the largest influence on the aesthetic impression created through the eye. Therefore, in order for designs to be similar, there must be commonalities in the forms of the entire articles to the designs (basic constitutions).

However, even if there are different points in the forms of the entire articles to the designs (basic constitutions) between the filed design and the cited design, if both forms are ordinary and the common points in the form of each part are conspicuous, the two designs may be regarded as similar, in spite of the difference in the forms of the entire articles to the designs (basic constitutions).

For example, where there are two designs of patterned rectangular parallelepiped packaging boxes with different length-width-height ratios, if they are both found to be ordinary as ratios of packaging boxes and do not draw attention, and their common patterns are found to be characteristic and draw strong attention, the two designs may be regarded as similar, surpassing the differences in the forms of the entire articles to the designs (basic constitutions) (the length-width-height ratios of the entire boxes).

Also, where different points in the form of each part have little influence on determination of similarity, the common form of the entire articles to the designs (basic constitutions) will have the largest influence on the determination of similarity within the designs, even if
they were ordinary, and the two designs could be
determined to be similar in some cases.

In addition, even if a design is an aggregation of
publicly known or well-known forms, if the mode of the
combination is novel and the form of the entire article to
the design (basic constitution) is novel, the form of the
entire article to the design (basic constitution) employing
such combination is evaluated as a novel form.

iii. Publicly known form used within the design in the
application

A publicly known form used within the filed design
generally has smaller influence on determination of
similarity than a novel form, but since a design is
composed of elements that are organically combined as
a whole, even if the form of a common point or a different
point were a publicly known form, a determination will
not be made only with regard to the other common
points and different points by simply excluding such
common point or different point.

Where a combination of publicly known forms is novel,
the mode of such combination will be evaluated.

iv. Relationship between constituent elements of the
design

It cannot be said sweepingly which of the constituent
elements of a design (shape, pattern and color) has a
large influence on the determination of similarity, and an
element that has the most notable characteristic and
draws attention in relation to prior publicly known
designs is regarded to have a large influence on the
determination of similarity.

However, while the shape and pattern often require
creation based on human knowledge, a color is more
appropriately described as a selection rather than a
creation, unless it constitutes a pattern, and a large
product variation is normally provided with only a
change in color, so color is less likely to draw attention
than the shape and pattern. Therefore, generally, color
has a smaller influence on the determination of similarity
than the shape and pattern.

v. Relationship with existing cases of determination of similarity in the same field of articles

In general, where evaluation on the degree of influence which common points and different points between two designs to be compared have on the aesthetic impressions of the entire designs is similar to such evaluation made in existing cases of determination, the result will be equivalent to that in the existing cases of determination of similarity.

However, since determination of similarity between designs is made for the entire designs including the other parts, even if the two designs to be compared have equivalent common points or different points to those in existing cases of determination, the finding of whether or not they are common points or different points in a part that draws attention in the entire designs and evaluation of the extent to which the part draws attention will not always be the same. Furthermore, prior publicly known designs are accumulated day by day, so the evaluation in comparison to prior publicly known designs will not always be the same.

In this manner, even if the designs have equivalent common points or different points, evaluation on the degree of influence they have on the determination of similarity will not always be the same, so the results of determinations made in existing cases of determination of similarity in the same field of articles will not be simply applied to another case.