Part VII Individual Applications for Design Registration

Chapter I Partial Design

71 Relevant provisions

Design Act

Article 2 (1) "Design" in this Act shall mean the shape, patterns or colors, or any combination thereof, of an article (including a part of an article, the same shall apply hereinafter except in Article 8), which creates an aesthetic impression through the eye.

(2) The shape, patterns or colors, or any combination thereof, of a part of an article as used in the preceding paragraph shall include those in a graphic image on a screen that is provided for use in the operation of the article (limited to the operations carried out in order to enable the article to perform its functions) and is displayed on the article itself or another article that is used with the article in an integrated manner.

(Paragraphs (3) and (4) omitted)

Ordinance for Enforcement of the Design Act

Form No. 2 [Notes]

(8) Where requesting a design registration for a part of an article, the column of "[Partial Design]" shall be established above the column of "[Article to the Design]."


Form No. 6 [Notes]

(8) (See Part II “Requirements for Design Registration,” Chapter I “Industrially Applicable Design,” 21 “Relevant provisions”)

(9) (See Part II “Requirements for Design Registration,” Chapter I “Industrially Applicable Design,” 21 “Relevant provisions”)

(10) (See Part II “Requirements for Design Registration,” Chapter I “Industrially Applicable Design,” 21 “Relevant provisions”)

(11) Where requesting a design registration for a part of an article, in the graphic image view (meaning the view representing the graphic image displayed on an article that is used with the article in an integrated manner as provided in Article 2(2) of the Design Act; the same shall apply hereinafter) prescribed in (8) through (10) and (14), the part of the article to the design for which the design registration is requested shall be specified by drawing the part for which the design registration is requested with solid lines and any other parts with broken lines, etc., and the way of specifying the part for which the design registration is requested
shall be stated in the column of “[Description of the Design]” of the application.

Form No. 7 [Notes]
(4) For other matters, the practice equivalent to the Form No. 6 Notes (2), (3), (6), (8)
through (12), (14) and (18) through (23) shall apply.

Form No. 8 [Notes]
(3) Where requesting a design registration for a part of an article, the part of the article
to the design for which the design registration is requested shall be specified by
painting over in black the parts other than the part for which the design registration
is requested, etc., and the way of specifying the part for which the design
registration is requested shall be stated in the column of “[Description of the
Design]” of the application.

71.1 Partial design
A partial design is defined as the shape, patterns or colors, or any combination
thereof, of a part of an article under the provision of Article 2(1) of the Design Act.
Specifically, the following applies.

(1) The article to the design of a partial design must be found to be an article
subject to the Design Act. (See Part II, “Requirements for Design Registration,”
Chapter I “Industrially Applicable Design,” 21.1.1.1 “The subject matter is found
to be an article”)
(2) The partial design constitutes a part that occupies a certain scope of the form of
the entire article.
(3) The partial design constitutes a part of the article that can become subject to
comparison when comparing with another design.

71.2 Application/drawings of an application for design registration for a partial
design

71.2.1 Matters to be stated in the application of an application for design
registration for a partial design

(1) Column of “Partial Design”
Since the method for requesting design registration and subject matter
for which design registration is requested differ between an application for
design registration for a partial design and that for whole design, when
filing an application for design registration for a partial design, a statement
must be made in the column of “Partial Design” of the application in order
to make a clear indication to that effect, under the Form No. 2 Note (8) of the Ordinance for Enforcement of the Design Act.

(2) Statement in the column of “Article to the Design”

When filing an application for design registration for a partial design, a classification of articles listed in the right-hand column of Appended Table 1 or a classification of articles equivalent in level to such classification must be stated in the column of “Article to the Design” of the application under Article 7 of the Design Act, equivalent to the case of filing an application for design registration for a whole design. (See Part V “One Application per Design”)

For example, in the case of a creation of a design of a still camera, even where the “part for which the design registration is requested” is the grip part of the still camera, “Still camera” must be stated in the column of “Article to the Design” of the application because the article to the design which is the object of the right is a “Still camera” including the grip part.

(3) Statement in the column of “Description of the Design”

The Form No. 6 Note (11) of the Ordinance for Enforcement of the Design Act provides that, where requesting a design registration for a part of an article, in a set of drawings, the part of the article to the design for which the design registration is requested is to be specified by drawing the “part for which the design registration is requested” with solid lines and “any other parts” with broken lines, etc., and the way of specifying the part for which the design registration is requested is to be stated in the column of “Description of the Design” of the application.

Therefore, in an application for design registration for a partial design, the way in which the “part for which the design registration is requested” has been specified in the set of drawings must be stated in the column of “Description of the Design” of the application.

(4) Statement in the column of “Description of Article to the Design”

The provision of the Form No. 2 Note (39) of the Ordinance for Enforcement of the Design Act also applies to an application for design registration for a partial design.

Therefore, where the article to the design of a partial design does not belong to any of the items of the classification of articles specified by Ordinance of the Ministry of Economy, Trade and Industry, an explanation which can help in understanding the article, such as the purpose of use or the state of use of the article, must be stated in the column of “Description
of Article to the Design” of the application.

71.2.2 Statement in drawings, etc. of an application for design registration for a partial design

Where filing an application for design registration for a partial design, drawings, etc. are to be prepared under the Form No. 6 Note (11) of the Ordinance for Enforcement of the Design Act.

(1) A set of drawings

A set of drawings representing the form of the entire article to the design of the partial design, including the “part for which design registration is requested” and “any other part,” is needed.

(2) Omission of views

Views can be omitted in the following cases.

(i) Omission of either of two views that are identical or mirror images as prescribed in the Form No. 6 Note (8) of the Ordinance for Enforcement of the Design Act
(ii) Omission of views that is permitted under the Form No. 6 Note (9) of the Ordinance for Enforcement of the Design Act
(iii) Omission of the back side view where the surface view and the back side view are identical or mirror images or the back side view is without patterns under the Form No. 6 Note (10) of the Ordinance for Enforcement of the Design Act
(iv) Omission of the rear view, left side view and right side view where the front view, rear view, left side view and right side view are identical
(v) In the case of an application for a partial design requesting design registration only for a graphic image that is displayed on another article that is used with the article in an integrated manner as provided in Article 2(2) of the Design Act, omission of a set of drawings or a part of views representing the article to the design, other than the graphic image view
(vi) In the case of requesting a design registration for a part of an article, omission of a view that falls under any of (a) to (c) below from among views indicating only a part other than the part for which the design registration is requested

a. Either the front view or the rear view
b. Either the left side view or the right side view
c. Either the top view or the bottom view
(3) Specification of the "part for which design registration is requested"

Where filing an application for design registration for a partial design of a three-dimensional article, according to the Form No. 6 Note (11) of the Ordinance for Enforcement of the Design Act, the "part for which design registration is requested" must be specified in the set of drawings prescribed in the Form No. 6 Note (8) of the Ordinance for Enforcement of the Design Act by drawing the "part for which the design registration is requested" with solid lines and "any other parts" with broken lines, etc.

Therefore, it is not allowed to specify the "part for which design registration is requested" in, for example, the sectional view, perspective view, or reference view indicating the state of use, etc.

However, because there are cases where the "part for which design registration is requested" cannot be specified in an application for design registration for a partial design in terms of constructing drawings unless a sectional view is added to the set of drawings, it is allowed to specify such part by adding a sectional view to the set of drawings in that case.

In such case, the sectional drawing may be found to be a normal sectional drawing to be added where the drawings are not enough to represent the design, instead of a drawing for specifying the "part for which design registration is requested," and it may be determined as a result that the "part for which design registration is requested" has not been specified; thus, the applicant for design registration is encouraged to state, for example, that "the 'part for which design registration is requested' is specified by the drawings including the sectional drawing" in the column of "Description of the Design" of the application upon filing.

(4) Extent of disclosure of the partial design

With regard to an application for design registration for a partial design, the form of the entire article to the design of the partial design, including the "part for which design registration is requested" and "any other part," must at least clearly represent the minimum constituent elements necessary for recognizing articles that belong to the classification of articles that is stated in the column of "Article to the Design" of the application. (See 71.4.1.2 "The subject matter is a specific design," (2) "Examples of cases where subject matter is not found to be a specific design," (v) below).

71.3 Finding of a design in an application for design registration for a partial design

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

Consequently, documents that are not categorized as an application or drawings, etc. attached to the application, such as a feature statement, a priority certificate, and a certificate for receiving application of the provision of Article 4(2) of the Design Act, are not used as the basis for finding a design in an application for design registration for a partial design. (See Part I “Application/Drawings,” Chapter II “Finding of the Design in an Application for Design Registration”)

(1) Article to the design of the partial design

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

(2) Usage and function of the “part for which design registration is requested”

The usage and function of the “part for which design registration is requested” should be found based on the usage and function of the article to the design of the partial design that has been found as mentioned above.

(3) Position, size and scope of the “part for which design registration is requested”

Position refers to the relative position of the “part for which design registration is requested” in the form of the entire article to the design of the partial design.

Size mainly refers to the absolute size of the “part for which design registration is requested.” With regard to the size, instead of finding one absolute size (dimension), a common-sense range of size in the art of the design should be found. (See Part I “Application/Drawings,” Chapter I “Application for Design Registration,” 11.1 “Provisions of Article 6 of the Design Act.”

In addition, scope mainly refers to the relative size (area ratio) of the “part for which design registration is requested” in the form of the entire article to the design of the partial design.

(4) Form of the “part for which design registration is requested”

(i) Finding of the “part for which design registration is requested”

The finding of the “part for which design registration is requested” is carried out based on the way of specifying such part which the applicant for design registration has stated in the column of “Description of the Design” of the application.

Meanwhile, the drawings that serve as the basis for finding the “part for
which design registration is requested” are the set of drawings, in principle, but if it is stated, for example, that “the ‘part for which design registration is requested’ is specified by the drawings including the sectional drawing” in the column of “Description of the Design” of the application, the “part for which design registration is requested” is found based on the drawings including the sectional drawing.

(ii) Finding of the form of the “part for which design registration is requested”

The form of the “part for which design registration is requested” is to be found based on the set of drawings and other necessary drawings, such as a sectional view or perspective view, and other reference views, such as a view showing the state of use, equivalent to the case of a whole design.

71.4 Requirements for design registration concerning a partial design

In order for the subject matter of an application for design registration for a partial design(Note) to be registered, it must comply with all of the following requirements, equivalent to the case of an application for design registration for a whole design.

(Note)

The subject matter of an application for design registration for a partial design refers to the subject matter for which the examiner has yet to make the determination as to whether or not it is categorized as a “design” as defined in Article 2(1) of the Design Act.

(1) The subject matter is an industrially applicable design (→71.4.1)
(2) The subject matter is novel (→71.4.2)
(3) The subject matter involves creative difficulty (→71.4.3)
(4) The subject matter is not a design in a later application that is identical or similar to part of a design in a prior application (→71.4.4)

71.4.1 Industrially applicable design

In order for the subject matter of an application for design registration for a partial design to be categorized as an industrially applicable design as provided in the main paragraph of Article 3(1) of the Design Act, it must comply with all of the following requirements.

Therefore, subject matter that does not comply with any of the following requirements is not categorized as an industrially applicable design as provided in the main paragraph of Article 3(1) of the Design Act, and therefore may not be registered.
(1) The subject matter constitutes a design  
(2) The subject matter is a specific design  
(3) The subject matter is industrially applicable

71.4.1.1 The subject matter constitutes a design

In order for the subject matter of an application for design registration for a partial design to constitute a design as defined in Article 2(1) of the Design Act, it must comply with all of the following requirements.

(1) The subject matter is found to be an article  
(2) The subject matter is the form of an article itself  
(3) The subject matter appeals to the eye  
(4) The subject matter creates an aesthetic impression through the eye  
(5) The subject matter constitutes a part that occupies a certain scope  
(6) The subject matter constitutes a part that becomes subject to comparison when comparing with another design

71.4.1.1.1 The subject matter is found to be an article

The article to the design of a partial design must be found to be an article subject to the Design Act.

(1) Examples of subject matter that is found to be an article

(i) Subject matter where the article to the design of a partial design is a “Sock,” which is found to be an article subject to the Design Act, and the “part for which the design registration is requested” is the “heel of a sock,” which is not found to be an article subject to the Design Act

(ii) Subject matter where the article to the design of a partial design is a “Packaging container,” which is found to be an article subject to the Design Act, and the “part for which the design registration is requested” is the part of the “cap for a packaging container,” which is found to be an article subject to the Design Act

(2) Example of subject matter that is not found to be an article

(i) Subject matter where only a pattern is represented in
the drawing as the “part for which the design registration is requested,” and the article to the design of a partial design is a “pattern to be represented on textile products”

71.4.1.2 The subject matter is the form of an article itself
The form of the entire article to the design of a partial design must be the form of an article itself.

(1) Example of subject matter that is not found to be the form of an article itself
(i) Subject matter where a part of the form of a flower made by tying knots in a handkerchief for achieving an effect of sales display is the “part for which the design registration is requested”

71.4.1.3 The subject matter appeals to the eye
The entire form of the “part for which the design registration is requested” must appeal to the eye.

(1) Examples of subject matter that is not found to appeal to the eye
(i) Subject matter where the entire form of the “part for which the design registration is requested” cannot be visually recognized from outside in the normal trading state of the article to the design of the partial design
(ii) Subject matter where the entire form of the “part for which the design registration is requested” is too fine to recognize by the naked eye

71.4.1.4 The subject matter creates an aesthetic impression through the eye
The “part for which the design registration is requested” must create an aesthetic impression through the eye.

71.4.1.5 The subject matter constitutes a part that occupies a certain scope
The “part for which the design registration is requested” must be a part that occupies a certain scope of the form of the entire article to the design of the partial design, that is, a
closed area that is included in the appearance of the design.

(1) Examples of subject matter that is not found to constitute a part that occupies a certain scope

(i) Subject matter where the “part for which the design registration is requested” is only a ridge line

Since a ridge line does not have an area, it does not constitute a part that occupies a certain scope.

[Case example] “Building concrete block”

(ii) Subject matter that represents only the silhouette of the form of the entire article to the design of a partial design

Since it is not found to be a closed area that is included in the appearance of the design, it does not constitute a part that occupies a certain scope.

[Case example]

Subject matter representing only a projected silhouette of the side view of a passenger car

71.4.1.1.6 The subject matter constitutes a part that can become subject to comparison when comparing with another design

The “part for which the design registration is requested” not only needs to constitute a part that occupies a certain scope of the form of the entire article, but it also needs to represent a unit of creation of a design that can become subject to comparison when comparing with another design.

(1) Examples of subject matter that is found to constitute a part that can become subject to comparison when comparing with another design
In both of the following case examples, the “part for which the design registration is requested” constitutes a part that occupies a certain scope of the form of the entire article of a packaging container, and they both represent the unit of creation of a design that can become subject to comparison when comparing with another design.

[Case example 1]  [Case example 2]
“Packaging container”  “Packaging container”

(2) Example of subject matter where the “part for which the design registration is requested” does not include any unit of creation of a design

In the following case example, the “part for which the design registration is requested” constitutes a part that occupies a certain scope of the form of the entire article of a packaging container, but it does not represent the unit of creation of a design that can become subject to comparison when comparing with another design.
71.4.1.2 The subject matter is a specific design

First, it must be possible to directly derive that the method and subject matter of the application for design registration are those of an application for design registration for a partial design, from the statement in the application and drawings, etc. attached to the application as originally filed, based on the ordinary skill in the art of the design.

Next, in order for the design in an application for design registration for a partial design to be found to be a specific design, equivalent to the case of a whole design, the design must be one for which contents of a specific single design, that is, specific contents concerning (i) through (iv) below, can be directly derived from the statement in the application and drawings, etc. attached to the application as originally filed, based on the ordinary skill in the art of the design.

(i) The article to the design of a partial design
(ii) The usage and function of the “part for which the design registration is requested”
(iii) The position, size and scope of the “part for which the design registration is requested”
(iv) The form of the “part for which the design registration is requested”

In addition, the form of the entire article to the design of the partial design, including the “part for which design registration is requested” and “any other part,” must at least clearly represent the minimum constituent elements necessary for recognizing articles that belong to the classification of articles that is stated in the column of “Article to the Design” of the application.
With regard to the accuracy of the statement in the application and drawings, etc. attached to the application, the practice for a whole design applies, so see Part II "Requirements for Design Registration," Chapter I "Industrially Applicable Design," 21.1.2 “The subject matter is a specific design.”

(1) Examples of cases where subject matter is found to be a specific design

Even where an application or drawings, etc. attached to the application contain any of the following improper descriptions, if contents of a specific single design can be directly derived upon making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, the subject matter is found to be a specific design.

(i) Where there is no indication of the column of “Partial Design” in the application as originally filed, but it is clear that the application for design registration relates to a partial design, from the statement in the column of “Description of the Design” in the application and specific expressions in the drawings, etc. attached to the application.

[Case example] “Flange”

[Top view]

[Description of the Design]
The part other than the parts colored in orange is the part for which the design registration is requested.

[Front view] [Right side view]

(ii) Where there is no column of "Partial Design" indicated and no statement made on the way of specifying the part for which the design registration is requested in the column of “Description of the Design” in the application as originally filed, but the fact that the application is an application for design registration for a partial design and the "part for which the design registration is requested" are clear from the specific expressions in the
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drawings, etc. attached to the application

[Case example] “Digital camera”

The respective views in the drawings attached to the application are described in a manner that clearly distinguishes a certain part by using solid lines and broken lines, and it can be inevitably derived that the application is an application for design registration for a partial design requesting design registration for the part described in solid lines, even if there is no column of “Partial Design” and there is no statement made on the way of specifying the part for which the design registration is requested in the column of “Description of the Design.”

(iii) Where a lack of indication of a boundary line is found to be an error in constructing drawings, and by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, the boundary of the “part for which the design registration is requested” can inevitably be derived

The “part for which the design registration is requested” must be a part that occupies a certain scope of the form of the entire article to the design of the partial design, that is, a closed area that is included in the appearance of the design. (See 71.4.1.1.5 “The subject matter constitutes a part that occupies a certain scope” above)

However, for example, where the subject matter is a wire rod or a rod, such as the “fence post” below, and by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, no problem is found in deeming that the position where the two ends of a solid line representing the outline of the “part for which the design registration is requested” are linked together by a straight line is the boundary, the “part for which the design registration is requested” is treated as occupying a certain scope.
(2) Examples of cases where subject matter is not found to be a specific design

Where an application or drawings, etc. attached to the application contains any of the following improper descriptions, and where contents of a specific single design cannot be directly derived upon making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, the subject matter is not found to be a specific design.

(i) Where it is unclear whether the application for design registration is one for a partial design or one for a whole design, or it is unclear which of the parts described in a distinguished manner in the drawings is the "part for which the design registration is requested," even by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, because there is no statement made on the way of specifying the "part for which the design registration is requested" in the column of "Description of the Design" in the application as originally filed.
(ii) Where the specific usage and function of the article to the design of a partial design or the “part for which the design registration is requested” are unclear

(iii) Where the entire form of the “part for which the design registration is requested” is not represented

(iv) Where the entire form of “any other part” is not represented

(v) Where the form of the entire article to the design of the partial design, including the “part for which design registration is requested” and “any other part,” does not clearly represent the minimum constituent elements necessary for recognizing articles that belong to the classification of articles that is stated in the column of “Article to the Design” of the application

(vi) Where the form of the “part for which the design registration is requested” is unclear

i. Where the form of the “part for which the design registration is requested” is inconsistent in the respective views

ii. Where the “part for which the design registration is requested” is
requested” is not a closed area

iii. Where the “part for which the design registration is requested” is specified only by views other than a set of drawings (such as specified only by a perspective view)

iv. Where the “part for which the design registration is requested” is specified by text in the column of “Description of the Design” in the application, without distinguishing the “part for which the design registration is requested” and “any other part” in the set of drawings

(vii) Where the form of “any other part” is unclear

Where the form of “any other part” represented by a broken line, etc. is not specific due to inconsistency between the views, for example, the position, size and scope of the “part for which the design registration is requested” in the form of the entire article are not made specific, so the subject matter will not be a specific design.

71.4.1.3 The subject matter is industrially applicable

The article to the design of a partial design must be industrially applicable.

Meanwhile, the industrial applicability of the “part for which the design registration is requested” is not to be determined.

71.4.2 Novelty

Application of the provisions of the items of Article 3(1) of the Design Act is to be determined by making determination as to whether or not the partial design is categorized as any publicly known design or categorized as any design similar to a publicly known design.

71.4.2.1 Article 3(1)(i) and (ii) of the Design Act

In order to be able to determine whether or not a partial design is categorized as a publicly known design, the entire form of the “part for which the design registration is requested” of the application for design registration for the partial design must be disclosed in the publicly known design, in principle.

With regard to any other determination standards, the determination standards for a whole design apply, so see Part II “Requirements for Design Registration,” Chapter II “Novelty,” 22.1.1 “Article 3(1)(i) of the Design Act” and 22.1.2 “Article 3(1)(ii) of the Design Act.”
71.4.2.2 Article 3(1)(iii) of the Design Act

71.4.2.2.1 Determination of similarity between a publicly known design and a partial design

Since the article and the form are inseparably integrated in a design, unless the article to the design of a partial design and the article to the design of a publicly known design are identical or similar, the designs are not similar.

For example, in the case of a creation of a design of a still camera, if an application for design registration for a partial design is filed for the grip part of the camera, the article to the design which is the object of the right is a “Still camera” including the grip part, so information that serves as the basis for determination of novelty will be designs for “still cameras” and articles similar thereto.

Under such requirement, if a partial design and a publicly known design comply with all of the following, the two designs are similar.

(i) The article to the design of a partial design and the article to the design of a publicly known design are identical or similar

(ii) The usage and function of the “part for which the design registration is requested” of an application for design registration for a partial design and those of the part of a publicly known design that coincides with the “part for which the design registration is requested” are identical or similar

(iii) The form of the “part for which the design registration is requested” of an application for design registration for a partial design and that of the part of a publicly known design that coincides with the “part for which the design registration is requested” are identical or similar

(iv) The position, size and scope of the “part for which the design registration is requested” of an application for design registration for a partial design in the form of the entire article and those of the part of a publicly known design that coincides with the “part for which the design registration is requested” in the form of the entire article are identical or commonplace in the art of the design
If the designs are identical with regard to all of (i) through (iv) above, the two designs are identical.

(1) Finding of common points and different points in the articles to the designs
   The common points and different points in the usage and function of the article to the design of a partial design and those of the article to the design of a publicly known design are found.

(2) Finding of common points and different points in the usage and function of the relevant parts
   The common points and different points in the usage and function of the “part for which the design registration is requested” and those of the part of a publicly known design that coincides with the “part for which the design registration is requested” are found.

(3) Finding of common points and different points in the forms of the relevant parts
   The common points and different points in the entire form and the form of each part of the “part for which the design registration is requested” and those of the part of a publicly known design that coincides with the “part for which the design registration is requested” are found.
   However, the common points and different points in the form of “any other part” are not to be found directly.

(4) Finding of the common points and different points in the position, size and scope of the relevant parts
   The common points and different points in the position, size and scope of the “part for which the design registration is requested” in the form of the entire article and those of the part of a publicly known design that coincides with the “part for which the design registration is requested” in the form of the entire article are found.

(5) Determination of similarity between a publicly known design and a partial design
   Determination of similarity between a publicly known
design and a partial design refers to determination as to whether designs are similar or not in terms of aesthetic impression. Specifically, the determination is made by comprehensively observing the common points and different points with regard to (1) through (4) above for the entire design, and evaluating the influence that these points have on the determination of similarity between the two designs. Meanwhile, the influence that the common points and different points have on the determination of similarity between the designs varies by individual designs, but the following generally apply:

(i) An easily visible part has a relatively large influence.
(ii) A part of an ordinary form has a relatively small influence.
(iii) A difference in size hardly has any influence if it is within a common-sense range in the art of the design.
(iv) A difference in material hardly has any influence if it does not appear as a characteristic of the outer appearance.
(v) A difference only in color hardly has any influence as compared to a difference in shape or pattern.
(vi) A difference in position, size or scope hardly has any influence if it is commonplace in the art of the design.

The form of “any other part” alone is not made subject to comparison.

71.4.2.2.2 Examples of applications for design registration for a partial design that fall under the provision of Article 3(1)(iii) of the Design Act
[Case example 1]
Publicly known design
"Main body of a vacuum cleaner"
Application for design registration for a partial design
"Main body of a vacuum cleaner"

[Case example 2]
Publicly known design
"Still camera"
Application for design registration for a partial design
"Still camera"
(Partial design published in a Design Bulletin)
[Case example 3]
Publicly known design
“Still camera”
(Application for design registration for a partial design)
“Camera lens with a view finder”
(Partial design published in a Design Bulletin)

(Note)
Note that the classification of articles “Camera lens with a view finder” is mentioned here for explaining the case example, and it does not indicate a case example of a specific classification of articles that is found to be equivalent in level to the classification of articles listed in Appended Table 1.

[Case example 4]
Publicly known design
“Packaging bottle”
(Application for design registration for a partial design)
“Packaging bottle”
(Partial design published in a Design Bulletin)
Part VII Individual Applications for Design Registration
Chapter I Partial Design

[Case example 5]
Publicly known design
“Still camera”
(Partial design published in a Design Bulletin)

[Case example 6]
Publicly known design
“Digital camera”
(Partial design published in a Design Bulletin)

71.4.3 Creative difficulty
Application of the provision of Article 3(2) of the Design Act is to be determined by making determination as to whether or not the entire form of the "part for which the design registration is requested" could have been easily created by a person skilled in the art based on shapes, patterns or colors, or any combination thereof that were publicly known prior to the filing of the application for design registration, and whether or not it is an ordinary technique for a person skilled in the art to make the "part for which the design registration is requested" such position, such size or such scope in the form of the entire article, considering the usage and function of such part.

Meanwhile, with regard to any other determination standards, the determination standards for a whole design apply, so see Part II
“Requirements for Design Registration,” Chapter III “Creative Difficulty.”

71.4.4 Design in a later application that is identical or similar to part of a design in a prior application

The provision of Article 3-2 of the Design Act also applies to the case where a partial design in a later application is not found to be a creation of a new design, such as where an application for design registration is filed while adopting a part of the design in a prior application almost as it is as the “part for which the design registration is requested” of a partial design in a later application.

Meanwhile, with regard to any other determination standards, the determination standards for a whole design apply, so see Part II “Requirements for Design Registration,” Chapter IV “Exclusion from Protection of a Design in a Later Application That Is Identical or Similar to Part of a Design in a Prior Application.”

71.4.4.1 Determination of similarity between part of a design disclosed in a prior application and a partial design in a later application

In order to apply the provision of Article 3-2 of the Design Act, it is necessary that the entire form of the “part for which the design registration is requested” of the partial design in the later application, which is subject to the provision of Article 3-2 of the Design Act, is disclosed in the design disclosed in the prior application, in principle (including the case where the entire form of the “part for which the design registration is requested” of the partial design in the later application, which is subject to the provision of Article 3-2 of the Design Act, is not disclosed, but is sufficiently represented to a comparable level, in the design disclosed in the prior application; see Part II “Requirements for Design Registration,” Chapter II “Novelty,” 22.1.2.6 “Design described in a publication”).

Regardless of (i) whether the design disclosed in a prior application is a whole design or a partial design, and (ii) whether the article to the design of the design disclosed in a prior application and that of the whole design in a later application are identical, similar or not similar, where the part of the design disclosed in a prior application that coincides with the “part for which the design registration is requested” of a partial design in a later application and the “part for which the design registration is requested” of the partial design in the later application have an identical or similar usage and function and their respective forms are identical or similar, the part of the design
disclosed in the prior application that coincides with the “part for which the design registration is requested” of the partial design in the later application and the partial design in the later application are similar.

71.4.4.2 Examples of applications for design registration for a partial design that fall under the provision of Article 3-2 of the Design Act

With regard to case examples of applications for design registration for a partial design that fall under the provision of Article 3-2 of the Design Act, see case examples 1 through 6 in 71.4.2.2.2 “Examples of applications for design registration for a partial design that fall under the provision of Article 3(1)(iii) of the Design Act” above by replacing the term publicly known design with design disclosed in a prior application.

71.5 Exception to lack of novelty concerning an application for design registration for a partial design

An application for design registration for a partial design is also subject to application of the provision of Article 4(1) or (2) of the Design Act. Meanwhile, with regard to the requirements, etc. for receiving application of the provision of Article 4(1) or (2) of the Design Act and any other determination standards, the determination standards for a whole design apply, so see Part III “Exception to Lack of Novelty.”

71.6 Provisions of Article 5 of the Design Act concerning an application for design registration for a partial design

With regard to application of the provisions of Article 5(i) and (ii) of the Design Act, the form of the entire article to the design of a partial design, including the “part for which the design registration is requested” and “any other part,” is to be subject to determination. However, with regard to application of the provision of Article 5(iii) of the Design Act, only the shape of the “part for which the design registration is requested” is to be subject to determination.

Meanwhile, with regard to any other determination standards, the determination standards for a whole design apply, so see Part IV “Unregistrable Designs.”

71.7 One application per design concerning an application for design registration for a partial design

An application for design registration for a partial design must also comply with the requirements provided in Article 7 of the Design Act.
Meanwhile, with regard to any other determination standards, the determination standards for a whole design apply, so see Part V “One Application per Design.”

71.7.1 Examples of cases that do not comply with the requirements provided in Article 7 of the Design Act

71.7.1.1 Examples of statements in the column of “Article to the Design” in the application that are not based on classification of articles

Where, in an application for design registration for a partial design, there is a statement that has added such words as “... part of” or “partial design of” after a classification of articles in the column of “Article to the Design” of the application (for example, the “heel part of a sock” or a “partial design of the heel of a sock”), such statement is not found to be a classification of articles listed in Appended Table 1 or a classification of articles equivalent in level to such classification.

71.7.1.2 Examples of cases where an application is not filed for each design

Where two or more physically separate “parts for which the design registration is requested” are included in the article to the design of one partial design, the application for design registration is not found to be filed for each design.

71.7.1.2.1 Categories of subject matter that is treated as one design even if it includes two or more physically separate “parts for which the design registration is requested”

Where subject matter falls under any of the following, it is treated as one design even if it includes two or more physically separate “parts for which the design registration is requested.”

(1) Where unity in form is found

Unity in form is found for two or more physically separate “parts for which the design registration is requested” if they have been created with relevance to each other, such as forms in mirror images or forms that constitute a set.
(2) Where unity in function is found

Even where two or more “parts for which the design registration is requested” are physically separate, if they have been created in an integrated manner because they perform one function as a whole, unity in function is found.

[Case example 1] “Barber scissors”
71.8 Partial design pertaining to a design for a set of articles

A partial design pertaining to a design for a set of articles cannot be registered. (See Part VII “Individual Applications for Design Registration,” Chapter II “Design for a Set of Articles,” 72.1.2 “Partial design pertaining to a design for a set of articles”)

71.9 Provisions of Articles 9 and 10 of the Design Act concerning an application for design registration for a partial design

Application of the provisions of Articles 9 and 10 of the Design Act is determined with regard to two or more applications for design registration for partial designs. Meanwhile, with regard to any other determination standards, the determination standards for a whole design apply, so see Part VI “Prior Application” and Part VII “Individual Applications for Design Registration,” Chapter III “Related Design.”

71.9.1 Determination of similarity between a partial design and a partial design

If two partial designs comply with all of the following, the two designs are similar.

(i) The usage and function of the articles to the design of the partial designs are identical or similar

(ii) The usage and function of the “parts for which the design registration is requested” are identical or similar

(iii) The forms of the “parts for which the design registration is requested” are identical or similar

(iv) The position, size and scope of the “parts for which the design registration is requested” in the forms of the entire articles are identical or commonplace in the art of the design

If the designs are identical with regard to all of (i) through (iv) above, the two designs are identical.
(1) Finding of common points and different points in the articles to the designs
The common points and different points in the usage and function of the articles to the design of the partial designs are found.

(2) Finding of common points and different points in the usage and function of the relevant parts
The common points and different points in the usage and function of the “parts for which the design registration is requested” are found.

(3) Finding of common points and different points in the forms of the relevant parts
The common points and different points in the entire form and the form of each part of the “parts for which the design registration is requested” are found.

(4) Finding of the common points and different points in the position, size and scope of the relevant parts
The common points and different points in the position, size and scope of the “parts for which the design registration is requested” in the forms of the entire articles are found.

(5) Determination of similarity between a partial design and a partial design
Determination of similarity between a partial design and a partial design is made according to 71.4.2.2.1 “Determination of similarity between a publicly known design and a partial design,” (5) “Determination of similarity between a publicly known design and a partial design” above.

71.9.1.1 Examples of applications for design registration for partial designs that are found to be similar under Article 9(1) of the Design Act
[Case example 1]
Application for design registration for a partial design in a prior application
“Still camera”

[Case example 2]
Application for design registration for a partial design in a prior application
“Digital camera”

Where the application for design registration for a partial design shown on the right-hand side in the case example above is filed during the period from the filing date of the application for design registration for a partial design in the prior application shown on the left-hand side to the publication date (including said date) of the Design Bulletin for said prior application for design registration (a Registered Design Bulletin or Bulletin for giving public notice of an application for which refusal has become final and binding in the case where no agreement was reached by consultations or consultations were unable to be held where two or more application have been filed for identical or similar designs on the same date), the application also falls under the provision of Article 3-2 of the Design Act, so the provision of Article 3-2 of the Design Act is applied in examination practice.
71.9.1.2 Examples of applications for design registration for partial designs that are found to be similar under Article 9(2) or Article 10 of the Design Act

With regard to the case examples, see case examples 1 and 2 in 71.9.1.1 “Examples of applications for design registration for partial designs that are found to be similar under Article 9(1) of the Design Act” above by replacing the term “the prior application for design registration for a partial design shown on the left-hand side” with “the application for design registration for a partial design filed on the same date.”

71.10 Change of the gist concerning an application for design registration for a partial design

71.10.1 Gist of design of a partial design

The “gist of design of a partial design” refers to the contents of a specific design that can be directly derived from the respective elements (i) the article to the design of a partial design, (ii) the usage and function of the “part for which the design registration is requested,” (iii) the position, size and scope of the “part for which the design registration is requested,” and (iv) the form of the “part for which the design registration is requested”) for finding the partial design represented in the statement in the application and drawing, etc. attached to the application based on the ordinary skill in the art of the design.

71.10.2 Categories of amendments that change the gist

Where an amendment made to the statement in the application or any drawings, etc. attached to the application falls under any of the following, it changes the gist of the statement in the application or drawings, etc. attached to the application as originally filed.

Meanwhile, with regard to any other determination standards, the determination standards for a whole design apply, so see Part VIII “Amendment of Statement in the Application/Drawings, etc.,” Chapter II “Dismissal of Amendments."

(1) Where the amendment is found to make a change exceeding the scope of identity that can be inevitably derived based on the ordinary skill in the art of the design

(2) Where the amendment is found to clarify the gist of design that was unclear when originally filed
71.10.3 Specific handling of an amendment made to the statement of an application

(1) Amendment to add the column of “Partial Design” to the application

Where it can be inevitably derived that the application for design registration is an application for design registration for a whole design by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application as originally filed, or where it is unclear whether the application for design registration is an application for design registration for a partial design or an application for design registration for a whole design and one of them cannot be inevitably derived even by making a comprehensive determination, an amendment that makes the application for design registration an application for design registration for a partial design by adding the column of “Partial Design” to the application changes the gist.

Even where there was no column of “Partial Design” in the application as originally filed, but it can be inevitably derived that the application for design registration is an application for design registration for a partial design by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, an amendment to add the column of “Partial Design” to the application does not change the gist.

(2) Amendment to delete the column of “Partial Design” from the application

Where it can be inevitably derived that the application for design registration is an application for design registration for a partial design by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application as originally filed, or where it is unclear whether the application for design registration is an application for a partial design or that for a whole design and one of them cannot be inevitably derived even by making a comprehensive determination, an amendment that makes the application for design registration an application for design registration for a whole design by deleting the column of “Partial Design” from the application changes the gist.

Even where there was a column of “Partial Design” in the application as originally filed, but it can be inevitably derived that the application for design registration is an application for design registration for a whole design by making comprehensive determination based on the statement
in the application and drawings, etc. attached to the application, an amendment to delete the column of “Partial Design” from the application does not change the gist.

(3) Amendment to supplement a statement concerning the way of specifying the “part for which the design registration is requested” with regard to an application for design registration for a partial design

Even where there was no statement concerning the way of specifying the “part for which the design registration is requested” in the column of “Description of the Design” in the application as originally filed, and the “part for which the design registration is requested” is unclear and no specific design can be inevitably derived even by comprehensive determination based on the statement in the application and drawings, etc. attached to the application, an amendment to supplement a statement concerning the way of specifying the “part for which the design registration is requested” in the column of “Description of the Design” of the application changes the gist.

Even where there was no statement concerning the way of specifying the “part for which the design registration is requested” in the column of “Description of the Design” in the application as originally filed, but it is clear that the application for design registration is an application for design registration for a partial design and the “part for which the design registration is requested” can be inevitably derived by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, an amendment to supplement a statement concerning the way of specifying the “part for which the design registration is requested” in the column of “Description of the Design” of the application does not change the gist.

(4) Amendment to delete a statement concerning the way of specifying the “part for which the design registration is requested” with regard to an application for design registration for a partial design

Even where there was no column of “Partial Design” in the application as originally filed, but it can be inevitably derived that the application for design registration is an application for design registration for a partial design by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, an amendment to delete a statement concerning the way of specifying the “part for which the design registration is requested” from the column of "Description of the Design" of the application, making it unclear whether
the application for design registration is one for a partial design or one for a whole design or making it unclear which part is the "part for which the design registration is requested" in the application for design registration, changes the gist.

Where there was no column of "Partial Design" in the application as originally filed, and it can be inevitably derived that the application for design registration is an application for design registration for a design for a whole design by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, an amendment to delete a statement concerning the way of specifying the “part for which the design registration is requested” from the column of “Description of the Design” of the application does not change the gist.

71.10.4 Specific handling of an amendment made to the drawing, etc. attached to the application

(1) Amendment to make an application for design registration that includes two or more physically separate “parts for which the design registration is requested” into one partial design

An amendment, made when dividing an application for design registration for a partial design that cannot be treated as one design because it includes two or more physically separate “parts for which the design registration is requested,” to correct a “part for which the design registration is requested” represented in the drawing, etc. attached to the application of the original application for design registration for a partial design that coincides with a “part for which the design registration is requested” in the new divided application for design registration for a partial design into “any other part” does not change the gist.

In this case, an amendment to correct all “parts for which the design registration is requested” other than one “part for which the design registration is requested” represented in the drawing, etc. attached to the application into “any other part” without dividing the application for design registration also does not change the gist.

(2) Amendment to change the form, etc. of the “part for which the design registration is requested”

An amendment to change the form of the “part for which the design registration is requested” exceeding the scope of identity that can be inevitably derived based on the ordinary skill in the art of the design or an amendment that does not change the form itself of said part but changes
the position, size or scope of the “part for which the design registration is requested” in the form of the entire article changes the gist.

In addition, where the form of the “part for which the design registration is requested” or the position, size or scope of the “part for which the design registration is requested” in the form of the entire article is unclear even by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application as originally filed, an amendment to make it clear changes the gist.

(3) Amendment to change the form of “any other part”

An amendment to change the form of the “part for which the design registration is requested” exceeding the scope of identity that can be inevitably derived based on the ordinary skill in the art of the design by correcting a part of “any other part” to be depicted by a solid line or an amendment to change the position, size or scope of the “part for which the design registration is requested” in the form of the entire article exceeding the scope of identity that can be inevitably derived based on the ordinary skill in the art of the design by changing the outline shape of “any other part” changes the gist.

Where it can be inevitably derived that the application for design registration is an application for design registration for a partial design by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, an amendment to change the application for design registration for the partial design into an application for design registration for a whole design by correcting “any other part” to be depicted solely by solid lines and also making necessary corrections to the statement of the application changes the gist.

71.11 Division concerning an application for design registration for a partial design

71.11.1 Division of a partial design for which an application has not been filed for each design

Where two or more physically separate “parts for which the design registration is requested” for which formal or functional identity is not found are included in the article to the design of one partial design, the application for design registration is not found to be filed for each design, and is treated as not complying with the requirements provided in Article 7 of the Design Act. (See 71.7.1.2 “Examples of cases where an application is not filed for each design” above)
In this case, division based on the provisions of Article 10-2 of the Design Act is allowed as an application for design registration for a partial design including two or more partial designs, and the new application for design registration for a partial design is deemed to have been filed at the time of filing the original application for design registration for a partial design.

However, where a new application for design registration is filed as an application for design registration for a whole design (for example, where a new application for design registration is filed by making one of the “parts for which the design registration is requested” in the original application for design registration for a partial design the design of a component), it is not found to be legitimate division based on the provisions of Article 10-2 of the Design Act and the new application for design registration is treated as having been filed at the time of the division.

71.11.2 Division of a part of an application for design registration filed for each design into one or more applications for design registration for partial designs

Where an application for design registration for a design for a whole design that is found to be one design or for a partial design that is treated as one design is divided into one or more new applications for design registration for partial designs, it is not found to be legitimate division based on the provisions of Article 10-2 of the Design Act, and the new application for design registration is treated as having been filed at the time of the division.

Meanwhile, with regard to any other determination standards, the determination standards for a whole design apply, so see Part IX “Special Application for Design Registration,” Chapter I “Division of Application for Design Registration.”

71.12 Conversion of a patent application or an application for utility model registration into an application for design registration for a partial design

Where the initial description and drawings of the patent application or application for utility model registration contain a concrete description based on which the partial design in the new converted application for design registration can be clearly recognized, and the contents before and after the conversion of the application are found to be identical, the new converted application for design registration for a partial design is deemed to have been filed at the time of filing the original patent application or application for utility model registration.

Meanwhile, with regard to any other determination standards, the determination standards for a whole design apply, so see Part IX “Special Application for Design Registration,” Chapter II “Conversion of Application.”
71.13 Application for design registration for a partial design containing a priority claim under the Paris Convention, etc.

A priority claim under the Paris Convention, etc. is effective where the partial design pertaining to the application for design registration filed in Japan and the partial design pertaining to the corresponding first application on which the priority claim under the Paris Convention, etc. is based are identical.

Therefore, in a case that falls under any of the following, a priority claim under the Paris Convention, etc. is not effective.

(1) Where the first application is an application for a whole design and the application for design registration filed in Japan is an application for a partial design that is a part of said whole design

(2) Where the first application is an application for a partial design and the “part for which the design registration is requested” as a partial design in the application for design registration filed in Japan includes additional contents that are not included in the first application or does not include a part of the contents that are included in the first application

(3) Where the first application is multiple applications for partial designs, and the application for design registration filed in Japan is an application for design registration for a partial design that combines them

(4) Where the first application is an application for a partial design, and the application for design registration filed in Japan is an application for design registration for a whole design that has changed the line representing “any other part,” which is generally a broken line, into a solid line

Meanwhile, with regard to any other determination standards, the determination standards for a whole design apply, so see Part X “Procedure for Priority Claim under the Paris Convention, etc.”