72 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.

(Article 2 (2) through (4) omitted)

Article 8 Where two or more articles are used together and are specifically designated by an Ordinance of the Ministry of Economy, Trade and Industry (hereinafter referred to as a “Set of Articles”), if the Set of Articles is coordinated as a whole, an application for design registration may be filed as for one design, and the applicant may obtain a design registration, for designs for the articles that constitute the Set of Articles.

72.1 Design for a set of articles

Subject matter that comply with both of the requirements that (i) the subject matter stated in the column of “Article to the Design” of the application are designated by an Ordinance of the Ministry of Economy, Trade and Industry provided in Article 8 of the Design Act and (ii) the constituent articles (Note) are appropriate to be used together are referred to as “a set of articles,” and where the constituent articles of the set of articles are coordinated as a whole, they may be registered as a design for a set of articles.

(Note)

A “constituent article” refers to an article constituting a set of articles, as stated in 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,” 24.1.3.3 “In the case of an application for design registration for a design for a set of articles.”

72.1.1 Requirements for being found to be a design for a set of articles

In order for an application for design registration to be registered as a design for a set of articles, it must comply with all of the following requirements.

(1) The subject matter stated in the column of “Article to the Design” of the application is designated by an Ordinance of the Ministry of Economy,
Part VII Individual Applications for Design Registration
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Trade and Industry

(2) The constituent articles are appropriate

(3) The set of articles is coordinated as a whole

72.1.1.1 The subject matter stated in the column of “Article to the Design” of the application are designated by an Ordinance of the Ministry of Economy, Trade and Industry

The subject matter stated in the column of “Article to the Design” of the application must be designated by an Ordinance of the Ministry of Economy, Trade and Industry, that is, they must fall under any of the categories of a set of articles listed in Appended Table 2.

Where the subject matter stated in the column of “Article to the Design” of the application are not designated by an Ordinance of the Ministry of Economy, Trade and Industry, they are not found to be a set of articles, and a notice of the reason for refusal under Article 8 of the Design Act is given.

72.1.1.2 The constituent articles are appropriate

Constituent articles need to be two or more articles that are used at the same time from a common sense perspective, such as the examples shown in the Table of Constituent Articles of Sets of Articles (See Part XIII Appendix). If articles are not appropriate constituent articles, they are not found to constitute a set of articles, and a notice of the reason for refusal under Article 8 of the Design Act is given.

72.1.1.3 The set of articles are coordinated as a whole

Even where the subject matter stated in the column of “Article to the Design” of the application are designated by an Ordinance of the Ministry of Economy, Trade and Industry, and they are found to be a set of articles constituted by specified constituent articles, the shapes, patterns or colors or any combinations thereof of the constituent articles must be coordinated as a whole.

In this manner, even where the subject matter are found to be a set of articles, if the constituent articles are not coordinated as a whole, they are not found to be a design for a set of articles, and a notice of the reason for refusal under Article 8 of the Design Act is given.

72.1.1.3.1 Categories of constituent articles that are found to be coordinated as a whole

Where the constituent articles fall under any of the
following, they are found to be coordinated as a whole.

(1) Where the shapes, patterns or colors or any combinations thereof of the constituent articles are represented through equivalent formative processing, and thereby are found to be coordinated as a whole

(2) Where the constituent articles represent one collective shape or pattern as a whole, and thereby are found to be coordinated as a whole

(3) Where the shapes, patterns or colors or any combinations thereof of the respective constituent articles give a conceptually related impression, such as narrativity, and thereby are found to be coordinated as a whole

72.1.1.3.1.1 Examples of cases where the shapes, patterns or colors or any combinations thereof of the constituent articles are represented through equivalent formative processing, and thereby are found to be coordinated as a whole

(1) Where the constituent articles are found to be coordinated in shape

(i) Where the shapes of all constituent articles have a constant order or tone

[Case example 1] “Set of television receivers”

[Case example 2] “Set of spice containers”
(ii) Where each constituent article represents a shape with equivalent characteristics

[Case example 1]
“Set of dining knives, forks and spoons”

[Case example 2]
“Set of audio equipment”
(2) Where the constituent articles are found to be coordinated in pattern
   (i) Where a pattern with the same motif is represented on each constituent article with an equivalent composition

   [Case example] “Set of storage racks”

   (ii) Where a pattern with the same mode of expression is represented on each constituent article with an equivalent composition

   [Case example] “Set of coffee ware”

(3) Where the constituent articles are found to be coordinated in color

   The constituent articles are not found to be coordinated
as a whole solely based on the mode of the color itself, but a specific color combined with a coordinated shape or pattern can serve as the basis for establishing coordination as a whole.

72.1.1.3.1.2 Examples of cases where the constituent articles represent one collective shape or pattern as a whole, and thereby are found to be coordinated as a whole

(1) Where the constituent articles are found to be coordinated in shape

Where the constituent articles constitute one collective shape in an integrated manner

[Case example 1] “Set of chairs”  [Case example 2] “Set of tables”

(2) Where the constituent articles are found to be coordinated in pattern

Where the patterns represented on the constituent articles form one collective pattern in an integrated manner

[Case example 1] “Set of kitchen equipment”  [Case example 2] “Set of spice containers”
(3) Where the constituent articles are found to be coordinated in color

The constituent articles are not found to be coordinated as a whole solely based on the mode of the color itself, but a specific color combined with a coordinated shape or pattern can serve as the basis for establishing coordination as a whole.

72.1.3.1.3 Example of a case where the shapes, patterns or colors or any combinations thereof of the respective constituent articles give a conceptually related impression, such as narrativity, and thereby are found to be coordinated as a whole

[Case example] “Set of smoker’s articles”

72.1.2 Partial design pertaining to a design for a set of articles

Article 2 of the Design Act provides that the design of a set of articles provided in Article 8 of the Design Act does not include a part of an article.

Therefore, an application for design registration for a design for a set of articles that includes a partial design is not found to be a set of articles, and a notice of the reason for refusal under Article 8 of the Design Act is given.

However, in the case of subject matter that is used while being placed on the floor, on a table or the like in a horizontal position whose bottom is normally not seen and the contents of a specific design can be derived by making comprehensive determination based on the statement in an application and drawings without the bottom view, the descriptions are treated as appropriate disclosure of constituent articles even without the bottom view.

(Note) Subject matter that is used while being placed on the floor, on a table or the like in a horizontal position means subject matter that is not lifted up upon use. This excludes subject matter that is used by lifting it up, such as a teapot. (Reference: 2000 Gyo Ke) No. 58, the "teapot" case)
Example of a case where descriptions are found to be appropriate disclosure of constituent articles even without the bottom view

[Case example] Set of speaker enclosures

72.1.3 Determination on the requirements for design registration, etc. concerning a design for a set of articles

Where an application for design registration for a design for a set of articles complies with the requirements provided in Article 8 of the Design Act, determination is made as to whether or not the application falls under the provisions including the following as the entire set of articles: the main paragraph of Article 3(1) of the Design Act (as well as Article 2 of the Design Act); novelty (Article 3(1) of the Design Act); creative difficulty (Article 3(2) of the Design Act); exclusion from protection of a design in a later application that is identical or similar to part of a design in a prior application (Article 3-2 of the Design Act); unregistrable designs (Article 5 of the Design Act); prior application (Article 9 of the Design Act); and related designs (Article 10 of the Design Act).

Meanwhile, with regard to the determination standards for applying the respective provisions mentioned above, the determination standards for a whole design apply, so see the parts concerning the respective provisions.

72.1.4 Exception to lack of novelty concerning an application for design registration for a design for a set of articles

An application for design registration for a design for a set of articles 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. and any other determination standards for receiving application of the provision of Article 4(1) or (2) of the Design Act, the determination standards for a whole design
apply, so see Part III “Exception to Lack of Novelty.”

72.1.5 Change of the gist concerning an application for design registration for a design for a set of articles

72.1.5.1 Gist of design of a design for a set of articles

The “gist of design of a design for a set of articles” refers to the contents of a specific design that can be directly derived from the statement in the application and drawings, etc. attached to the application based on the ordinary skill in the art of the design.

72.1.5.2 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

72.1.5.3 Specific handling of an amendment made to the statement of an application

(1) Amendment to correct into a set of articles listed in Appended Table 2

Where a set of articles listed in Appended Table 2 was not stated in the column of “Article to the Design” of the application as originally filed and designs for all articles of the specified constituent articles are described in the drawings, etc. attached to the application, an amendment to correct the statement in the column of “Article to the Design” of the application into a set of articles listed in Appended Table 2 changes the gist.

However, where the statement in the column of “Article to the
Design” of the application as originally filed was, for example, “a set (pair) of xxx set (unit),” “a set (pair) of xxx” or “xxx set (unit),” and is unregistrable under Article 8 of the Design Act, but a set of articles listed in Appended Table 2 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 correct the statement in the column of “Article to the Design” into such set of articles that could be inevitably derived does not change the gist.

(2) Amendment to correct into a classification of articles listed in Appended Table 1
Where a set of articles listed in Appended Table 2 is stated in the column of “Article to the Design” of the application, but only one design for a specified constituent article is described or only one design for any other article which is inappropriate is described in the drawings, etc. attached to the application, an amendment to correct the statement in the column of “Article to the Design” of the application into a classification of articles listed in the right-hand column of Appended Table 1 to which the article to such one design belongs or into a classification of articles equivalent in level to such classification does not change the gist.

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

(1) Amendment to delete an article that is found to be inappropriate as a constituent article of a set of articles
Where a set of articles listed in Appended Table 2 is stated in the column of “Article to the Design” of the application, but designs for all articles of the specified constituent articles as well a design for any other article which is inappropriate are described in drawings, etc. attached to the application, an amendment, made when dividing the application for design registration into one application for design registration for a design for a set of articles and one or more other applications for design registration, to delete the design for any other article which is inappropriate from drawings, etc. attached to the application does not change the gist.
(2) Amendment to supplement or delete an article that is found to be appropriate as a constituent article

An amendment to supplement or delete an article that is found to be appropriate as a constituent article exceeds the scope of identity that can be inevitably derived by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application as originally filed, and it changes the gist.

(3) Amendment to supplement drawings of the respective constituent articles with regard to an application for design registration that only has a drawing of the articles in a combined state

An amendment to supplement, in drawings, etc. attached to the application, drawings representing the forms of the respective constituent articles that cannot be inevitably derived by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application as originally filed changes the gist.

Where the forms of the constituent articles can be inevitably derived by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application as originally filed, an amendment to supplement drawings representing the forms of the respective constituent articles does not change the gist.

72.1.6 Division concerning an application for design registration for a design for a set of articles

72.1.6.1 Division of an application for design registration the design of which is found to be a design for a set of articles

Where a design constituted by multiple articles complies with the requirements provided in Article 8 of the Design Act, such design is found to be one design as a whole, so if one or more new applications for design registration are filed for respective constituent articles, 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.
which is not found to be a design for a set of articles

Where an application for design registration for a design for a set of articles does not comply with the requirements provided in Article 8 of the Design Act, such design is not found to be one design as a whole, so division based on the provisions of Article 10-2 of the Design Act is allowed, and the new application for design registration is deemed to have been filed at the time of filing the original application for design 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 I “Division of Applications for Design Registration.”

72.1.7 Application for design registration for a design for a set of articles containing a priority claim under the Paris Convention, etc.

A priority claim under the Paris Convention, etc. is effective with regard to an application for design registration for a design for a set of articles only where the constituent articles are filed as one application in the first country equivalent to the case of a set of articles in Japan.

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.”