

41.100.02**Handling Concerning Examination on Principal Paragraph of Article 3(1) for Three-Dimensional Trademarks**

1. Handling a case where articles which are clearly deemed to be able to have a use mode as a trademark are included among designated goods or services pertaining to an application of a three-dimensional trademark consisted of shapes of articles to be used for the provision of services or goods (including packages of goods) (hereinafter, referred to as “goods, etc.”).

See Examination Guideline for Trademarks: Chapter 2, Part 2: Principal Paragraph of Article 3(1)

2. Handling a case where description which is not adequate as a constituent of one three-dimensional shape (for example, a photograph, a cross-sectional view, etc. whose scale is different) is included in a plurality of photographs or figures representing a shape of a three-dimensional trademark

When the components and embodiment of a three-dimensional trademark that is described in the trademark description column cannot be concretely specified, since such a trademark will not qualify for the definition “a trademark which can be registered” as stipulated in the principal paragraph of Article 3(1) of the Trademark Act, it will violate the provisions of the paragraph, and cannot be defined as a trademark that can be registered. The following explains the handling of the case when a description that is comprised of many photographs showing the shape of the three-dimensional trademark or figure includes an inappropriate description of the three-dimensional shape (for example the photographs and sectional views with different scales).

In principle, changes or deletions will be rejected when they are made to a three-dimensional trademark that is not described in the supplementary remarks of the trademark description, because this changes the gist of the trademark application. However, in the following cases, an amendment which is made to correct the inappropriate description will be accepted. (In the case of an international

trademark application, the claimed trademark cannot be amended.)

(i) When the scales of the multiple photographs or figures of the components that make up a three-dimensional trademark that is described in the trademark description column differ, it will not change the shape of the three-dimensional trademark even if amendment was made by adjusting the scales of the photographs or figures to the same scale within the scope of shape similar to that of the three-dimensional trademark at the time of application. Thus, such an amendment will be accepted.

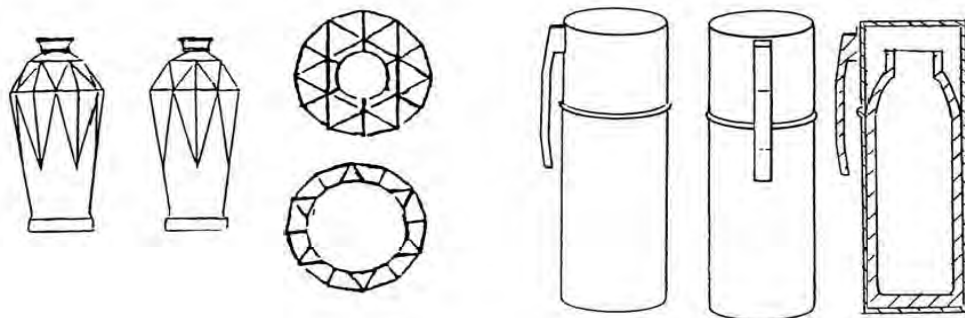
An amendment that comes to the recognition of the letters, figures, symbols or decorations added to the three-dimensional shape that have not been found at filing of the application, due to the scaling up, will be rejected because such an amendment will be an addition of new constituent.

(ii) Since the external appearance of a three-dimensional trademark must appeal to the visual sense, sectional views cannot be accepted. Even though that figure is deleted, as long as the identicalness to the components of a three-dimensional trademark at the time of application can be maintained, an amendment that involves the deletion of a sectional view will be accepted since it does not change the shape of the three-dimensional trademark.

However, when making an amendment, it is necessary to describe the entire trademark after it has been amended (See Form 15-2 [Remark 10]).

An amendment that involves the changing of a sectional view into a figure of an external shape will add a shape that was not contained in the description at the time of application, and will change the gist. Therefore such an amendment will be rejected.

[Specific examples] (Examples that run counter to the principal paragraph of Article 3(1) of the Trademark Act)



(An example of figures of different scales) (An example of figures of including sectional view)

3. The handling of a case when the photograph of a shape of a three-dimensional trademark is so unclear that the entire trademark cannot be clearly identified

When the entire three-dimensional trademark that is described in the trademark description column cannot be clearly specified, such a trademark does not comply with the provisions of the principal paragraph of Article 3(1) of the Trademark Act.

However, even though the three-dimensional trademark consists only of a three-dimensional shape and even when the photograph lacks clarity, when the entire shape can be approximately specified, it will not be regarded as being contrary to the principal paragraph of Article 3(1) of the Trademark Act. When a person submits a photograph that will allow the entire shape to be clearly specified as an amendment, as long as it is identical to the components of the three-dimensional trademark at the time of filing of the application, the amendment will be accepted. (In the case of an international trademark application, the claimed trademark cannot be amended). When making an amendment, it is necessary to describe the entire trademark after the amendment.

When a three-dimensional shape is clearly described, but the letters, figures, symbols or decorations (hereinafter referred to as “letters, etc.”) that have been added are so small that it is impossible from their appearance to understand their components, or when they are displayed so unclearly that it is too difficult to decipher, an amendment which is made by submitting a clear photograph of the shape to clarify the construction and embodiment will result in an addition of a new component part and therefore will not be accepted.

In such a case, the part that contains the letter or figure that was added to the three-dimensional shape will not be included as a subject for examination regarding the capability of being distinguished and judgment of similarity because it is undecipherable.

4. How to handle a case in which a photograph or figure that depicts the shape of a three-dimensional trademark consists of stores and houses on a street, or landscape, or when within the photograph or figure along with buildings and structures, it depicts plants, people, or pedestrian streets

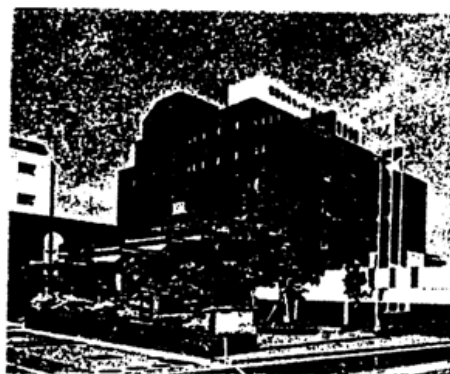
(i) When the three-dimensional trademark described in the trademark description

column is comprised of stores and houses on a street, or landscape, or when it includes people and pedestrian streets as components along with buildings, and when it can be acknowledged from an observation of the entire trademark that it is composed of a painting or landscape photograph, since the composition, contour and use mode as a three-dimensional shape cannot be specified, it will not be accepted as a three-dimensional trademark, and will run counter to the principal paragraph of Article 3(1) of the Trademark Act.

- (ii) However, since a trademark as described above will be perceived to clearly illustrate a plane trademark, in principle, if an amendment is made by changing the trademark into a plane trademark by deleting the claim that it is a three-dimensional trademark, it will be accepted. (In the case of an international trademark application, the claimed trademark cannot be changed into a plane trademark by deleting the claim that it is a three-dimensional trademark.)

In this case, when the description of the three-dimensional trademark is composed of multiple photographs or drawings, no amendment can be made to the description of any one of the photographs or drawings, because said amendment may change the gist.

[Specific examples] (Examples that run counter to the principal paragraph of Article 3(1) of the Trademark Act)



5. How to handle the case when, from the composition of the photograph or figure that describes the shape of a three-dimensional trademark, it is determined that the shape of the goods does not have the required thickness

Even though from the shape of the three-dimensional trademark that is described in the trademark description column it is evident that the goods do not have the

required thickness, as long as the shape is composed of the shape of the designated goods, it will be accepted as a shape that contains the elements of a three-dimensional shape.

6. How to handle the case when the edge of a photograph that shows the shape of a three-dimensional trademark is ripped, and as a result the entire contour and thus the entire shape of the three-dimensional trademark cannot be seen or specified

When the edge of a photograph that shows the shape of a three-dimensional trademark as described in the trademark description column is ripped, an amendment which involves the submission of a photograph or figure that allows the whole shape to be grasped is, in principle, a change or addition of a three-dimensional shape, and will change the gist. Therefore, such an amendment will not be accepted.

For example, when the three-dimensional trademark illustrates the interior of a room, and when that trademark is composed of the three-dimensional shape of the room as viewed from one direction, since the outline of the three-dimensional shape cannot be shown clearly, the composition and embodiment of the three-dimensional trademark cannot be concretely specified. Since such a trademark with such a composition cannot be used as an embodiment that functions as an identification sign representing the source of goods or services, it runs counter to the principal paragraph of Article 3(1) of the Trademark Act.

[Specific examples] (Examples that run counter to the principal paragraph of Article 3(1) of the Trademark Act)

