

49.01

How to Describe a Three-Dimensional Trademark in an Application

With regard to a three-dimensional trademark, the trademark stated in the column in which the trademark for which registration is sought is required to be stated (hereinafter referred to as the “column for stating the trademark”) in the application (hereinafter referred to as the “trademark stated in an application”) and the detailed description of the trademark are to be handled as follows.

1. Case where the column for stating the trademark includes an inappropriate statement

(1) If the trademark stated in an application is stated by using a drawing of a structure or shape that is not visible to consumers (a sectional view, etc.), given that a three-dimensional trademark must appeal to the visual sense, such statement is inappropriate for indicating a three-dimensional trademark, and the trademark is judged not to satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act.

In such case, a change, deletion, etc. of a three-dimensional trademark that is not a supplementary part of the trademark stated in the application is rejected in principle, as it will change the gist of the trademark.

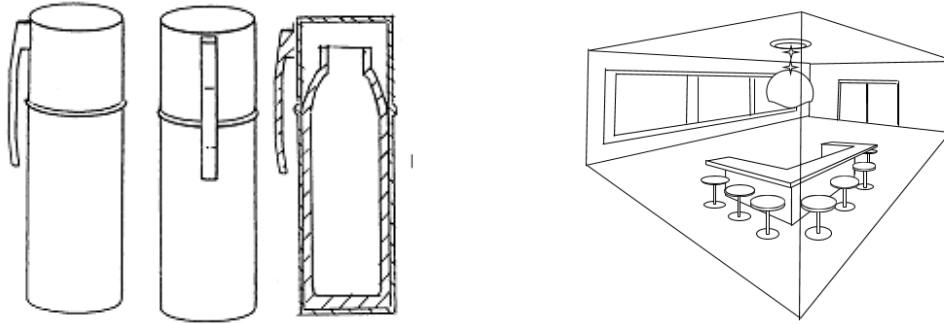
The above also applies to the case where a three-dimensional trademark is indicated by two or more drawings or photographs, including a drawing of a structure or shape that is not visible to consumers (sectional view, etc.). Indeed, an amendment to delete the sectional view, etc. in this case is acceptable as long as the composition remains identical to the composition of the three-dimensional trademark at the time of the filing of the application, as the amendment will not change the shape of the three-dimensional trademark (the trademark may not be amended in the case of an international application for trademark registration). However, in this case, it is necessary to state the entire trademark as after the amendment (deletion) (in the case of stating a trademark by using two or more different drawings or photographs, all drawings or photographs as after the amendment).¹

Meanwhile, an amendment to change that sectional view, etc. into a drawing indicating the outer appearance is rejected, as it will result in the addition of a shape that was not stated at the time of the filing of the application, and will change the gist of the trademark.

[Specific examples] Examples that are judged not to satisfy the requirements under the main

¹ See Note 10, Form 15-2 of the Regulation for Enforcement of the Trademark Act.

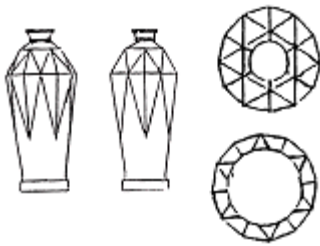
paragraph of Article 3(1) of the Trademark Act



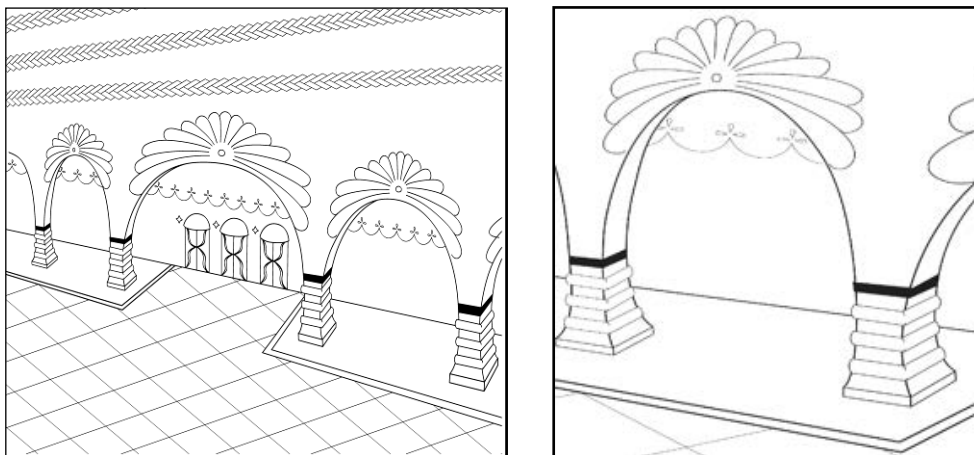
* Examples of a drawing of a structure or shape that is not visible to consumers

(2) If the scales of the multiple drawings or photographs that indicate the composition of a three-dimensional trademark differ, they are inappropriate for indicating a single three-dimensional trademark, and the trademark does not satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act.

[Specific examples] Examples that are judged not to satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act



* Example of drawings in different scales



* Example of drawings in different scales (example including a drawing that enlarges a part of the

interior of a facility)

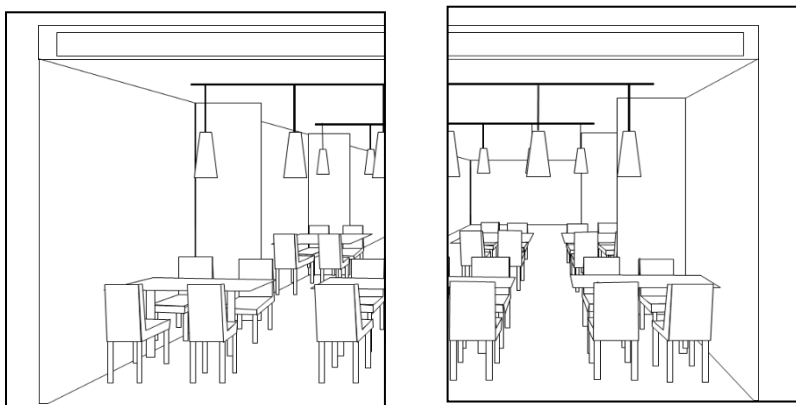
In a case where the scales of drawings differ as shown above, a change, deletion, etc. of a three-dimensional trademark that is not a supplementary part of the trademark stated in the application is rejected in principle, as it will change the gist of the trademark.

Indeed, an amendment to adjust the scales of the photographs or drawings to the same scale is acceptable as long as the shape remains similar to the shape of the three-dimensional trademark at the time of the filing of the application, as the amendment will not change the shape of the three-dimensional trademark (the trademark may not be amended in the case of an international application for trademark registration).

However, an amendment that, for example, makes characters, figures, symbols, or decorations, etc. added to the three-dimensional shape, which could not be recognized at the time of the filing of the application, recognizable due to enlarging the scale is rejected, as it will result in the addition of a new component part, and will change the gist of the trademark.

(3) If the three-dimensional shape constituting a single three-dimensional trademark is divided and indicated by using two or more drawings or photographs, the three-dimensional shapes indicated by the respective drawings do not match each other, so the trademark does not satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act.

[Specific example] Example that is judged not to satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act



* Example indicating the three-dimensional shape of the interior of a store by dividing it into two drawings

(4) If a three-dimensional trademark is solely comprised of a three-dimensional shape, and the entire shape cannot be clearly identified due to unclarity of the drawing or photograph, the trademark does not satisfy the requirements under the main paragraph

of Article 3(1) of the Trademark Act.

However, if a three-dimensional trademark is solely comprised of a three-dimensional shape, and the photograph is unclear, but the entire shape can be approximately identified, the trademark satisfies the requirements under the main paragraph of Article 3(1) of the Trademark Act. In this case, an amendment of the photograph into a clear one with which the entire three-dimensional shape can be clearly identified is acceptable as long as the composition remains identical to the composition of the three-dimensional trademark at the time of the filing of the application (the trademark may not be amended in the case of an international application for trademark registration). Meanwhile, in this case, it is necessary to state the entire trademark as after the amendment (in the case of stating a trademark by using two or more different drawings or photographs, all drawings or photographs as after the amendment).

If a three-dimensional shape constituting a three-dimensional trademark has characters, figures, symbols, or decorations, etc. (hereinafter referred to as "characters, etc.") added to it, and the three-dimensional shape is clearly stated, but the characters, etc. are indicated so small that their composition and mode cannot be identified, or they are indicated so unclearly that they are not easily legible, an amendment of the photograph into a clear one to make the composition and mode of the characters, etc. clear is rejected, as it will result in the addition of a new component part, and will change the gist of the trademark.

Meanwhile, if the part containing the characters, etc. added to the three-dimensional shape is unclear, the characters, etc. are treated as being illegible and are not made subject to examination for determining the distinctiveness or similarity of the trademark.

2. Case where a three-dimensional trademark is stated by using multiple types of lines, etc.

Handling in the case where the statement in the column for stating the trademark is made by drawing the mark in connection with the trademark with solid lines and other parts with broken lines, etc. (hereinafter referred to as "(having) parts drawn differently with solid lines/broken lines, etc."), and it is unclear whether the broken lines, etc. indicate a part that does not constitute the trademark or a part that constitutes the trademark, such as a pattern.

If the statement in the column for stating the trademark is comprised of solid lines/broken lines, etc., and it cannot be judged from the trademark stated in an application and the statement in the detailed description of the trademark (if there is a detailed description of the trademark) whether the broken line part is drawn as a part that does not constitute the trademark or as a part that constitutes the trademark, such as a pattern, the trademark does not satisfy the requirements under the main paragraph

of Article 3(1) of the Trademark Act.

[Specific example] Example that is judged not to satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act



* In the above drawing, if the broken lines indicate a part that constitutes the trademark, the following statement could be made, for example, in the detailed description of the trademark, in order to satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act. (Above drawing: Example of a statement in the detailed description of the trademark)

The trademark for which registration is sought is a three-dimensional trademark comprised of a three-dimensional shape to which the characters "JPO" indicated in broken lines on the cylindrical shape are added.

3. Case where the edge of a three-dimensional trademark is cut off, etc.

Handling in the case where the edge of a trademark stated in an application (if there are parts drawn differently with solid lines/broken lines, etc., the edge of a part drawn with solid lines, etc. that constitutes the trademark) is cut off by the frame of the column for stating the trademark

(1) If the edge of a trademark stated in an application is cut off by the frame of the column for stating the trademark, the outline of the entire three-dimensional shape is not clearly indicated, so the composition and mode of the three-dimensional trademark cannot be specifically identified. Therefore, as with the shape of goods or the shape of the outer appearance of a store, office, place of business, or facility (hereinafter referred to as a "store, etc."), if it is possible to indicate the outline of the entirety of the three-dimensional shape constituting the three-dimensional trademark in the column for stating the trademark, but the entirety fails to be indicated, the trademark does not satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act.

[Specific example] Example that is judged not to satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act



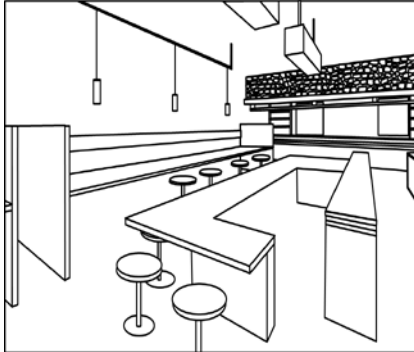
* Example of a three-dimensional trademark comprised of the shape of goods where the composition and mode as a three-dimensional trademark cannot be identified as an edge of the statement indicating the three-dimensional shape is cut off by the frame of the column for stating the trademark

Indeed, with regard to a three-dimensional trademark indicating the composition of the inside of a three-dimensional shape, such as the interior, there are cases where the edge of the three-dimensional shape, such as the ceiling, wall, floor, etc. is unavoidably cut off when trying to indicate the trademark, and it cannot be denied that the trademark could function as a mark for identifying the source within such scope of composition and mode.

Accordingly, if the trademark is a three-dimensional trademark indicating the composition of the inside of a three-dimensional shape, such as the interior, and it is unavoidable for the edge of the three-dimensional trademark to be cut off by the frame of the column for stating the trademark, the composition and mode as a three-dimensional trademark are judged to be identified within the scope stated in the column for stating the trademark. In this case, it must be made clear in the detailed description of the trademark that the trademark is a three-dimensional trademark indicating the composition of the inside of a three-dimensional shape, and (i) if there is no statement of the detailed description of the trademark or (ii) if it is unclear from the statement of the detailed description of the trademark that the trademark is a three-dimensional trademark indicating the composition of the inside of a three-dimensional shape, the trademark does not satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act. In the case of (ii), the trademark does not satisfy the requirements under Article 5(5) of the Trademark Act either.

[Specific example] Example that is judged not to satisfy the requirements under the main paragraph of Article 3(1) and Article 5(5) of the Trademark Act

[Trademark for Which Registration Is Sought]



[Three-Dimensional Trademark]

[Detailed Description of Trademark]

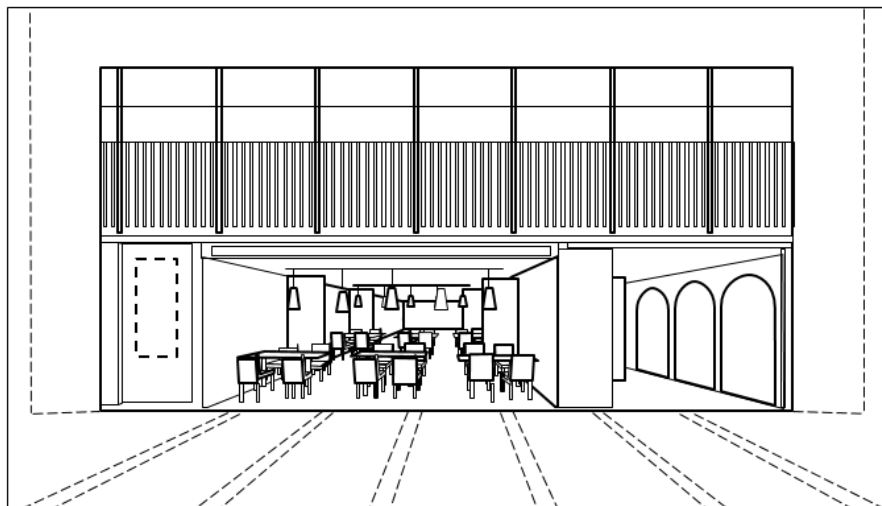
The trademark for which registration is sought (hereinafter referred to as the "trademark") is a three-dimensional trademark comprised of three-dimensional shapes including a u-shaped counter and stools.

(Omitted)

* Example in which the edge of the three-dimensional trademark is cut off by the frame of the column for stating the trademark, and it is not judged to be clear from the detailed description of the trademark that the trademark is a three-dimensional trademark indicating the composition of the inside of a three-dimensional shape (example of (ii) above)

(2) If the edge of a part that does not constitute the trademark (broken lines, etc.) is cut off by the frame of the column for stating the trademark, but the edge of the part that constitutes the trademark (solid lines, etc.) is not cut off by the frame of the column for stating the trademark, the trademark satisfies the requirements under the main paragraph of Article 3(1) of the Trademark Act.

[Specific example] Example that is judged to satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act



* Example in which the edge of the part that constitutes the trademark (solid lines, etc.) is not cut off

4. Statement of the "detailed description of the trademark" for a three-dimensional trademark

Case where statement of the detailed description of the trademark is necessary (Article 5(4) of the Trademark Act; "case where it is necessary for identifying the trademark" in Article 4-8(2)(iii) of the Regulation for Enforcement of the Trademark Act) for a three-dimensional trademark and the handling thereof

(1) For example, in the following cases, a statement of the detailed description of the trademark is necessary for identifying the trademark for which registration is sought.

- Case where there are parts drawn differently with solid lines/broken lines, etc. in the column for stating the trademark

- Case where the trademark is a three-dimensional trademark comprised of the shape of the interior of a store, etc., and the edge of the three-dimensional trademark is cut off by frame of the column for stating the trademark

(2) If there are parts drawn differently with solid lines/broken lines, etc. in the column for stating the trademark, the meaning of the differently drawn lines, etc. is unclear from the trademark stated in an application alone, and the composition and mode of the trademark cannot be clearly identified. Therefore, if there are parts drawn differently with solid lines/broken lines, etc., the details of the differently drawn lines, etc. must be stated in the detailed description of the trademark, and (i) if there is no statement of the detailed description of the trademark or (ii) if the composition and mode of the three-dimensional trademark are unclear from the trademark stated in the column for stating the trademark and the statement in the detailed description of the trademark, the trademark does not satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act. In the

case of (ii), the trademark does not satisfy the requirements under Article 5(5) of the Trademark Act either.

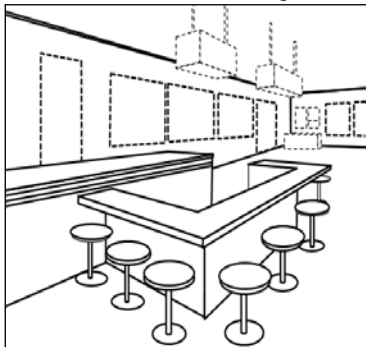
(3) See Item 3(1) for a statement of the detailed description of the trademark for a three-dimensional trademark indicating the composition of the inside of a three-dimensional shape, such as the interior.

Handling of the case where a mark constituting a three-dimensional trademark and description of the mark stated in the detailed description of the trademark do not match each other

(4) If the trademark stated in an application and the mark stated in the detailed description of the trademark do not match each other (including the case where a mark which is not indicated in the trademark stated in an application is stated in the detailed description of the trademark), the trademark does not satisfy the requirements under Article 5(5) of the Trademark Act.

[Specific example] Example that is judged not to satisfy the requirements under Article 5(5) of the Trademark Act

[Trademark for Which Registration Is Sought]



[Three-Dimensional Trademark]

[Detailed Description of Trademark]

The trademark for which registration is sought (hereinafter referred to as the "trademark") is a three-dimensional trademark indicating the composition of the inside of a store, and it is comprised of a three-dimensional shape of the interior of a store including a U-shaped counter whose inside is comprised of a cupboard, stools, a table for providing liquor and food, etc. installed adjoined to the counter, and two lamp shades.

It must be noted that the broken lines merely indicate an example of the shape of the store, and do not constitute a part of the trademark.

(Omitted)

* Example in which both a U-shaped counter "whose inside is comprised of a cupboard" that is not stated in the column for stating the trademark and the "two lamp shades" drawn with broken lines are not elements constituting the trademark, and the trademark stated in the application

and the detailed description of the trademark do not match each other

(5) If a trademark is solely comprised of a three-dimensional trademark, and the entire shape cannot be clearly identified due to unclarity of the drawing or photograph, even if the mark is specifically stated in the detailed description of the trademark, that description is not judged to match the trademark stated in the application, so the trademark does not satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act as well as the requirements under Article 5(5) of the Trademark Act.

5. Examination on the requirement of a single trademark on each application for a three-dimensional trademark comprised of multiple three-dimensional shapes (Article 6(1) of the Trademark Act)

As it has been clarified in the Examination Guidelines for Trademarks that a three-dimensional shape includes "that comprised of multiple three-dimensional shapes" (Part I, Chapter 2, Item 6(1) [main paragraph of Article 3(1)] of the Examination Guidelines for Trademarks), there is a question of in what kinds of cases a three-dimensional trademark comprised of multiple three-dimensional shapes violates Article 6(1) of the Trademark Act.

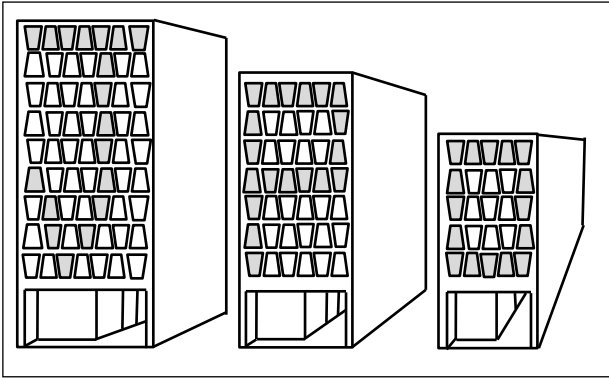
In the case of a character trademark or a plane trademark, even if it is comprised of multiple separate characters or figures, as long as they are stated by using a single drawing or photograph, the trademark does not violate Article 6(1) of the Trademark Act.

Also in the case of stating a three-dimensional trademark by using a single drawing or photograph, no reason can be found to adopt an approach different from the case of a character trademark or a plane trademark for the examination on the requirement of a single trademark on each application, so the judgment will be made in the same manner. In other words, as long as the multiple three-dimensional shapes are stated by using a single drawing or photograph, they are judged to constitute a single three-dimensional trademark, and the trademark does not violate Article 6(1) of the Trademark Act in principle.

Even in the case where a three-dimensional trademark comprised of multiple three-dimensional shapes is stated by using a single drawing or photograph, if they cannot be supposed as the shape of the designated goods, etc. and their use as advertisement of goods, etc. cannot be naturally supposed, a notification of reason for refusal stating that the trademark is judged not to satisfy the requirements under the main paragraph of Article 3(1) of the Trademark Act is given (see Part I, Chapter 2, Item 6(7) [main paragraph of Article 3(1)] of the Examination Guidelines for Trademarks for details).

[Specific example] Example that is judged not to violate Article 6(1) of the Trademark Act

The following is an example of a trademark that does not violate Article 6(1) of the Trademark Act, and not an example of determination as to whether the trademark falls under the main paragraph of Article 3(1) of the Trademark Act.

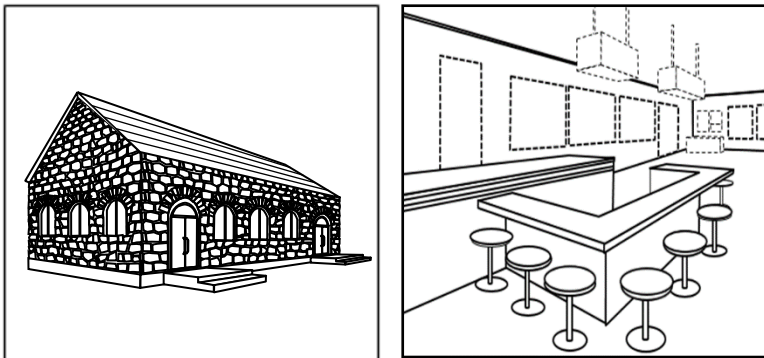


* Example of stating a three-dimensional trademark comprised of three three-dimensional shapes by using a single drawing

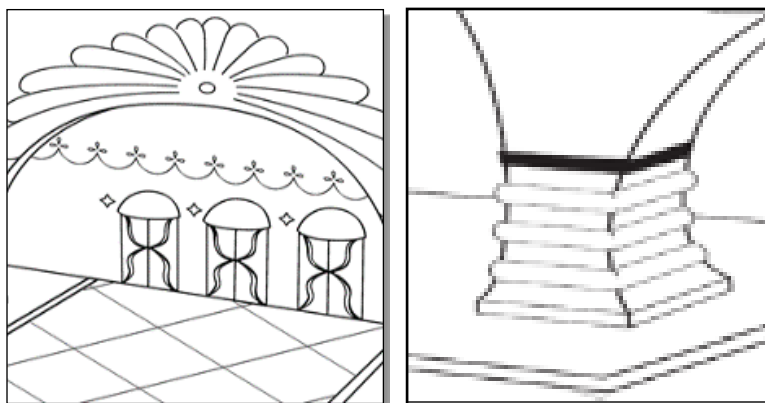
If a three-dimensional trademark is stated by using two or more drawings or photographs and it is clear that they indicate two or more different three-dimensional trademarks, the trademark is judged to violate Article 6(1) of the Trademark Act as the application is found to have been filed for multiple trademarks.

[Specific example] Example that is judged to violate Article 6(1) of the Trademark Act

The following is an example of a trademark that violates Article 6(1) of the Trademark Act, and not an example of determination as to whether the trademark falls under the main paragraph of Article 3(1) of the Trademark Act.

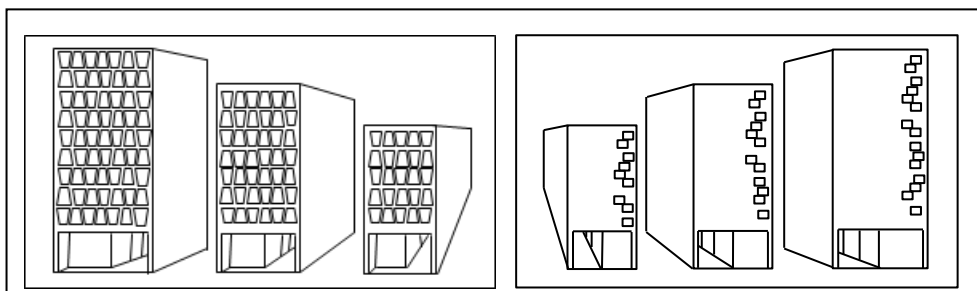


* Example of an application filed by indicating the outer appearance and the interior of a store by using separate drawings



* Example of an application filed by indicating unrelated interior parts by using separate drawings

It is acceptable to indicate a three-dimensional trademark comprised of multiple three-dimensional shapes from two or more different angles (however, the three-dimensional shapes indicated by the respective drawings need to match each other).



* Example recognized as indicating, from different angles, three-dimensional shapes that have the same outer appearance