

From Filing to Registration of Design

**Japan Patent Office
Asia-Pacific Industrial Property Center. JIII**

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1. The Design Registration System in Japan

1-1. History of Japanese Design Law

*1885–1886 Mr. Korekiyo Takahashi made a trip to each of the U.S. and Europe in order to observe patent law practice.

Design Ordinance 1888, was enforced on Feb. 1, 1889.

→ To protect entrepreneurs.

(1889–1899: Drawings of registered designs were published in the Patent Gazette)

Design Law 1899, was enforced on July 1, 1899.

*July 15, 1899, Japan joined the Paris Convention.

Design Law 1909, was enforced on Nov. 1, 1909.

→ In harmony with domestic economics (reducing fees).

Design Law 1921, was enforced on Jan. 11, 1922.

→ To make the subject matter clear by deleting “applied”.

(1933– Representations of registered designs were published in color, in the Design Gazette)

*1950: The issue of Japanese imitation goods started to be discussed at home as well as abroad.

*1951: Raymond Lowey visited Japan.

Design Law 1959, was enforced on April 1, 1960.

→ Introducing world wide novelty to encourage industries to manufacture original designed products.

*1991–1997 A series of meetings were held by a Committee of Experts on the Development of the Hague Agreement.

Design Law 1998, was enforced on Jan. 1, 1999.

*1999 Diplomatic Conference on the Geneva Act

1-2. Designs and articles

(1) Definition

Under Japanese Design Law, it is understood that a design must have a shape because it must relate to an article with a solid body. Under Japanese Design Law, the design must show an aesthetic impression. A design for an ornament which fails to designate the shape of the article itself cannot be considered a design under Design Law. In other words, a design under Japanese Design Law (hereinafter JDL) means the appearance of an article produced industrially. (Sec. 2, paragraph. 1)

(2) Articles and products

An article is interpreted as a tangible product, such as a movable property, which has a shape and can be seen normally. Articles registrable under Japanese Design Law are listed in the *Classes of Articles* prescribed by ordinance of the Ministry of Economy, Trade and Industry. Articles not registrable under Japanese Design Law are real estate, electricity, heat, gas, or liquid products that have no specified shape.

*A prefabricated house falls under Class 61 of the *Classes of Articles*. It is deemed to be an article since it is industrially manufactured and traded as a movable property.

(3) Component parts

An article is traditionally interpreted as either a product having an inseparable solid body or a complex product consisting of some component parts assembled before being put on the market. There are many articles (parts) which serve as component parts to another article, such as padding for heels or insertable soles for footwear, which fall under Class 6 of the *Classes of Articles*, or an automobile grille, which falls under Class 35 of the *Classes of Articles*. Under the former Design Law, parts of articles not separated into component parts are not subject to protection, whereas some foreign design laws do allow it.

(4) Portion of an article

The present Design Law introduces the concept of parts of an article in Section 2. Therefore, applicants may obtain design registration for a part of an article on the condition that the overall shape of the article is shown in a representation. The JPO uses the special term “partial design” to indicate a design for a part of an article. In Japanese, a partial design is called “BUBUN ISHOU.” This new concept has been introduced to protect creative designs for a portion of an article. This new system in Japan seems to be set up under the influence of the dotted line practice in the U.S.

(5) A set of articles

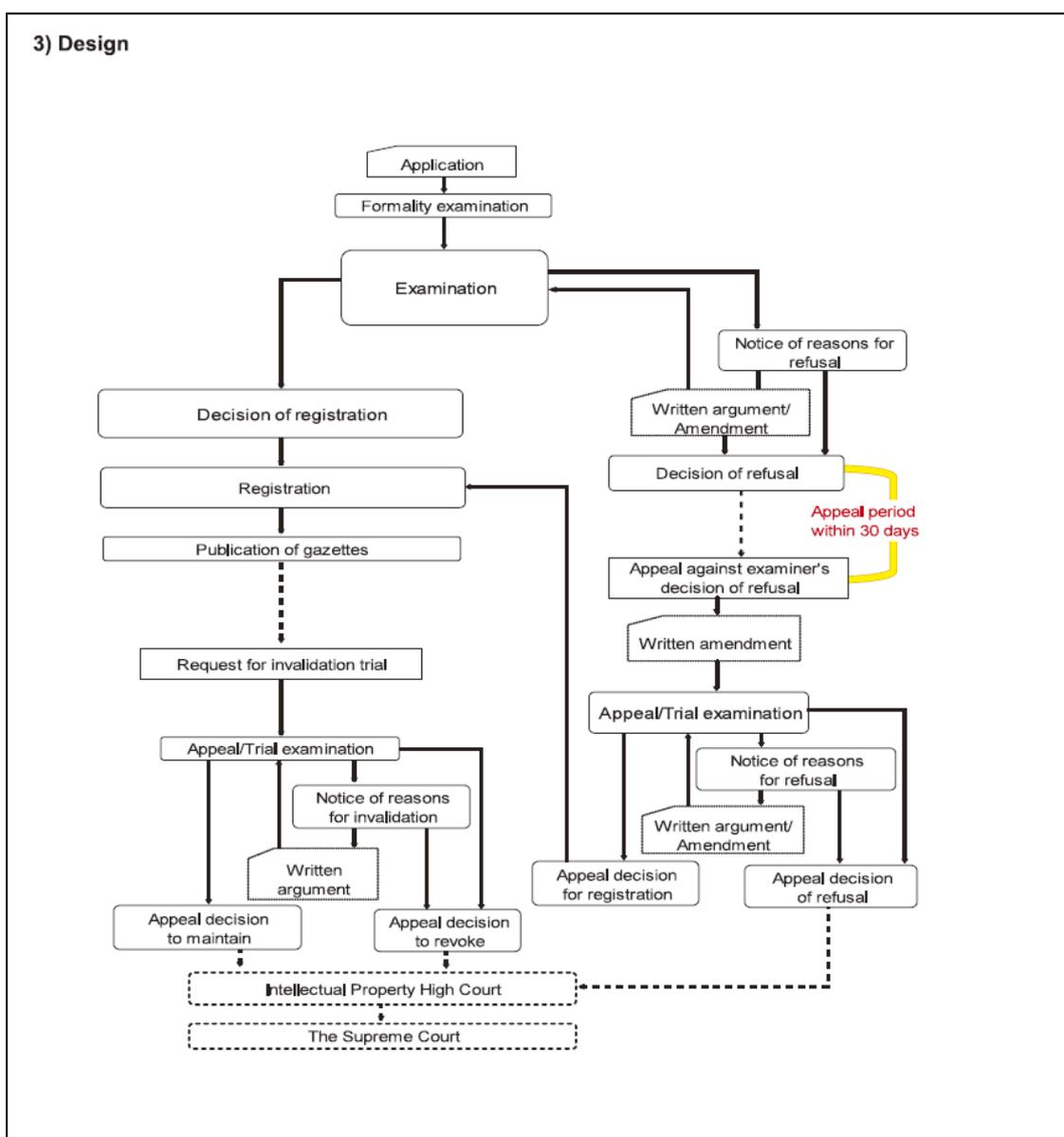
Under Japanese Design Law, a design must relate one single article. However, a number of articles, such as a knife, fork and spoon, may usually be traded as a set of articles. Therefore, as an exception to the provisions in Section 7, a design for items prescribed by ordinance of the Ministry of International Trade and Industry is protected as a design for a set of articles. The number of items officially admitted is fifty six, and listed in the Annexed Table 2 of the Design Law Enforcement Regulations. (Cf.ANNEX-6)

1-3. Flow chart (From filing to registration)

Source: JPO

http://www.jpo.go.jp/cgi/linke.gi?url=/shiryou_e/toushin_e/kenkyukai_e/annual_report2005.htm

The following flow chart shows various proceedings, beginning with filing a design application. If an applicant receives a decision from an examiner, stating that the design has been rejected, the applicant may proceed step by step to have the decision overruled and, if necessary, appeal to the Supreme Court.



1-4. Registered design right

(1) Ownership

When a design is recorded in the Design Register, its owner has an exclusive right to use the registered design and designs similar thereto. The owner may grant exclusive and non-exclusive licenses based on the registered design right. (cf. Sections 20, 23, 27 and 28) Parties who may obtain a design registration are designers, creators or the successors in title to designers or creators. (cf. Patent Law Sections. 33 to 34 apply mutatis mutandis to design applications under Sec. 15).

(2) The scope and duration of protection

In Japan, the term of a design right is 15 years from the date of the registration of its establishment. (cf. Sec. 21)

The scope of protection is specified on the basis of statements in the application request and representations attached to the request (cf. Sec. 24). Therefore, the gist of a design should be set out clearly in both the application request and representations. If there is some discord between the statement and the drawings in a design application, the design will be deemed not to be clearly specified and the application will therefore be rejected.

(3) Enforcement, sanctions and remedies

Since a registered design right is an officially recognized right, a proprietor may sue any party who uses the design or designs similar thereto without consent according to the Code of Civil Procedure, as well as other rights under the Civil Code. Japanese Design Law provides for various sanctions and remedies in this regard. (cf. Sections. 37 to 40 and 69)

The owner of a design right or an exclusive licensee may require a party infringing on the design right or exclusive license to pay compensation for damages. (cf. Civil Code, Art. 709)

(4) Indication of a design registration (cf. Sec. 64)

In the market, it is difficult for the average person to determine whether a design is registered or not. Therefore, it is recommended that products to which a registered design, or a design similar thereto, has been applied, or the packaging of such products, be clearly marked to indicate that the design has been registered.

(5) Presumption of negligence (cf. Sec. 40)

Under Section 40 of the Design law, a party who has infringed on a design right or exclusive license of another party shall be presumed to have been negligent as far as the act of infringement is concerned.

[A self-propelled Crane Case]

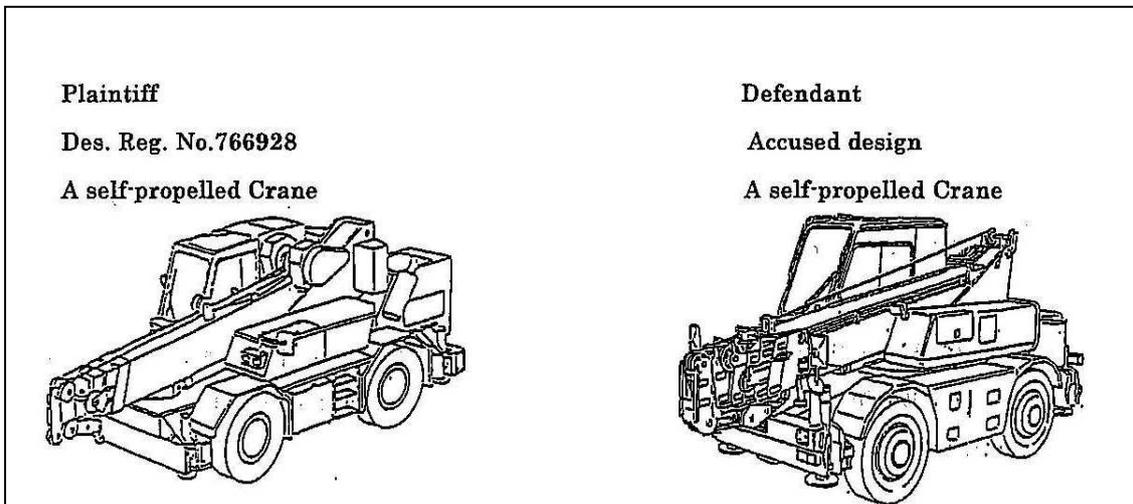
Tokyo District Court, January 24, 1997 (Case No. Heisei 5 (Wa) 3966 of 1993)

The court issued an order that the defendant shall not make, sell or exhibit for sale the self-propelled crane infringing the plaintiff's design right.

The court ordered the defendant to pay at least ¥142,560,000 (\$1,188,000: 1\$=¥120) as compensation to the plaintiff.

The plaintiff, K registered the design of a self-propelled crane on April 25, 1989 (Des. Reg. No.766928). The plaintiff has made self-propelled cranes embodying the registered design.

The defendant, KS started to make, sell and exhibit for sale self-propelled cranes around December 1991.



**The defendant appealed to the Tokyo High Court (Case No. Heisei 9 (Ne) 404 of 1997).*

The court issued to dismiss the appeal on June 18, 1998.

1-5. Special registration

(1) Related design registration

When designs similar to each other are filed by the same applicant with the JPO on the same date, one of them, chosen by the applicant, may be registered as the principal design and other design(s) as related design(s). (cf. Sec. 10)

The owner of a related design may bring an action against a party who infringes on that right to the related design. Fees for registration and maintenance of the registration of a related design are the same as those for the principal design registration. The rights to a related design and its principal design may not be transferred independently. (cf. Sec. 22)

(2) Secret design

A design can be kept secret for up to three years from the date of its registration. In such a case, it is necessary to indicate that the applicant has requested that Section 14 be applied at the time the design was filed with the JPO.

2. Filling an application request with drawings and the Formality check

2-1. Application request

Since Jan. 1, 2000 the JPO has required that applications for design registration be made either by computer or in person. In the case a party files the application in person, the applicant must request the Patent Application Processing Center to transform the documents into electronic data. Therefore, all electronic data regarding the filed designs are deemed to be original, except for specimens, which must be submitted in person and stored at the JPO. The JPO will ask the Patent Application Processing Center to take pictures of the specimens and transform them into electronic data that is not deemed original but is nonetheless used the same way as other data.

Since a design subject to Japanese Design Law should be clearly understandable on the basis of the application request and representation, it is necessary to prepare an application which shows the claimed design clearly. Section 6 of Japanese Design Law specifies contents required within a design application. As stipulated in Section 6, applicants must indicate the article to which the design is related, as well as the name or address of the applicants and the creator/designer.

(1) Design for a portion of an article

When the applicant files a claim for a partial design registration, the applicant must indicate this in the application request. The drawings for a partial design application must show exactly what the applicant is claiming to be part of an article, as well as the remainder of the article. The JPO recommends that the partial design be shown by solid lines and the remainder by dotted lines. In the case of photographs, it is recommended that the overall shape of the article, except for the partial design, be shown in gray or black. In either case, the statement specifying what is claimed and by what method the boundaries of the claimed design are shown in the representations, e.g. the use of solid lines and dotted lines or shading of the remainder, must be in the request.

(2) Design for a set of articles

As an exception to the provisions of Section 7, a design for several items is protected as a design for a set of articles as prescribed by ordinance of the Ministry of International Trade and Industry. The number of items officially admitted is fifty six, and is listed in the Annexed Table 2 of the Design Law Enforcement Regulations. As usual, it is necessary to submit illustrations representing six views for each article composing the set, as well as a set of six views for the complete set.

(3) Related design registration

It is necessary to indicate the principal design in the request form, when applicants file for related design registration.

(4) Secret design

It is necessary to indicate that the applicant has requested that Section 14 be applied when filing a design with the JPO. In this connection, it is necessary to pay ¥5,100- in addition to the standard design application fee.

(5) Priority claim and Priority certificates

A foreign applicant who wishes to have a design registered at the JPO, must indicate any priority claim in the application request and state: the applicant's(s') full name and full address, the designer's(s') full name and full address and relevant priority data, e.g. the country, the filing date and the filing number of the first application. A certified priority document is necessary to complete the application, and must be submitted within three months from the Japanese filing date. (cf. Sec. 15 of Japanese Design Law, Sec. 13 of the Design Law Enforcement Regulations)

(6) Application claims regarding loss of novelty, and Certificates regarding the loss of novelty

Section 4 of Japanese Design Law provides for exceptions to the loss of novelty. Under Section 4, the design (a) which was publicly known, published or available to the public on the Internet on or before the date of filing of the present design (A) may not be cited as a proof to the loss of novelty of the present design (A) which was filed by the owner of the design (a), provided that the applicant submits a request for the application of Section 4 when filing the design registration request and submits a certificate regarding loss of novelty of the design (a). (cf. Sec. 4)

- Example-

Design (a) is published on Jan. 1, 2005. Owner of the design (a) is Mr. J.

Design (A) is filed with the JPO on May 1, 2005. Owner of the design (A) is Mr. J.

Mr. J may submit a certificate regarding loss of novelty of the design (a).

The Examiner does not cite the design (a) for (A).

(7) Conversion of applications

Under Section 13, both a patent application and a utility model application may be formally converted into a design application within a limited time period. Since the Japanese industrial property laws have adopted the first-to-file rule, it is expected that applicants for a patent or a utility model might misunderstand given categories for protecting their creations. However, changing the design shown in the initial application is not permitted. When conversion of an application is allowed, the design application is deemed to have been filed on the date that the initial patent or utility model application was filed with the Japan Patent Office.

2-2. Drawings attached to the request

(1) Drawings, Photographs, Specimens

Section 24 of Japanese Design Law stipulates that indications or statements in the application request, and representations attached thereto, must specify the scope of a registered design. Therefore, it is required that the drawing show the design clearly and objectively. The officially accepted method of drawing is set out in the Design Law Enforcement Regulations (DLER) and Form No.8.

According to the DLER, a figure showing a view may not include a center line, horizontal lines, letters or marks. Under restrictions on electronic filing, each figure must be no longer than 113 mm×150 mm. The drawing should be made using about 0.4 mm thick lines, about 0.4 mm dotted lines and about 0.2 mm alternate long and short dash lines. In the sectional view, about 0.2 mm lines are used to show a cross section.

(2) Orthographic projection

Every Japanese person has studied orthographic projection methods during the course of compulsory education. Under Japanese Design Law, the government has officially adopted the orthographic projection method for the representation of drawings. Applicants are required to submit a set of at least six views in orthographic form so as to show the design clearly.

(3) New methods for representing a design from January 1, 1999

In addition to the orthographic projection drawing method, either isometric drawings or oblique projection may be used. In the case of an oblique projection, either a cabinet drawing or cavalier drawing may be used. When a design is represented by oblique drawings, the method used, i.e. cabinet or a cavalier, must be indicated in the request, along with its the angle of inclination. These methods may be used together with orthographic projection in one application.

(4) Shading, such as lines or dots

Since Jan. 1, 2000, it is not necessary to erase lines or dots used to shade a three-dimensional article. When shading is used in a drawing, the shading method must be indicated in the application request. An example of this indication is that the dots shown within the entire area of a figure are for shading only.

(5) Computer-generated graphics

The JPO accepts drawings produced by computer. However, when gradation of brightness is used to indicate a surface shape, a statement to that effect must be included in the request. An example of this indication is that the gradation is used to show surface shape only.

(6) Photographs

Each photograph submitted must show only the design, with nothing else in the background. Other requirements are the same as for drawings.

(7) Specimens

Specimens must be unbreakable, and must be smaller than 260 mm×190 mm. They may not be more than 7 mm thick when pasted on a blank form attached to the application request. In the case of a specimen made of cloth or paper, it may be less than 1,000 mm×1,000 mm, provided that the specimen is held up in less than 260 mm×190 mm×7 mm. (Section 5 of the Design Law Enforcement Regulations)

(8) Drawings regarding a design-in-part

The drawings for a partial design application must show exactly what the applicant is claiming as a part of an article, as well as the remainder of the article. The JPO recommends that the partial design be shown by solid lines and the remainder by dotted lines. In the case of a photograph, it is recommended that the overall shape of the article except for the partial design should be shown in gray, black or any other color.

2-3. Documents an applicant may submit

(1) Statement of Features

This new system was introduced under present Japanese Design Law, and allows an applicant to submit a statement describing the feature(s) of the design when filing a request for design registration, or while the application is pending in the course of examination, appeal, trial or retrial.

The statement of feature(s) of the design has been provided so as to help examiners and the public understand the applicant's personal view on the design. However, the statement of feature(s) is not a document which specifies the scope of the design under Article 24. It is intended to shorten the examination time, since it gives examiners good information on which to base accurate decisions on the area of the prior designs. (Section 6 of the Design Law Enforcement Regulations)

(2) Power of Attorney

It is not necessary to submit a Power of Attorney in the initial application filing procedure. However, the JPO may later require a Power of Attorney for certain kinds of procedures, e.g., demanding an appeal against an application rejection, an appeal to invalidate a granted registration, etc. It is recommended that foreign applicants send an executed Power of Attorney to their Japanese design registration administrator or agent at their earliest convenience after filing a design application.

2-4. Formality checks and objections

Clerical officers check all design applications to ensure that they satisfy the formality requirements. (cf. Sec. 17 of the Patent Law applies *mutatis mutandis* to design applications under Sec. 68). More specifically, they check whether necessary items are indicated in the request, for example, the name and address of the applicant, as well as the name of the article. They also check whether the necessary number of

representational views for the design has been submitted or not. If t any discrepancy is found in the application, t the applicant is invited in the name of the JPO Commissioner to make a formality amendment. If this is not done within 30 days from the order, the application is then dismissed.

3. Novelty examination

3-1. Classification (Japanese domestic classification)

In a request for design registration, the title or name of an article must be indicated in accordance with corresponding articles from the *Classes of Articles* as prescribed by ordinance of the Ministry of Economy, Trade and Industry. (cf. Sec. 7) The *Classes of Articles* covers nearly 2,500 classes of articles. However, the JPO has published a classification list based on the *Classes of Articles* in order to help applicants select suitable titles or articles for design applications, since categories for new articles and products have increased significantly in recent decades. The list is known as the Japanese Design Classification (hereinafter the JDC).

In October, 1998, the JPO started to use the International Design Classification (Locarno Classification, hereinafter the IDC) secondarily only for Japanese Design Gazettes. The IDC in the gazettes is applied so as to help foreign applicants understand the article regarding the design. Since then, classes and subclasses under the IDC are cited with classes under the JDC on each design gazette.

3-2. Searching the prior art data base

At the JPO, designs published in documents such as design gazettes, official patent or utility model publications, or private publications (incl. magazines, catalogues and periodicals), are assigned by means of the JDC. This helps ensure that substantive examination proceeds smoothly.

The JPO has nearly fifty examiners with specialized university training in industrial design, art and architecture. When examiners are assigned new design applications according to the JDC, they begin searches for identical or similar designs among prior documents stored in computers.

3-3. Examination standards

(1) Requirements for registration (cf. Sections 17 and 48)

It Japan it is required that a design have objective and absolute novelty (cf. Sec.

3 paragraph 1). In addition to the novelty requirement, Japanese Design Law requires that a design have creativity (cf. Sec. 3 paragraph 2). A design dictated solely by the technical function of its product cannot be protected under sui generis design law. This is a common principle within Intellectual Property Laws from throughout the world. Following this principle, Japanese Design Law excludes solely functional designs from being subject to protection under Secs. 2 and 5.

Japanese Design Law requires designers, creators and their successors in title to file and register designs with the Patent Office (cf. Sec. 20). These designs must meet conditions as established by Japanese Design Law. (cf. Sections 17 and 48) The requirements listed under these Sections are as follows. (Items with* are not stipulated in Sec. 48.)

The Examination Standards include the following requirements as well as examples and explanations regarding the standards.

- (1) A design shall be used industrially. Sec. 3 (1)**
- (2) A design shall be new. Sec. 3 (1)**
- (3) A design shall have creativity. Sec. 3 (2)**
- (4) A design shall not be the same as part of a design that has been filed earlier and published later than its filing. Sec. 3 bis.**
- (5) A design shall not contravene public order or morality. Sec. 5 (1) (i)**
- (6) A design shall not cause confusion with another person's business. Sec. 5 (1) (ii)**
- (7) A design shall not be composed only of shapes dictated by technical function. Sec. 5 (1) (iii)**
- (8) In the case of a design for a set of articles, the design shall be coordinated as a whole. Sec.8**
- (9) A design shall be first filed with the Patent Office. Sec.9**
- * (10) A design may be registered as a "related design" regarding another design filed on the same day: however, the design must be similar to another design and the owner of both designs must be the same person. Sec.10**
- (11) A design only being similar to a related design cannot be registered. Sec. 10 (2)**
- (12) A design must meet conditions provided for in a treaty. Sec. 17 (1) (ii)**
- * (13) More than one design shall not be claimed in one application. Sec. 7, Sec. 17 (1) (iii)**

(2) Amendment

Since Japanese Design Law has adopted the first-to-file rule, it allows applicants to correct errors and ambiguous descriptions which do not change the gist of the design represented in the initial design application. Accordingly, the applicant may submit an amendment to correct errors and ambiguous descriptions. (cf. Section 17 paragraph 4 of the Patent law *mutatis mutandis* to design applications under Sec. 68 paragraph 2) However, if a correction is regarded by the examiner as having changed the gist of the initial design, it will be declined (Sec. 17 bis). Since April 1999, the JPO has stopped inviting applicants to correct minor flaws in drawings. As a result, amendments correcting defects in the drawings after an Office Action will often result in the dismissal of the amendment, since the examiner considers amendments to be equivalent to the addition of new matters to the initial design or a change of its gist.

In many examination and trial cases, amendments that result in a change of some portion of a shape or pattern have been declined. A change in color or description relating to transparency is always determined as being a change to the gist of the design. Whether an amendment changes the gist of the initial Japanese design application or not is determined by the examiner based on a general knowledge of designs present in the field of products, as well as background on the purpose of the article and how the article, to which the design relates, is used.

(3) One design per application rule

Since Section 7 requires that an application cover only one design, any design application including two or more designs must be divided into two or more applications. In the case of two or more articles being indicated in one request, it is necessary to make two or more requests.

【EXAMPLE】

Indication of an article in the original application request:

【A bus and a bus toy】 * This means more than one article is indicated.

Therefore, it is necessary to amend or divide the original application.

Amendment : 【A bus】

Divisional application: 【A bus toy】 (cf. Sec. 10bis)

3-4. Novelty and Creativity

(1) Novelty

Under Copyright Law, the term “original” means that a work was made or written by an author and that author alone without any acts of copying involved. On the other hand, “new” is used under Design Law to mean that a design was not published before the filing date of a design application. “Objective novelty” is the same concept as that used under Patent Law. When a design is evaluated in terms of “relative novelty” or local novelty, it is compared to prior designs from a restricted geographic area, a specified industrial sector and a limited period of time.

(2) Creativity

Under the former Design Law (1959), a design which is the same as a well-known shape or design may not be registered even where the article to which the design is applied is different because the design is considered not creative under Section 3 paragraph 2 of the former Design Law. The revised Design Law (1998) added the word “publicly known” to the former provisions of Section 3 paragraph 2. As a result, under present Design Law, the design considered to be created on the basis of designs published in the Official Gazette or any other publication including foreign catalogues cannot be registered. Therefore, a registrable design must meet higher standards under the present law.

3-5. First Office Action

For the benefit of both applicants and examiners, the JPO has drawn up Design Examination Standards and other guidelines regarding applications of Section 17. According to Sections 17 and 18, an examiner makes a decision on a design application based on the results gained through searches and investigation. First, the examiner notifies the applicant as to whether the design should be registered or refused. When a notice of rejection is issued, the examiner must explain the reasons for rejection.

The following are examples of notices of rejection under Section 3.

Example 1: Under Article 3, paragraph 1. (Similar designs)

This design application should be rejected for the reason given below under Section 17 of the Design Law.

If the applicant wishes to argue against the reason for rejection, he must submit an argument within 40 days from the date on which this notification was issued.

Reason

The design specified in this application is similar to a design described in a publication published in Japan prior to the filing of this application. Therefore, the present design falls under the provisions of the Design Law Section 3, paragraph 1, item 3.

Remarks

Des. Reg. No. 1234567 published by the Japan Patent Office
(Article related to design: Wrapping paper)

Example 2: Under Article 3, paragraph 2.

The design is considered to be made up of a combination of publicly known designs and shall thereby be refused under Article 3, paragraph 2.

This design application should be rejected for the reason given below under Section 17 of the Design Law.

If the applicant wishes to argue against the reason for rejection, he must submit an argument within **3 months** from the date on which this notification was issued.

Reason

The design specified in this application is considered a design capable of being easily created by a person with ordinary skills in the art prior to the filing of this application, on the basis of a nationally or internationally publicly known shape, pattern or color, or combination thereof. Therefore, the present design falls under the provisions of the Design Law Section 3, paragraph 2.

Remarks

The design specified in this application for a design registration relates to a ballpoint pen composed of a cap and a body. The design of the cap is the same as registered design No. 123456 published before the filing date of the present design application. The design of the ballpoint pen body is also the same as registered design No.123333 published before the filing date of the present design application. Therefore, the design of this application for registration is determined as being a design which could be easily created before the filing of this application by a person with ordinary skill in the art, on the basis of the above published designs. Thus, the present design falls under the provisions of the Design Law Section 3, paragraph 2.

3-6. Submission of an argument

When an applicant receives a notice of rejection, a response may be made by submitting an argument to counter the rejection within forty days from the date the notice is received. The time period allotted for foreign applicants is three months. If no response is submitted within the specified term, the applicant will automatically receive a decision of rejection.

An applicant receiving a notice of rejection issued by an examiner must first

decide whether the examiner's decision is acceptable by reviewing the references as well as similarities and differences between the cited and subject designs.

An applicant deciding to submit an argument will request an attorney to draft the argument by providing information and documents effective in enabling the examiner to understand the point of novelty of the subject design and the unique features which only the subject design possesses.

The following items are the structures of an argument stating that the subject design is not similar to the cited design.

- ARGUMENT
 - Date of submission etc.,

 - Contents of Argument
1. The Examiner stated that the subject design is similar to the Des. Reg. No. 1234567 and therefore the subject design cannot be registered. However, we do not agree with the judgment and submit this argument.
 2. The subject design has features A, B, C, and D.
 3. The cited design has features A, E, and F.
 4. Both designs have the feature A which normally does not appeal to observers since it is well-known in the field of the wrapping paper industry. Therefore, the feature A cannot be valued.
 5. The subject design has features B, C, and D which are not shown in the cited design. These features give the subject design unique appearance of the wrapping paper.
 6. Therefore, the subject design is not similar to the cited design in its entirety.
 7. In conclusion, the subject design should be registered.

3-7. Decision to grant and Decision of refusal

Each examiner reads the arguments carefully and makes a decision. Sometimes the examiner is persuaded by an argument. In that case, the examiner drafts a decision of registration. When an applicant receives a decision of registration, the design is registered in the Design Register upon payment of the registration fee. If the registration fee for the initial year is not paid, the design application will be dismissed and deemed to have never been filed with the JPO from the outset. When the design is registered, the JPO Commissioner issues a design registration certificate to the owner of the registered design (cf. Sec. 62).

When an applicant receives a decision of rejection, an appeal may be filed against the examiner's decision in the trial examination at the Trial Department of the JPO within thirty days from transmittal of the examiner's decision. (cf. Sec. 46)

3-8. Registration and Publication

The JPO maintains a Design Register for the registration of various matters regarding registered designs. (cf. Sec. 61)

Designs are published in the Official Gazette (ISHO KOHO) issued by the JPO (cf. Sec. 66). The publication is issued in CD-ROM format. Anyone can see the publication through IPDL*¹.

http://www4.ipdl.ncipi.go.jp/Isyou/dgde_top.ipdl?N0000=3100

Under Section 40 of Design Law, any party who has infringed on another party's design right or exclusive license shall be presumed to have been negligent as far as the act of infringement is concerned.

*¹ Industrial Property Digital Library

4. Appeal/Trial board to Supreme Court

4-1. Appeal/Trial board

Each trial examiner has extensive experience in carrying out substantive examinations. A trial board consists of three trial examiners, one of whom is the Trial Examiner-in-Chief. In the Trial Department, a trial board examines cases which have been previously decided by examiners. (cf. Sections 46 to 52)

Provisions under Section 53 of Japanese design law stipulate that the party concerned or a participant may demand a retrial against a final and conclusive trial decision.

4-2. Intellectual property high court

An appeal may be filed against any decision made by the trial board at the Intellectual Property High Court.

4-3. Supreme Court

A party who does not agree with a decision made by the Intellectual Property High Court may appeal to the Supreme Court to obtain a final decision.

ANNEXES

- 【ANNEX 1】 Example of standard design application request
- 【ANNEX 2】 Example of standard design drawing (Basic drawings)
- 【ANNEX 3】 Example of standard design drawing (Sectional view)
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- 【ANNEX 8】 Example of a Official Gazette (ISHO KOHO)

ANNEX

Example of standard design application request and drawing

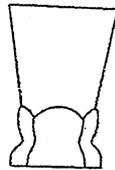
[Document]	Request for Design Registration
[Reference number for applicant] *1	O/R-A-01
[Filing date]	Heisei year 18, April 18th
[To]	To the Commissioner of the Patent Office
[Article regarding the design]	A cup with a handle
[Designer]	
[Domicile or residence]	Bologna ABC123, Italy
[name]	Anton Chita
[Applicant]	
[Identification number] *2	000000001
[Domicile or residence]	Bologna EFG456, Italy
[Name]	ABC S.p.A
([Nationality])	
[Representative]	
[Identification number] *2	100077517
[Domicile or residence]	Toranomon 3-5-1, Minato-ku, Tokyo
[Name]	Hanako KYOUKAI
[Phone]	03-5470-1900
[Priority claim under the Paris Convention]	
[Name of the country]	Italy
[Filing date]	December 25, 2005
[Filing number]	BO20050003124
[Indication of Fee]	
[Deposit account number]	012345
[Amount of payment]	16000
[Object submitted]	
[Object] *3	Drawing 1
[Explanation of the article regarding the design] *4	The article is used for drinking milk.
[Explanation of the design] *5	The rear view is a mirror image of the front view.

Annex-1

[Document] Drawing
[Front view]



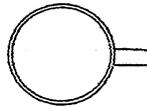
[Left side view]



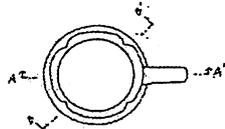
[Right side view]



[Top plan view]

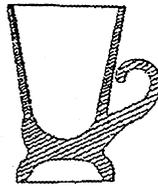


[Bottom view]



Annex-2

[A-A cross sectional view]



[B-B cross sectional view]



- *1. Applicants may put numbers here for their reference, when they file more than one application on the same day.
- *2. The domicile or residence may be omitted when the identification number is indicated.
- *3. Indicate whether it is a drawing, photograph or specimen.
- *4. When the design is for an article not listed in the CA, it is necessary to explain either how the article is used or the purpose of the article.

(Form 2, Note 25 of the Regulation under the JDL)

- *5. Explanation of the design is required when the design falls within the provisions of Section 6 of the JDL.

Annex-3

Example of a request and drawing for a design of part of an article.

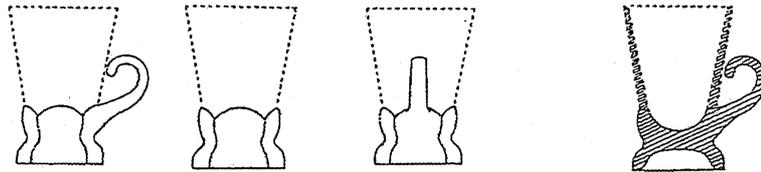
[Document] Request for Design Registration
 [Reference number for applicant] O/R-A-02
 [Filing date] Heisei year 12, July 28th
 [To] To the Commissioner of the Patent Office
 [Design in Part] *6
 [Article regarding the design] A cup with a handle
 [Designer]

.....
 [Object] Drawing 1

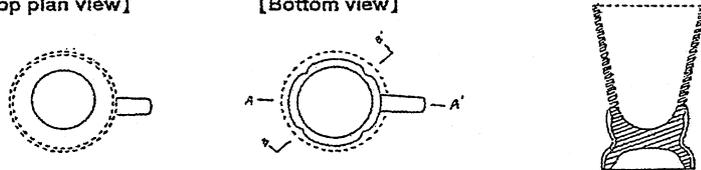
[Explanation of the article regarding the design] *4
 The article is used for drinking milk.

[Explanation of the design] *5 The part shown in solid lines is the subject to be registered as a design in part. The rear view is a mirror image of the front view.

[Document] Drawing
 [Front view] [Left side view] [Right side view] [A-A' cross sectional view]



[Top plan view] [Bottom view] [B-B' cross sectional view]



*5 In the case of a design in part or partial design, it shall be specified on the representation what part of an article is claimed.

*6. When a design relates to part of an article, the indication of the design in part must be stated.

Annex-4

When drawings of each article composing a set of articles show the design of the set of articles clearly, it is not necessary to submit individual drawings of the complete set of articles.

[Article regarding the design] A set of table knives, forks and spoons

[Explanation of the design] The rear view of the knife is omitted, as its appearance is symmetrical with the front view of the knife

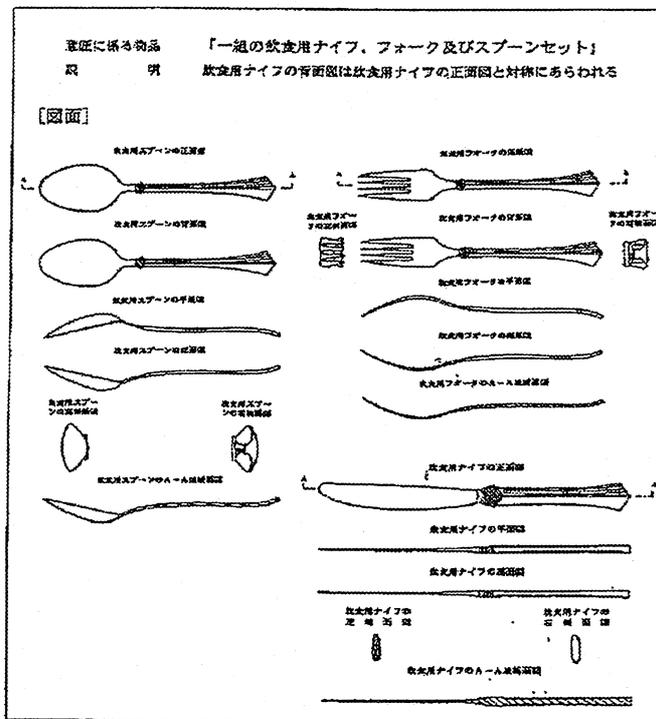


Fig. A-11
A set of spice pots

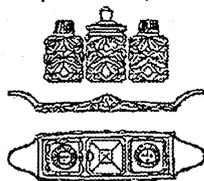


Fig. A-12
A set of spice pots

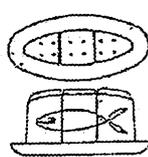
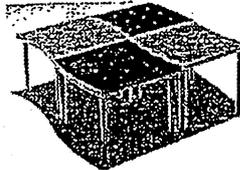


Fig. A-13
A set of tables



(Extract from the "Standards for Design Examination Practice under the revised Law 1998" published in December 1998, by the JPO, p. 75, 76, 80, 82)

Fig. A-14
A set of kitchen utensils

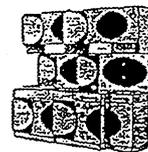


Fig. A-15
A set of audio equipment

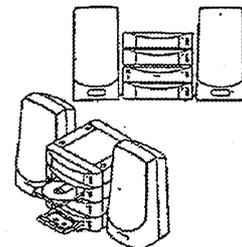
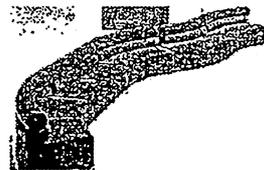


Fig. A-16
A set of chairs



Annexed Table 2 (related to Article 7)

1	A set of underclothes
2	A set of cuff links and a tie-pin
3	A set of personal ornaments
4	A set of smoker's supplies
5	A set of cosmetic products
6	A set of dolls for girl's festival
7	A set of washing equipment
8	A set of lavatory cleaning tools
9	A set of toilet articles
10	A set of electrical tooth brushes
11	A set of pans for camping
12	A tea service
13	A coffee service
14	A sake service
15	A set of table plates and cups
16	A green tea service
17	A dinner service
18	A set of spice pots
19	A set of table knives, forks and spoons
20	A set of chairs
21	A set of reception furniture
22	A set of outdoor chairs and a table
23	A set of storage furniture at the entrance
24	A set of storage furniture
25	A set of desks
26	A set of tables
27	A set of ceiling lamps
28	A set of air conditioning equipment
29	A set of washing stand equipment
30	A set of kitchen utensils
31	A set of lavatory accessories
32	A toy tea service
33	A toy coffee service
34	A toy dinner service
35	A set of toy spice pots
36	A set of toy table knives, forks and spoons
37	A set of golf clubs
38	A set of drums
39	A set of office equipment
40	A set of writing instruments
41	A set of car air spoilers
42	A set of car seat covers
43	A set of car floor mats
44	A set of bicycle pedals
45	A set of motorcycle cowls
46	A set of motorcycle fenders
47	A set of car navigation equipment
48	A set of audio equipment
49	A set of car audio equipment
50	A set of speaker boxes
51	A set of TV equipment
52	A set of optical disk playback equipment
53	A set of computer equipment
54	A set of automatic vending equipment
55	A set of medical x-ray photographing equipment
56	A set of gate poles, a gate and fences

(Extract from the "Design Protection System and Design Law" published by the Design Division, the JPO, in September 1999, ANNEX 3-4 *Annex-6*)

Fee
as of April 1, 2000

Item	price(¥)	
Filing fee	16,000	
Data entering fee	1,200	per case
	700	per page
Request for a secret design	5,100	
Fee for changing the name of the applicant (Free of charge in the case of merger or inheritance)	4,200	
Fee for demanding an appeal	55,000	
Registration fee or annual fee		
Initial year to third year	8,500	annually
Fourth to tenth year	16,900	annually
Eleventh to fifteenth year	33,800	annually
Fee for inspection of files	1,500	
Fee for inspection of the Design Register	300	
Fee for a copy of the documents in the file	1,400	
Fee for a copy of the matter in the Design Register	350	
On line data issue fee of the matter in the electronic data base	800	
In hand issue fee of the matter in the electronic data base	1,500	

Annex-7