

IV. Summary table : Catalogue of Eligibility for Industrial Design Protection

This table shows the summary of the original catalogue of eligibility for industrial design protection. Please see the original catalogue to clearly understand eligibility requirements for industrial design protection.

Catalog of Eligibility for Industrial Design Protection

Phase 1. Objective Eligibility of Industrial Design

1. What is the law on design protection? (initial enactment date, the latest date of revision)

※NOTE: limited to laws concerning design rights and design patents

CNIPA

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA (Enactment 1984. 3. 12, Partial Amendment 2008.12.27.)

Initial enactment date : Adopted at the 4th Meeting of the Standing Committee of the Sixth National People's Congress on March 12, 1984; The latest date of revision : Amended the third time on December 27, 2008

EUIPO

Council Regulation (EC) No 6/2002 of 12 December 2001 as amended by Council Regulation No 1891/2006 of 18 December 2006 (CDR). The CDR is implemented by Commission Regulation (EC) No 2245/2002 of 21 October 2002 (CDIR).

JPO

Design Act (Act No. 125 of April 13, 1959) The latest revision was on May 30, 2018 by Act No. 33.

KIPO

Design Protection Act (Enactment 1961. 12. 31, Partial Amendment 2017.9.22.)

USPTO

35 U.S.C. 171 Patents for designs (Based on Title 35, U.S.C., 1946 ed., § 73 (R.S. 4929, amended (1) May 9, 1902, ch. 783, 32 Stat. 193, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212; R.S. 4933; Amended Dec. 18, 2012, Public Law 112-211, sec. 202(a), 126 Stat. 1535.)

2. Is 'Design' defined in the Act? If so, what is the legal definition of 'Design'? (relevant provision)

CNIPA Article 2.4: "Design" means any new design of the shape, the pattern, or their combination, or the combination of the color with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application.

EUIPO "Design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation (art. 3(a) CDR)

JPO Definition of "design" is provided for in Article 2 of the Design Act.

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

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

KIPO Article 2 (Definitions)
The terms used in this Act shall be defined as follows:
1. The term "design" means a shape, pattern, or color of an article [including parts of an article (excluding those defined under Article 42) and typefaces; the same shall apply hereinafter], which invokes the sense of beauty through visual perception;

USPTO 35 USC 171
IN GENERAL.—Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefore, subject to the conditions and requirements of this title.

3. Is 'subject matter of design protection' defined in the Act? If so, what is 'subject matter of design protection'? (relevant provision)

CNIPA Article 2.4: "Design" means any new design of the shape, the pattern, or their combination, or the combination of the color with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application.

EUIPO No specific provision in the CDR defines what is the 'subject-matter of protection'. However, there are some specific provisions for the representation of designs of certain kinds, such as designs consisting of a repeating surface pattern (art. 43) CDIR) or designs consisting in a typographic typeface (art. 4(4) CDIR).

JPO "Design" defined in Article 2 of the Design Act is recognized as the subject matter of the design protection.
(Purpose)

Article 1 The purpose of this Act is, through promoting the protection and the utilization of designs, to encourage creation of designs, and thereby to contribute to the development of industry.

KIPO Article 2 (Definitions)
The terms used in this Act shall be defined as follows:
1. The term "design" means a shape, pattern, or color of an article [including parts of an article (excluding those defined under Article 42) and typefaces; the same shall apply hereinafter], which invokes the sense of beauty through visual perception;
2. The term "typeface" means a set of characters (including those in the form of numerals, punctuation marks, and symbols) made in a style with common characteristics for recording, marking, or printing;

USPTO 35 USC 171
IN GENERAL.—Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefore, subject to the conditions and requirements of this title.

3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.1. Graphic Design	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
	The carrier of a design must be a product and 'Graphic Design' has no carrier.	Section 4(1) of the EUIPO's Guidelines on Examination of Applications for Registered Community Designs provides that any design showing the appearance of a product or a part thereof, is eligible to protection if this representation consists of, inter alia, lines, contours, colours or shapes.	"Graphic Design" itself is recognized as a creation of patterns (and colors) alone which is independent from the article, thus it is not found to be a "design" provided for in Article 2 of the Design Act.	'Graphic design' itself cannot meet the article of manufacture requirement but can be accepted for design registration when it is combined with an article.	The ornamental appearance of a design for an article includes its shape and configuration as well as any indicia, contrasting color or materials, graphic representations, or other ornamentation applied to the article ("surface treatment").
3.2. Typeface Design	<input checked="" type="checkbox"/> Etc.	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes
	It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines. The Guidelines For Patent Examination: The carrier of a design must	Art. 3(b) CDR provides that typographic typefaces are products. A typographic typeface represented by a string of all the letters of the alphabet will therefore be eligible to design protection because it will represent "the appearance of a product", as required under Art. 3(a) CDR	"Typeface Design" itself is recognized as a creation of patterns (and colors) alone which is independent from the article, thus it is not found to be a "design" provided for in Article 2 of the Design Act.	The term "typeface" means a set of characters (including those in the form of numerals, punctuation marks, and symbols) made in a style with common characteristics for recording, marking, or printing, in Article 2(2).	USPTO personnel should not reject claims for type fonts under 35 U.S.C. 171 for failure to comply with the "article of manufacture" requirement on the basis that more modern methods of typesetting, including computer-generation, do not require solid printing blocks (See MPEP 1504.01(a)).

	be a product.				
3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.3. GUI Design	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes
	Article 2.4 of the patent law of the people's republic of China "design" means any new design of the shape, the pattern or their combination, and the combination of the colour with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application. GUI is the design of	Section 4(1) of the EUIPO's Guidelines on Examination of Applications for Registered Community Designs provides that "Designs of screen displays and icons and other kinds of visible elements of a computer program are eligible for registration (see Class 14-04 of the Locarno Classification)".	The Japanese Design Act sets forth the "design" which is the subject matter of design protection as a form (an appearance) of an individual article. Any "design" comprised as "the shape, patterns or colors, or any combination thereof, of an article" may become the subject of design registration	The term "GUI on a display" means a pattern, color, or combination thereof, (including animated design) presented on the display part including LED of articles. ※ The term "display part" of an article means an existing physical screen that visually represents wordings, images, etc.	Computer-generated icons, such as full screen displays and individual icons, are 2-dimensional images which alone are surface ornamentation. See, e.g., <i>Ex parte Strijland</i> , 26 USPQ2d 1259 (Bd. Pat. App. & Int. 1992) (computer-generated icon alone is merely surface ornamentation). The

	<p>patterns of a product, so it is in conformity with the provisions of Article 2.4.</p>		<p>provided that such a design fulfills all the requirements such as novelty, creativity, etc. If a graphic image of GUI is properly represented as a design of a part of an article, it will be a subject matter of the design protection.</p>	<p>The requirements for the establishment of GUI on a display shall be governed by the general requirements for the establishment of design.</p>	<p>USPTO considers designs for computer-generated icons embodied in articles of manufacture to be statutory subject matter eligible for design patent protection under 35 U.S.C. 171.</p>
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3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.4. Interior Design	☒Etc.	☒Yes	☒Yes, ☒No	☒No	☒Yes
	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>The fact that “interior design” may represent more than one product is not an obstacle to protection if it is clear from the representation that the protection is sought for the specific combination of the different products. A set of articles can be a ‘product’ in itself within the meaning of Article 3 CDR. It can be represented in a single design application if the articles making up this set are linked by aesthetic and functional complementarity and are, in normal circumstances, sold altogether as one single product, like a set of furniture.</p>	<p>The Japanese Design Act sets forth the "design" which is the subject matter of design protection as a form (an appearance) of an individual article (prescribed in Articles 2 and 7. Article 8 (Design for a set of articles) is only an exception.). Although any "design" comprised as "the shape, patterns or colors, or any combination thereof, of an article" may become the subject of design registration, any layout and/or arrangement of plural articles is NOT intended to be a subject matter of the design protection.</p>	<p>In accordance with the definitions of Article 2 of the Design Protection Act, a design will become a subject matter of design protection only if it is combined with an article. If an interior design meets the requirements prescribed in Article 42 of the Same Act (at least two articles are used together as a set of articles, a design for the set of products may be registered as one design, if the design for the set of articles is unitary), it may be registered as a set of articles. But if an interior design is characterized only by its layout and/or arrangement of multiple articles, it will not be a subject matter of the design protection.</p>	<p>35 USC 171 IN GENERAL.—Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefore, subject to the conditions and requirements of this title.</p>

3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.5. Architecture Design	☒ Yes, ☒ Etc.	☒ Yes	☒ Yes, ☒ No	☒ Etc.	☒ Yes
	<p>Architecture Design is a subject matter of design protection while there is limitation provided in the Guidelines For Patent Examination.</p> <p>“According to Article 2. 4, the following situations are ineligible for patent protection for design:</p> <p>(I) any fixed building, bridge and the like which depends on their specific geographic conditions and cannot be rebuilt elsewhere, such as villa built by a particular lake or hill;”</p>	<p>A ‘design’ means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation (Article 3(a) CDR). Even though there is no specific provision concerning ‘architecture designs’, such designs are not excluded from protection given the comprehensive definition of designs at art. 3(a) CDR.</p>	<p>Since an object which is industrially mass-produced and handled as movables when distributed on the market is admitted as an "article", a fixed form (appearance) of a factory-produced product may be granted design registration despite the fact that such a product will have a status of immovables when used. However, “Architecture Design” in general is understood as one that is just related to immovable, thus it is not found to be a "design" provided for in Article 2 of the Design Act (the shape, patterns or colors, or any combination thereof, of an article).</p>	<p>The term “article” under the Act means, in principle, tangible movables as a specific and independent article. Therefore, immovables, provided that if immovables can be repeatedly produced and transported, may be accepted for the design registration.</p> <p>Where ‘an architecture design’ is repeatedly producible and transportable, it may be accepted for the design registration.</p>	<p>35 USC 171</p> <p>IN GENERAL.— Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefore, subject to the conditions and requirements of this title.</p>

3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.6. Architectural plan /drawing	<input checked="" type="checkbox"/> Etc.	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No
	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>According to Section 4(1) of the EUIPO's Guidelines on Examination of Applications for Registered Community Designs, blueprints, plans for houses or other architectural plans and interior or landscape designs (e.g. gardens) will be considered 'products' for the purpose of applying Article 7(1) CDR and will be accepted only with the corresponding indication of 'printed matters' in Class 19-08 of the Locarno Classification. An objection will be raised if the product indicated in an application for a design consisting of a blueprint of a house is 'houses' in Class 25-03 of the Locarno Classification.</p>	<p>Any "design" comprised as "the shape, patterns or colors, or any combination thereof, of an article" may become the subject of design registration provided that such a design fulfills all the requirements such as novelty, creativity, etc. However, "Architectural plan/drawing" itself is recognized as a creation of patterns (and colors) alone which is independent from the article, thus it is not found to be a "design" provided for in Article 2 of the Design Act. Therefore, 'Architectural plan/drawing' does not become a subject matter of the design protection.</p>	<p>An architectural plan/drawing falls under diagrammatic works in accordance with Article 4.8 of the Copyright Act.</p>	<p>A picture standing alone is not patentable under 35 U.S.C. 171. The factor which distinguishes statutory design subject matter from mere picture or ornamentation, per se (i.e., abstract design), is the embodiment of the design in an article of manufacture. Consistent with 35 U.S.C. 171, case law and USPTO practice, the design must be shown as applied to or embodied in an article of manufacture. A claim to a picture, print, impression, etc. per se that is not applied to or embodied in an article of manufacture should be rejected under 35 U.S.C. 171 as directed to nonstatutory subject matter.</p>

3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.7. Food plating design	☒Etc.	☒Yes	☒No	☒No	☒Yes
	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>Even though there is no specific provision concerning ‘food plating’, such designs are not excluded from protection given the comprehensive definition of designs at art. 3(a) CDR, such designs are not excluded from protection given the comprehensive definition of designs at art. 3(a) CDR.</p>	<p>The Japanese Design Act sets forth the “design” which is the subject matter of design protection as a form (an appearance) of an individual article (prescribed in Articles 2 and 7. Article 8 (Design for a set of articles) is only an exception.). Although any "design" comprised as "the shape, patterns or colors, or any combination thereof, of an article" may become the subject of design registration, any layout and/or arrangement of plural articles is NOT intended to be a subject matter of the design protection.</p>	<p>If “food plating design” means the unique arrangement/composition of food, it cannot be protected on the ground of Article 2 (Definition) of the Design Protection Act. But if it means a processed food that meets the requirements of the design, it can be registered.</p>	<p>Design is inseparable from the article to which it is applied and cannot exist alone merely as a scheme of surface ornamentation. It must be a definite, preconceived thing, capable of reproduction and not merely the chance result of a method (MPEP 1502)</p>

3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.8. Intangible but visual	<input checked="" type="checkbox"/> Etc.	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>Even though there is no specific provision concerning 'intangible but visual design', such designs are not excluded from protection given the comprehensive definition of designs at art. 3(a) CDR. The representation of the design however requires a fixed form of the laser image or pattern, and it is assumed that the scope of protection will be limited to such fixed form.</p>	<p>Any "design" comprised as "the shape, patterns or colors, or any combination thereof, of an article" may become the subject of design registration provided that such a design fulfills all the requirements such as novelty, creativity, etc. However, intangibles such as light and any object which does not have its own proper form such as liquid are not recognized as "article", thus they are not found to be "design" provided for in Article 2 of the Design Act. Therefore, these kinds of objects do not become the subject matter of the design protection.</p>	<p>According to the Design Examination Standards, the term "article" under the Act means, in principle, tangible movables as a specific and independent article. Therefore, an item without certain shapes, such as gas, liquid, electricity, light, heat, sound, radio wave, shall not be accepted for the design registration.</p>	<p>"We do not see that the dependence of the existence of a design on something outside itself is a reason for holding it is not a design 'for an article of manufacture.'" See In re Hruby, 373 F.2d 997, 1001, 153 USPQ 61, 66 (CCPA 1967) (design of water fountain patentable design for an article of manufacture) (MPEP 1504.01(a) I A). The dependence of a computer-generated icon on a central processing unit and computer program for its existence itself is not a reason for holding that the design is not for an article of manufacture.</p>

3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.9. Design with no fixed pattern	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes, <input checked="" type="checkbox"/> No
	<p>Article 2.4 : "design" means any new design of the shape, the pattern or their combination, and the combination of the colour with shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application.</p> <p>The Guidelines For Patent Examination :</p> <p>According to Article 2. 4, the following situations are ineligible for patent protection for design:</p> <p>(2) any product which has no fixed shape, pattern or colour because it contains the</p>	<p>Art. 3(a) CDR requires the ‘appearance of the whole or a part of a product’. There is no statutory requirement that the appearance of such a product be immutable or permanent or capable of being reproduced industrially. It is however usually considered that the scope of protection of a design such as the one given as an example would be limited to what can be seen in the representation, without extending to the concept itself or to the variations and different configurations that the design may have when its elements are moving.</p>	<p>Any "design" comprised as "the shape, patterns or colors, or any combination thereof, of an article" may become the subject of design registration provided that such a design fulfills all the requirements such as novelty, creativity, etc. However, any gathering/collection of powder or granules which does not have a specific fixed form is not recognized as an "article", thus it is not found to be a "design" provided for in Article 2 of the Design Act. Therefore, these kinds of objects do not become the subject matter of the design protection.</p>	<p>The term “article” under the Act means, in principle, tangible movables as a specific and independent article. Therefore, immovables, provided that if immovables can be repeatedly produced and transported, may be accepted for the design registration.</p> <p>An item composed of powders or granules, such as cement and sugar, shall not be accepted for the design registration.</p> <p>But a standardized or solidified powder such</p>	<p>Designs which satisfy the requirements of 35 USC 171 in that they are deemed to be directed to a design for an “article of manufacture” may be considered eligible subject matter even if the design may have a plurality of configurations or states.</p> <p>However, a design with no fixed pattern and infinite permutations could not be properly claimed in an application such that it satisfies 35 USC 112 and/or 35 USC 171.</p>

	substance which has no fixed shape, such as gas, liquid or powder;			as cube sugar which collectively form a certain shape can be a subject matter of design protection.	
3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.10. Design constituted by common shape and fine arts	<input checked="" type="checkbox"/> Etc.	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Etc.	<input checked="" type="checkbox"/> Yes
	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>Even though there is no specific provision concerning ‘design constituted by common shape and fine arts’, such designs are not excluded from protection given the comprehensive definition of designs at art. 3(a) CDR.</p> <p>Article 17 (Relationship to copyright) of the European Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs foresees the</p>	<p>Any "design" comprised as "the shape, patterns or colors, or any combination thereof, of an article" may become the subject of design registration provided that such a design fulfills all the requirements such as novelty, creativity, etc. However, where the design right pertaining to the registered design is in conflict with another person's copyright which arose prior to the date of filing of the application for the said registered</p>	<p>“The design constituted by common shape and fine arts” is a subject matter of design protection as long as it meets requirements of novelty and easily created design.</p>	<p>In a design patent application, the subject matter which is claimed is the design embodied in or applied to an article of manufacture (or portion thereof) and not the article itself. Ex parte Cady, 1916 C.D. 62, 232 O.G. 621 (Comm’r Pat. 1916). "[35 U.S.C.] 171 refers, not to the design of an article, but to the design for an article, and is inclusive of ornamental designs of</p>

		possibility of cumulative protection of a creation by both design law and the national copyright law of the Member States	design, the holder of the design right may not work the registered design as a business.		all kinds including surface ornamentation as well as configuration of goods." In re Zahn, 617 F.2d 261, 204 USPQ 988 (CCPA 1980).
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4. Are the registrability/patentability/requirements for protection defined in the Act? If so, what is the requirement for protection? (relevant ground)

CNIPA ☒ Yes

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

Article 23. :

Any design for which patent right may be granted shall not be a prior design, nor has any entity or individual filed before the date of filing with the patent administration department under the State Council an application relating to the identical design disclosed in patent documents announced after the date of filing.

Any design for which patent right may be granted shall significantly differ from prior design or combination of prior design features.

Any design for which patent right may be granted must not be in conflict with the legitimate right obtained before the date of filing by any other person.

The prior design referred to in this Law means any design known to the public before the date of filing in China or abroad.

EUIPO ☒ Yes

Designs are liable to be declared invalid if they:

- Do not correspond to the definition of a design (art. 25(1)(a) CDR)
- Lack novelty (art. 5 CDR)
- Lack individual character (art. 6 CDR)
- Which are dictated by their technical function or by interconnection purposes (art. 8 CDR)
- Designs contrary to public policy or morality (art. 9 CDR)
- Designs filed by an individual or a legal entity which was not entitled (art. 25(1)(c) CDR)
- Designs which conflict with earlier designs having an earlier date of filing or of priority, but a later date of publication (art. 25(1)(d) CDR)
- Designs in conflict with an earlier distinctive sign (art. 25(1)(e) CDR)
- Designs which conflict with earlier work protected under copyright law (art. 25(1)(f) CDR)
- Designs conflicting with any of the items protected under art. 6ter of the Paris Convention (art. 25(1)(g) CDR)

JPO ☒ Yes

(Conditions for design registration)

Article 3 (1) A creator of a design that is industrially applicable may be entitled to obtain a design registration for the said design, except for the following:

- (i) Designs that were publicly known in Japan or a foreign country, prior to the filing of the application for design registration;
 - (ii) Designs that were described in a distributed publication, or designs that were made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the application for design registration; or
 - (iii) Designs similar to those prescribed in the preceding two items.
- (2) Where, prior to the filing of the application for design registration, a person ordinarily skilled in the art of the design would have been able to easily create the design based on shape, patterns or colors, or any combination thereof that were publicly known in Japan or a foreign country, a design registration shall not be granted for such a design (except for designs prescribed in any of the items of the preceding paragraph), notwithstanding the preceding paragraph.

Article 3-2 Where a design in an application for design registration is identical with or similar to part of a design described in the statement in the application and drawing, photograph, model or specimen attached to the application of another application for design registration which has been filed prior to the date of filing of the said application and published after the filing of the said application in the design bulletin under Article 20(3) or Article 66(3) (hereinafter referred to in this Article as the "earlier application"), a design registration shall not be granted for such a design, notwithstanding paragraph (1) of the preceding Article; provided, however, that this shall not apply where the applicant of the said application and the applicant of the earlier application are the same person and the said application was filed before the date when the design bulletin in which the earlier application was published under Article 20(3) (except for a design bulletin in which the matters listed in Article 20(3)(iv) were published under Article 20(4)) was issued.

☒ Yes

Article 33 (Requirements for Design Registration)

- (1) A design that may be used for an industrial purpose is eligible for design registration, except in any of the following cases:
1. A design publicly known or worked in the Republic of Korea or a foreign country before an application for design registration is filed;
 2. A design described in a printed publication distributed in the Republic of Korea or a foreign country or made available for public use via telecommunications lines before an application for design registration is filed;
 3. A design similar to any of the designs specified in subparagraph 1 or 2.
- (2) Notwithstanding paragraph (1), a design (excluding the designs specified in any subparagraph of paragraph (1)) that could have been easily created by a person who has ordinary skills in the art to which the design pertains by applying any of the following methods before an application for design registration is filed shall not be eligible for design registration:
1. A design specified in paragraph (1) 1 or 2 or a combination of such designs;

2. A shape, pattern, or color or a combination thereof, widely known in the Republic of Korea or in a foreign country.

(3) Notwithstanding paragraph (1), a design for which an application for design registration is filed is not eligible for design registration, if the design is identical with or similar to a part of a design claimed in another application for design registration (limited to an application filed before the date on which the relevant application for design registration is filed), which has been published in the Design Gazette under Article 52, 56, or 90 (3) after the application for the registration of the relevant design was filed, or expressed in a drawing, a photograph, or a sample accompanying such application: Provided, That the foregoing shall not apply where the applicant for the registration of the relevant design and the applicant for the registration of another design are one and the same person.

☒ Yes

35 USC 171 – patent for designs

- (a) IN GENERAL.—Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefore, subject to the conditions and requirements of this title.
- (b) APPLICABILITY OF THIS TITLE - The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided

4.1. Is the novelty of a design judged and when is the initial novelty judged?	
<div>CNIPA</div> <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Decision to grant	
Article 23.1 : Any design for which patent right may be granted shall not be a prior design, nor has any entity nor individual filed before the date of filing with the patent administration department under the State Council an application relating to the identical design and disclosed in patent documents announced after the date of filing.	
<div>EUIPO</div> <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Request for Invalidation Trials	
Art. 5 CDR 1. A design shall be considered to be new if no identical design has been made available to the public: (a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public; (b) in the case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority. 2. Designs shall be deemed to be identical if their features differ only in immaterial details.	
<div>JPO</div> <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Decision to grant	

Article 3(1) of the Design Act.

Article 3 (1) A creator of a design that is industrially applicable may be entitled to obtain a design registration for the said design, except for the following:

- (i) Designs that were publicly known in Japan or a foreign country, prior to the filing of the application for design registration;
- (ii) Designs that were described in a distributed publication, or designs that were made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the application for design registration; or
- (iii) Designs similar to those prescribed in the preceding two items.

Part II, Chapter II of the Examination Guidelines for Design "Novelty".

As to the Examination Guidelines for Design above, please refer to the following:

http://www.jpo.go.jp/tetuzuki_e/t_tokkyo_e/pdf/design_es/0202.pdf

KIPO

☒ **Yes** (In the case of designs that fall under Locarno Classification 2, 5, or 19, during determination of registration, the novelty is not judged) ☒ Decision to grant

[Design Protection Act]

Article 33 (Requirements for Design Registration)

- (1) A design that may be used for an industrial purpose is eligible for design registration, except in any of the following cases:
1. A design publicly known or worked in the Republic of Korea or a foreign country before an application for design registration is filed;
 2. A design described in a printed publication distributed in the Republic of Korea or a foreign country or made available for public use via telecommunications lines before an application for design registration is filed;
 3. A design similar to any of the designs specified in subparagraph 1 or 2.

[Design Examination Standards]

Part4, Chapter 3 Novelty 1)~4)

USPTO

☒ **Yes** ☐ Decision to grant

35 U.S.C. 102: Conditions for patentability; novelty (see MEP 1504.02)

(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

A claimed design may be rejected under 35 U.S.C. 102 when the invention is anticipated (or is "not novel") over a disclosure that is available as prior art. In design patent applications, the factual inquiry in determining anticipation over a prior art reference is the same as in utility patent applications. That is, the reference "must be identical in all material respects." *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997). For anticipation to be found, the claimed design and the prior art design must be substantially the same. *Door-Master Corp. v. Yorktowne, Inc.*, 256 F.3d 1308, 1313, 59__ USPQ2d 1472 __, 1475__ (Fed. Cir. 2001) (citing *Gorham Mfg. Co. v. White*, 81 U.S. 511, 528 (1871)). In *International Seaway Trading Corp. v. Walgreens Corp.*, 589 F.3d 1233, 1239-40, 93 USPQ2d 1001, 1005 (Fed. Cir. 2009), the Federal Circuit held that the ordinary observer test is "the sole test for anticipation."

4.2. Is the creativity/non-obviousness of design judged and when is the initial creativity/non-obviousness judged?

CNIPA

☒ Yes

☒ Request for Invalidation Trials

Article 23.2:

Any design for which patent right may be granted shall significantly differ from prior design or the combination of prior design features.

EUIPO

☒ Yes

☒ Request for Invalidation Trials

Art. 6 CDR

1. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:
 - (a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;
 - (b) in the case of a registered Community design, before the date of filing the application for registration or, if a priority is claimed, the date of priority.
2. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

JPO

☒ Yes

☒ Decision to grant

Article 3(2) of the Design Act.

Article 3(2) Where, prior to the filing of the application for design registration, a person ordinarily skilled in the art of the design would have been able to easily create the design based on shape, patterns or colors, or any combination thereof that were publicly known in Japan or a foreign country, a design registration shall not be granted for such a design (except for designs prescribed in any of the items of the preceding paragraph), notwithstanding the preceding paragraph.

Part II, Chapter III of the Examination Guidelines for Design "Creative Difficulty".

As to the Examination Guidelines for Design above, please refer to the following:

http://www.jpo.go.jp/tetuzuki_e/t_tokkyo_e/pdf/design_es/0203.pdf

KIPO

☒ Yes

☐ Decision to grant

Article 33 (Requirements for Design Registration)

(2) Notwithstanding paragraph (1), a design (excluding the designs specified in any subparagraph of paragraph (1)) that could have been easily created by a person who has ordinary skills in the art to which the design pertains by applying any of the following methods before an application for design registration is filed shall not be eligible for design registration:

1. A design specified in paragraph (1) 1 or 2 or a combination of such designs;
2. A shape, pattern, or color or a combination thereof, widely known in the Republic of Korea or in a foreign country.

USPTO

☒ Yes

☐ Decision to grant

35 U.S.C. 103 Conditions for patentability; non-obvious subject matter (see MPEP 1504.03).

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains.

Patentability should not be negated by the manner in which the invention was made.

In order to be unpatentable, 35 U.S.C. 103 requires that an invention must have been obvious to a designer having "ordinary skill in the art" to which the subject matter sought to be patented pertains. The "level of ordinary skill in the art" from which obviousness of a design claim must be evaluated under 35 U.S.C. 103 has been held by the courts to be the perspective of the "designer of . . . articles of the types presented." See *In re Nalbandian*, 661 F.2d 1214, 1216, 211 USPQ 782, 784 (CCPA 1981); *In re Carter*, 673 F.2d 1378, 213 USPQ 625 (CCPA 1982).

5. Is it possible to file more than two designs in one application? (multiple design application is excluded)

CNIPA ☒ Yes

Article 31.2: An application for a patent for design shall be limited to one design. Two or more similar designs for the same product or two or more designs which are incorporated in products belonging to the same class and sold or used in sets may be filed as one application.

EUIPO ☒ Yes

Art 37 CDR

1. Several designs may be combined in one multiple application for registered Community designs. Except in cases of ornamentation, this possibility is subject to the condition that the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same class of the International Classification for Industrial Designs.
2. Besides the fees referred to in Article 36(4), the multiple application shall be subject to payment of an additional registration fee and an additional publication fee. Where the multiple application contains a request for deferment of publication, the additional publication fee shall be replaced by the additional fee for deferment of publication. The additional fees shall correspond to a percentage of the basic fees for each additional design.
3. The multiple application shall comply with the conditions of presentation laid down in the implementing regulation.
4. Each of the designs contained in a multiple application or registration may be dealt with separately from the others for the purpose of applying this Regulation. It may in particular, separately from the others, be enforced, licensed, be the subject of a right in rem, a levy of execution or insolvency proceedings, be surrendered, renewed or assigned, be the subject of deferred publication or be declared invalid. A multiple application or registration may be divided into separate applications or registrations only under the conditions set out in the implementing regulation.

JPO ☒ No

(One application per design)

Article 7 An application for design registration shall be filed for each design in accordance with a classification of articles as provided by an Ordinance of the Ministry of Economy, Trade and Industry.

KIPO ☒ No

Article 40 (One Registration Application for One Design)

(1) An application for design registration shall be filed for each design.

(2) A person who intends to file an application for design registration shall follow the classification of products prescribed by Ordinance of the Ministry of Trade, Industry and Energy

USPTO

☒ **Yes**

MPEP 1504.05 It is permissible to illustrate more than one embodiment of a design invention in a single application. However, such embodiments may be presented only if they involve a single inventive concept.

6. Does the Act specify what shall be unregistrable /ungrantable/ and unprotectable even if they fall under the definition of “design” (or it is in accordance with subject matter of design protection) under the Act?

CNIPA

Article 5.1: No patent right shall be granted for any invention-creation that is contrary to the laws or social morality or that is detrimental to public interest.

Article 25.1(6): For any of the following, no patent right shall be granted:

(6) designs of two-dimensional printing goods, made of the pattern, the colour or the combination of the two, which serve mainly as indicators.

EUIPO

The CDR distinguishes the conditions under which a design application complies with the definition of a design (art. 3(a), and 25(1)(a) and art. 47) and the remaining conditions for registrability (art. 5, 6, 8 and 9).

As said above, EUIPO examines on its own motions whether the design application complies with the definition of a design (art. 3(a) and 47 CDR), but it does not examine any other of the protection requirements. Once a design is registered, an application for invalidity can be filed with EUIPO (art. 24 CDR) or, under certain conditions, before a national court (art. 84 CDR). Such an application for invalidity can be based on any of the grounds for invalidity listed under art. 25 CDR (see 3-11 above), including those which were already examined by EUIPO before registration.

JPO

(Unregistrable designs)

Article 5 Notwithstanding Article 3, the following designs shall not be registered.

- (i) a design which is liable to injure public order or morality;
- (ii) a design which is liable to create confusion with an article pertaining to another person's business; or
- (iii) a design solely consisting of a shape that is indispensable for securing functions of the article.

KIPO

Article 34 (Unregistrable Designs)

Notwithstanding Article 33, none of the following designs is eligible for design registration:

1. A design identical with or similar to the national flag or emblem, a military flag, a decoration, an order of merit, or a badge of the Republic of Korea, a medal of any public institution, the national flag or emblem of a foreign country, or the wording or mark of an international organization;
2. A design the meaning or any content of which offends against general morality and good customs of ordinary people or is likely to disturb public order;
3. A Design that is likely to be mistaken as related to an article associated with any other person's business;
4. A design made only of a shape indispensable to secure a function of the relevant article.

USPTO MPEP 1504.01(e)

Design applications which disclose subject matter which could be deemed offensive to any race, religion, sex, ethnic group, or nationality, such as those which include caricatures or depictions, should be rejected as nonstatutory subject matter under 35 U.S.C. 171. See 37 CFR 1.3.

Phase 2. Subjective Eligibility of Industrial Design

1. The requirements for the entitlement to registration of a design.

	CNIPA	EUIPO	JPO	KIPO	USPTO
1.1. Requirements for a creator	A "creator" referred to in the Patent Law means any person who makes creative contributions to design (Rule 13 of the Implementing Regulations of the Patent Law of the People's Republic of China) . The creator shall be a natural person, an entity or organization shall not be a creator	Article 18 of the Community Design Regulation No 6/2002 of 12 December 2001 ('CDR') (Right of the designer to be cited): 'The designer shall have the right, in the same way as the applicant for or the holder of a registered Community design, to be cited as such before the Office and in the register. If the design is the result of teamwork, the citation of the team may replace the citation of the individual designers'.	A person who has created an industrially applicable design acquires, on the completion of the creation, the right to obtain a design registration for that design. (Art. 3(1) of the Design Act) (Excluding the designs created by employees (Art. 35(3) of the Patent Act applied mutatis mutandis under Art. 15(3) of the Design Act) Fundamentally designs are created by human brains, a person who is not a natural person (i.e. a juridical person, etc.) cannot be a creator of a design.	The right to obtain registration shall be established by completion of a design and this right will be granted to a creator who is a natural person. As the creation of a design does not need capacity to conduct legal proceedings, a minor who does not have such capacity can be a creator.	35 U.S.C. § 100(f) The term "inventor" means the individual (i.e., "natural person") or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

	CNIPA	EUIPO	JPO	KIPO	USPTO
1.2. Requirements for joint creators	<p>A "creator" referred to in the Patent Law means any person who makes creative contributions to design (Rule 13 of the Implementing Regulations of the Patent Law of the People's Republic of China) . The creator shall be a natural person, an entity or organization shall not be a creator</p>	<p>A ‘team of designers’ may consist of two or more designers, and as such they have the right to be cited either individually or as a team in the Community design application: ‘If the design is the result of teamwork, the citation of the team may replace the citation of the individual designers’ (Article 18 CDR).</p> <p>The right to be cited as individual designer(s) or as a team of designers subsists even if this application is filed by their employer or their successor in title.</p>	<p>Where two or more persons have created a design jointly, the right to obtain a design registration for the design is jointly owned. In this case, the application for design registration may only be filed by all the joint owners (Art. 38 of the Patent Act applied mutatis mutandis under Art. 15(1) of the Design Act). If this requirement is not met, the application becomes the subject of refusal (Art. 17(i) of the Design Act).</p>	<p>If at least two persons jointly create a design, such persons shall jointly have the right to register the design. (Article 3(2) of the Design Protection Act) If a right to have a design registered is jointly owned under Article 3 (2), all co-owners shall jointly file an application for design registration. (Article 39 of the Design Protection Act). If an application is filed by only a party of the co-owners, it will be rejected (Article 62(1)ii of the Design Protection Act). Joint creators will be determined by the substantial joint ownership relationship and mere a manager,</p>	<p>35 U.S.C. § 116(a): When an invention is made by two or more persons jointly, they shall apply for patent jointly and each make the required oath, except as otherwise provided in this title. Inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.</p> <p>35 U.S.C. § 100(g): The terms "joint inventor" and "coinventor" mean any 1 of the</p>

				an assistant, a sponsor or trustee will not constitute a co-creator.	individuals who invented or discovered the subject matter of a joint invention.
	CNIPA	EUIPO	JPO	KIPO	USPTO
1.3. Requirements for a successor	The right of patent application and the patent right may be assigned. Where the right of patent application or the patent right is assigned, the parties shall conclude a written contract and register it with the patent administration department under the State Council. The patent administration department under the State Council shall announce the registration. The assignment shall take effect as of the date of registration (Article 10).	When filing a Community design application or enforcing the exclusive rights obtained on the Community design, successors in title (individuals or legal entities) do therefore not have to substantiate their ownership of the design by proving that they have purchased the rights from the designer(s), or that such rights have been otherwise transferred to them by means of succession or transfer of a branch of business etc.	The right to obtain a design registration may be transferred because it is a sort of property right. However, where the right to obtain a design registration is jointly owned, no joint owner may assign his respective share without the consent of all the other joint owners (Art. 33 of the Patent Act applied mutatis mutandis under Art. 15(2) of the Design Act).	A right to have a design registered is transferable as it is a property right (Article 54 (1) of the Design Protection Act) Thus, apart from an above-mentioned creator, those who have legal capacity (natural and juridical person) are entitled to registration of a design as a successor.	35 U.S.C. § 261: Subject to the provisions of this title, patents shall have the attributes of personal property. The Patent and Trademark Office shall maintain a register of interests in patents and applications for patents and shall record any document related thereto upon request, and may require a fee therefor.

2. Do have any provisions prescribing those who are not entitled to registration of a design?

CNIPA

(1) Where any foreign individual, enterprise or other type of organization having no habitual residence or business office in China, if none of the following requirements are met, should not file a patent application in China.

the country to which the applicant belongs has concluded with China an agreement affording patent protection to the nationals of each other;

the country to which the applicant belongs is a country party to the Paris Convention for the Paris Convention or a member of the World Trade Organization; or

the country to which the applicant belongs provides patent protection to foreign person on the basis of the principle of reciprocity. (Article 18)

(2) For domestic applicants, examiners generally do not examine the eligibility of the applicant in the examination procedure of the Patent Office. Both individuals and entities have the right to file the patent application. Where the examiner determines the eligibility of the applicant is obviously questionable, the applicant shall be notified to submit a proof. For example, the applicant filled in the request is "the Scientific Research Division of xx University" or "xx Project Group of xx Research Institute", the applicant is notified to submit a document certifying its eligibility as an applicant.

EUIPO

There is no statutory limitation, in the CDR, which would rule out the entitlement to file a Community design application. Applicants can be natural persons or legal entities, without any restriction as to their nationality or whether private or public law governs their existence.

JPO

The fundamental provisions on a person who is not entitled to obtain a design registration or a person who cannot undertake the procedure for design registration are as follows.

(1) Where the applicant for design registration does not have the right to obtain a design registration for the design (Art. 3(1), Art. 17(iv) of the Design Act).

(2) While the right to obtain a design registration is jointly owned, the application for design registration is not filed by all the joint owners (Art. 38 of the Patent Act applied mutatis mutandis under Art. 15(1) of the Design Act, Art. 17(i) of the Design Act)

(3) Where the applicant for design registration who is a foreign national not domiciled or resident (or, in the case of a juridical person, with a business office) in Japan is a national of the country that is not authorized under the principle of reciprocity or provisions of a treaty (Art. 25 of the Patent Act applied mutatis mutandis under Art. 68(1) of the Design Act, Art. 17(i) of the Design Act).

(4) Where the applicant for design registration is an association or foundation, etc. which does not have the status of a juridical person (Art. 6 of the Patent Act applied mutatis mutandis under Art. 68(2) of the Design Act).

(5) While the applicant for design registration is a minor or an adult ward, the application for design registration is not filed through their statutory representatives (Art. 7 of the Patent Act applied mutatis mutandis under Art. 68(2) of the Design Act).

(6) Where the applicant for design registration of a related design is not the same as the applicant or holder of the principal design. (Art. 10(1) of the Design Act).

(7) Where the applicant of a divisional application, a converted application or a new application for amended design is not the same as that of the original application. (Art. 10-2, Art. 13, Art. 17-3 of the Design Act)

KIPO

(1) Any employee of the Korean Intellectual Property Office or the Intellectual Property Trial and Appeal Board

No design shall be registered for any employee of the Korean Intellectual Property Office or the Intellectual Property Trial and Appeal Board while he/she is in service, except for a registered design acquired by inheritance or bequest. (Article 3(1) of the Design Protection Act). This is to prevent an abusive practice as they could inappropriately attempt to file an application for registration of another person's design, in particular, an examiner can obtain registration of a design by filing an application by himself while performing his job as examiner.

(2) An ineligible person

An ineligible person is referred to a person who is neither a creator of a design nor a legitimate successor to a right to have a design registered. An ineligible person is unable to have a design registered as he/she does not have a right to have a design registered (Article 3(1) of the Design Protection Act). Thus, such an application shall be rejected (Article 62(1)i of the Design Protection Act). If a registration is granted to such an application, the registration will be invalidated by a request for an invalidation trial (Article 121(1)ii of the Design Protection Act).

USPTO

MPEP § 1702: Pursuant to 35 U.S.C. § 4, patent examiners, other Office employees, and Office officers may not apply for a patent or acquire any right or interest in any patent during the period of their employment with the Office and for one year thereafter. An Office employee or officer who is named as an inventor in a patent application will be presumed (1) to be legally incapable of signing the inventor's oath or declaration pursuant to 35 U.S.C. § 4 , or (2) to refuse to sign the inventor's oath or declaration based on his or her status as an Office employee. See also MPEP § 310

3. Do have any provision to protect a legitimate right holder?

CNIPA

Any party involving in a dispute over the ownership of the right of patent application or patent right could apply for mediation with the administrative authority for patent affairs or instituted legal proceedings before the people's court , who has already applied for mediation with the administrative authority for patent affairs or instituted legal proceedings before the people's court, may request the patent administration department under the State Council to suspend the relevant procedures. (rule 86.1)

EUIPO

Two alternative actions aim at protecting a legitimate right holder:

1. Claim to entitlement with a view to a change of ownership

According to Article 17 CDR (Presumption in favour of the registered holder of the design), 'The person in whose name the registered Community design is registered or, prior to registration, the person in whose name the application is filed, shall be deemed to be the person entitled in any proceedings before the Office as well as in any other proceedings'.

2. Request for a declaration of invalidity

As an alternative to the request to have a change of ownership, the person who claims to be entitled to a Community design may also seek the invalidity thereof. According to Article 25(1)(c) CDR, a Community design may be declared invalid if, by virtue of a court decision, the rights holder is not entitled to the Community design.

JPO Where the applicant for design registration is different from the creator of the design but the applicant has not succeeded to the right to obtain a design registration from the creator, the application becomes the subject of refusal (Art. 17(iv) of the Design Act).
Where a design was created jointly and the right to obtain a design registration is jointly owned, an application for design registration filed by only a part of the joint owners becomes the subject of refusal (Art. 17(i) of the Design Act).

KIPO (1) Where an application filed for registration of a design has been rejected due to ineligibility of an applicant, if a legitimate right-holder subsequently files an application for registration of the design, the filing date of the latter application shall be retrospectively revised to the earlier filing date when the ineligible applicant filed the application. (Article 44 of the Design Protection Act)
(2) If a ruling to revoke registration of, or invalidation trial of a design becomes final and conclusive on the ground that the registrant is unentitled, the application filed by the legitimate right-holder for registration of the design subsequent to the application filed by the person unentitled to design registration shall be deemed filed at the time the application for the revoked or invalidated registration of the design was filed:

USPTO MPEP § 2310: A derivation proceeding is a trial proceeding under 35 U.S.C. § 135 conducted at the Patent Trial and Appeal Board to determine whether (i) an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application, and (ii) the earlier application claiming such invention was filed without authorization.

4. Formality concerning indication of a creator and other issues

	CNIPA	EUIPO	JPO	KIPO	USPTO
4.1. Requirements to indicate a creator in an application form.	A creator shall be indicated in an application (Rule 16) ,but that does not have any impact on the establishment of a filing date (Rule 39).	Article 1(2)(d) of the Implementing Regulation No 2245/2002 of 21 October 2002 (CDIR) (Content of the application): 'The application may contain (...) the citation of the designer or of the	A person requesting a design registration shall state the name and domicile or residence of the creator of the design in an application (Art. 6(1)(ii) of the Design Act). If the statement of the creator is missing in	A creator shall be indicated in an application (Article 37 of the Design Protection Act) but that does not have any impact on the establishment of a filing date (Article 38 of the Design Protection Act).	35 U.S.C. § 115(a): An application for patent that is filed under section 111(a) or commences the national stage undersection 371 shall include, or be amended to include, the name of the inventor for any

		<p>team of designers or a statement signed by the applicant to the effect that the designer or team of designers has waived the right to be cited under Article 36(3)(e) of Regulation (EC) No 6/2002’.</p> <p>The citation, the waiver and an indication regarding the designer(s) are merely optional and are not subject to examination.</p>	<p>the application, the applicant is required to amend the application in the name of the Commissioner of the Patent Office. . (This treatment is not applicable to the international registrations designating Japan under the Geneva Act of the Hague Agreement.)</p>		<p>invention claimed in the application. Except as otherwise provided in this section, each individual who is the inventor or a joint inventor of a claimed invention in an application for patent shall execute an oath or declaration in connection with the application.</p>
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	CNIPA	EUIPO	JPO	KIPO	USPTO
4.2. Allowing to change or add a creator in the application proceedings	<p>It is allowed to change or add a creator in an application form in the application proceedings (Rule 119)</p>	<p>The answer is in the affirmative. Since the right to be cited as the designer is not limited in time, the designer’s name can also be entered into the EUIPO register after the filing of the design (Article 69(2)(j)</p>	<p>An amendment of the statement of the creator may be made only while the case is pending. Such an amendment must be submitted together with the following documents;</p>	<p>It is allowed to change or add a creator in an application form in the application proceedings (Article 50 of the Enforcement Rule of the Design Protection Act)</p>	<p>35 U.S.C. § 116(c): Whenever through error a person is named in an application for patent as the inventor, or through an error an inventor is not named in an application, the Director may permit</p>

		<p>CDIR).</p> <p>Likewise, the name of a designer (or the designation of a team of designers) can be added after the filing of the design</p>	<p>(1) Written declarations by the creators (declarations as to whether being a genuine creator or not made by all the persons stated in the application before and after the amendment), and</p> <p>(2) A document stating the reason for the change (addition or deletion of the creator(s))</p>		<p>the application to be amended accordingly, under such terms as he prescribes. Where an application has an incorrect inventorship, the applicant should submit a request to correct inventorship under 37 CFR 1.48. See also MPEP § 602.01(c) et seq.</p>
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	CNIPA	EUIPO	JPO	KIPO	USPTO
4.3. Allowing to change or add a creator after the final decision	It is allowed to change or add a creator in an application form after the final decision. (Rule 119)	<p>The answer is in the affirmative.</p> <p>Since the right to be cited as the designer is not limited in time, the designer's name can also be entered into the EUIPO register after the filing of the design (Article 69(2)(j) CDIR).</p> <p>Likewise, the name of a designer (or the designation of a team of designers) can be added after the filing of the design</p>	<p>Since an amendment of the statement of the creator may be made only while the case is pending, such an amendment is not admissible after a design right has been registered or an examiner's decision or appeals decision of refusal has become final and binding.</p> <p>However, if it is found that the statement of the name of the creator in the original certificate of design registration is not the truth, the genuine creator may submit a request of transfer of the design right with the statement of the name of the genuine creator and a document proving the fact.</p>	In principle, it is not allowed to change or add a creator in an application form after issuing a decision of granting or refusing a registration, Provided That it is deemed to be an obvious omission or typo, it is allowed.	35 U.S.C. § 256(a): Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent, the Director may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate correcting such error.

	CNIPA	EUIPO	JPO	KIPO	USPTO
4.4. Does the applicant need to submit a document certifying that assignment from a creator?	Where a creator and an applicant are different, it is not necessary to submit a document certifying succession of a design right.	When filing a Community design application, successors in title do not have to substantiate their ownership of the design by proving that they have purchased the rights from the designer(s), or that such rights have been otherwise transferred to them such as by means of succession.	In general, even where the applicant and the creator are stated as the different persons in an application for design registration, it is not needed to submit a document proving the succession of the right to obtain a design registration. However, when it is found necessary, the applicant is ordered to submit a said document in the name of the Commissioner of the Patent Office. (Art. 5(2) of the Enforcement Ordinance of the Patent Act applied mutatis mutandis under Art. 19 of the Enforcement Ordinance of the Design Act)	Where a creator and an applicant are different, it is not necessary to submit a document certifying succession of a design right.	35 U.S.C. § 118: A person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. A person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties. If the Director grants a patent on an application filed under this section by a person other than the inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient.

	CNIPA	EUIPO	JPO	KIPO	USPTO
4.5. Priority claim in regards to a creator	CNIPA examines only if the description in the column of the applicant in the first country listed in the priority certificate is the same as the description in the column of the applicant listed in the application which is submitted to the second country with priority claim. Thus, as long as the applicants are the same, the priority claim will be acceptable.	EUIPO examines only if the designation of the applicant in the first country listed in the priority certificate is the same as the applicant listed in the Community design application. As long as the applicants are the same, the priority claim will be acceptable. An inconsistency in the citation of the designer does not have any impact on the validity of a priority claim. This is so because the citation of a designer in an application for a Community design is merely optional and not examined by EUIPO	In the determination of the validity of the effect of a priority claim under the Paris Convention, the identity of the creator is not examined, while the legality of the applicant is examined (i.e. whether the applicant in Japan is either the same person as or his successor to that of the first application and is eligible for the benefits of the treaty).	KIPO examines only if the description in the column of the applicant in the first country listed in the priority certificate is the same as the description in the column of the applicant listed in the application which is submitted to the second country with priority claim. Thus, as long as the applicants are the same, the priority claim will be acceptable.	MPEP § 213.02, subsection II: Pursuant to 35 U.S.C. § 119(a), the foreign application must have been filed by the same applicant as the applicant in the United States, or by applicant's legal representatives or assigns. Consistent with longstanding USPTO policy, this is interpreted to mean that the U.S. and foreign applications must name the same inventor or have at least one joint inventor in common.