Catalog of Eligibility for Industrial Design Protection

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I. Introduction

1. Project Background

During the inaugural ID5 annual meeting in December 2015, the Partners recognized the need to exchange information concerning what subject matter could be protected as an industrial design, and it was agreed that KIPO would take the lead on the this project Catalog of Eligibility for Industrial Design Protection.

The ID5 Partners each have their own legal definitions of design, subject matter of design protection, and registrabiliy/patentability requirements based on each Partner's unique economic, societal, and cultural perspective. The View and Drawing Requirements for Designs Project implemented under the leadership of EUIPO clearly reveals such differing perspectives.

Today, design protection in the international arena has grown more important as disputes over designs are more likely to occur with the growth in international trade of goods and services. Against this backdrop, the need to enhance mutual understanding and predictability among the Partners has become an urgent issue in order to protect design rights.

2. Project Definition

The purpose of the "Catalog of Eligibility for Industrial Design Protection" Project is to broaden the mutual understanding among Partners through the sharing of basic legal information, such as information on design protection systems and registrability requirements.[1]

[1] The term "registerability" is used here broadly and includes both requirements for design registration and design patent systems.

The Lead Office will be in charge of collecting, organizing, and comparing the requirements for design registration based on legislation of each country. The Study is expected to create an understanding systematically for users about the requirements for design registration.[2]

The legal definition of “design” is associated with the registrable/patentable design requirements, and it plays a key role to understanding the design protection regime which is useful information for users to know. The study is expected to develop a deeper understanding of the ID5 Partners and their respective systems.

The structure and format of the catalog has been agreed upon by all the Partners, and the Partners have provided the requirements and entitlement for obtaining industrial design protection found in their own design laws. The Lead Office created a first draft structure and collected input from the Partners in order to produce the final draft of the catalog.

3. The Catalog

The Catalog is created to enhance understanding of diverse design systems of the ID5 Partners (hereinafter referred to as the “Partners”) by comparing their different eligibility requirements. Given the broad concept of the eligibility requirements, the catalog focuses on legislative provisions including laws, enforcement rules and examination guidelines to minimize overlapping areas with different projects led by other Partners while containing relevant examples and drawings to provide a better understanding for users.

The catalog is largely composed of four chapters:

[2] “Design registration” refers to design registrations in registration systems and design patents in design patent systems.

1. The Project background and definition
2. Part 1 : Requirements for obtaining Industrial Design Protection
3. Part 2 : Entitlement for obtaining Industrial Design Protection
4. Summary table.

Chapter 4 contains a summary table for users to easily understand eligibility requirements of each office.

The ID5 Partners hope that the catalog will help facilitate the design application by providing users with a better understanding on eligibility requirements.

While the information provided in this catalog has been derived from submission by the Partner Offices and is believed to be accurate and current at the time of drafting, this catalog is for educational and informational purposes only and should not be relied on for legal reference purposes. Reference should be made to the laws, regulations, examination guides and other materials provided by the Offices directly and updated as needed.

II. Part 1 : Requirements for obtaining Industrial Design Protection

1 Eligibility of the Partners

1.1 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.)'

1.2 Is 'Design' defined in the Act? If so, what is the legal definition of 'Design'?

- **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.

1.3 Is ‘subject matter of design protection’ defined in the Act? If so, what is ‘subject matter of design protection’ ?

- **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. 4(3) 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.

1.3.1 Is ‘Graphic Design’ a subject matter of design protection’?

- **CNIPA**

☒No

If so, what is the legal ground?

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

What are the details of the legal ground?

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.

（The carrier of a design must be a product and ‘Graphic Design’ has no carrier.）

EUIPO

☒Yes

If so, what is the legal ground?

Even though there is no specific provision concerning ‘graphic designs’, such designs are not excluded from protection given the comprehensive definition of designs at art. 3(a) CDR. They are therefore assumed to be eligible to design protection to the extent that they may be a representation of a detail or an aspect of the product . “Graphic symbols” are a product, within the meaning of Art. 3(b) CDR. A graphic symbol represented by lines, contours, shapes etc. will therefore be eligible to design protection because it will represent “the appearance of a product”, as required under Art. 3(a) CDR.

examination_of_appli
cations_for_registere

What are the details of the legal ground?

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. As an example, it is stated that combinations of colours may be accepted if it can be ascertained from the contours of the representation that they relate to a product such as, for instance, a logo or a graphic symbol in Class 32 of the Locarno Classification. By contrast, a single colour may of course be an element of a design, but on its own it does not comply with the definition of a design because, in the absence of lines or contours, it does not constitute the ‘appearance of a product’

JPO

☒No

If so, what is the legal ground?

Article 2(1) of the Design Act

"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.

What are the details of the legal ground?

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 provided that such a design fulfills all the requirements such as novelty, creativity, etc.

However, "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. Therefore, ‘Graphic Design’ does not become a subject matter of the design protection.

[Examination Guidelines for Design]

In order for the subject matter of an application for design registration to constitute a design, it must be a creation of the form of an article, and because the article and the form are inseparably integrated, creation of the form alone detached from the article, such as creation of the pattern alone or the color alone, is not found to be a design.

Articles subject to the Design Act are tangible objects which are movables distributed on markets.

(21.1.1.1. "The subject matter is found to be an article")

KIPO

☒No

If so, what is the legal ground?

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;

What are the details of the legal ground?

‘Graphic design’ itself cannot meet the article of manufacture requirement but can be accepted for design registration when it is combined with an article.

[Design Examination Standards]

Part 4, Chapter 1 Definition of Design

1. Definition of Design

1) Under paragraph (1) of Article 2 (Definition) of the Design Act, the term “design” means a shape, pattern, or color of an article, which invokes a sense of beauty through visual perception.

2) The subject matter of the design shall include articles, parts of an article (excluding parts of a set of articles), and typefaces.

3) What fails to accord with the definition of design shall not be accepted for design registration in violation with the body (industrial applicability) of paragraph (1) of Article 33 (Requirements for Design Registration) of the Act.

- **USPTO**

☒Yes

If so, what is the legal ground?

35 USC 171 and MPEP 1504.01

What are the details of the legal ground?

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"). Surface treatment must be

applied to or embodied in an article of manufacture. Surface treatment, per se (i.e., not applied to or embodied in a specific article of manufacture), is not proper subject matter for a design patent under 35 U.S.C. 171. Surface treatment may either be disclosed with the article to which it is applied or in which it is embodied and must be shown in full lines or in broken lines (if unclaimed) to meet the statutory requirement (See MEP 1502)

1.3.2 Is 'Typeface Design' a subject matter of design protection?

- **CNIPA**

☒Etc. (The case of Notes 3.2 shown at the end of this document is not the subject matter of design protection.)

If so, what is the legal ground?

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.

What are the details of the legal ground?

The Guidelines For Patent Examination: The carrier of a design must be a product.

- **EUIPO**

☒Yes

If so, what is the legal ground?

Art. 3(b) CDR and 4(4) CDIR

What are the details of the legal ground?

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

Art. 4(4) CDIR provides that “Where an application concerns a design consisting in a typographic typeface, the representation of the design shall consist in a string of all the letters of the alphabet, in both upper and lower case, and of all the arabic numerals, together with a text of five lines produced using that typeface, both letters and numerals being in the size pitch 16”.

- **JPO**

☒No

If so, what is the legal ground?

Article 2(1) of the Design Act

"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.

What are the details of the legal ground?

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 provided that such a design fulfills all the requirements such as novelty, creativity, etc.

However, "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. Therefore, ‘Typeface Design’ does not become a subject matter of the design protection.

[Examination Guidelines for Design]

In order for the subject matter of an application for design registration to constitute a design, it must be a creation of the form of an article, and because the article and the form

are inseparably integrated, creation of the form alone detached from the article, such as creation of the pattern alone or the color alone, is not found to be a design.

Articles subject to the Design Act are tangible objects which are movables distributed on markets.

(21.1.1.1. "The subject matter is found to be an article")

KIPO

☒Yes

If so, what is the legal ground?

Design Protection Act

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;

What are the details of the legal ground?

[Design Examination Standards]

Part 4, Chapter 1 Requirements for Establishment

2.3) Requirements for typeface design

(1) A typeface shall be deemed as an “article” and shall not accompany a “shape.”

(2) In cases where a typeface design fails to fulfill the following requirements, it shall be deemed that such design does not accord with the definition of design under paragraph (1) of Article 2(Definition) of the Act.

① A typeface shall be as prescribed by paragraph (2) of Article 2 (Definition) of the Act.

ⓐ A typeface shall be used for recording, marking, printing, etc.

ⓑ A typeface shall be made in a style with common characteristics.

ⓒ A typeface shall consist of a set of fonts in Korean, English, Chinese alphabets or any other languages as well as numerals and special symbols.

② A typeface shall be a pattern, color, or combination thereof.

③ A typeface shall invoke a sense of beauty through visual perception.

USPTO

☒Yes

If so, what is the legal ground?

35 USC 171 and MPEP 1504.01

What are the details of the legal ground?

Traditionally, type fonts have been generated by solid blocks from which each letter or symbol was produced. Consequently, the USPTO has historically granted design patents drawn to type fonts. 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)).

1.3.3 Is ‘GUI’ a subject matter of design protection?

- **CNIPA**

☒Yes

If so, what is the legal ground?

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

What are the details of the legal ground?

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.

GUI is the design of patterns of a product, so it is in conformity with the provisions of Article 2.4.

(Example)

Not accepted item：

Web design of the website

Desktop of computer

GUI without device

Accepted item：

CN201630237603.3

GUI of POS machine

CN201630455006.8

GUI of cell phone

CN201630096416.8 projector and its GUI

EUIPO

☒Yes

What is the legal ground?

Even though there is no specific provision concerning ‘graphical user interface’, such designs are not excluded from protection given the comprehensive definition of designs at art. 3(a) CDR. They are therefore assumed to be eligible to design protection to the extent that they may be a representation of a detail or an aspect of the product. By analogy, “Graphic symbols” are a product, within the meaning of Art. 3(b) CDR. A GUI represented by lines, contours, shapes etc. will therefore be eligible to design protection because it will represent “the appearance of a product”, as required under Art. 3(a) CDR.

What are the details of the legal ground?

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)”.

JPO

☒Yes

What is the legal ground?

Article 2(1) and (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.

Part VII, Chapter IV of the Examination Guidelines for Design "Design Including a Graphic Image on a Screen".

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/0704.pdf

What are the details of the legal ground?

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 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.

[Examination Guidelines for Design]

In order for a graphic image on a screen included in the design in the application for design registration to constitute a design subject to protection under the Design Act, the graphic image must comply with either (1) or (2) below.

(1) The graphic image displayed on the display part of the article is found to be the shape, patterns or colors, or any combination thereof, of a part of the article as provided in Article 2(1) of the Design Act.

(2) The graphic image on a screen included in the design constitutes a graphic image as provided in Article 2(2) of the Design Act.

In addition, in order to comply with either (1) or (2) above, the graphic image displayed on the display part of the article needs to be a graphic image that has been recorded in the article.

(74.1 The graphic image on a screen constitutes a design)

When filing an application for design registration for a design including a graphic image on a screen, the article that serves as the basis of the creation must be found to be an article

subject to the Design Act. (“A graphic image for xx” or “an interface for xx” is not categorized as an article to the design.)

(74.2.1 Matters to be stated in the application of an application for design registration including a graphic image on a screen, (2) Statement in the column of “Article to the Design”)

In order for a graphic image to be found as one provided in Article 2(2) of the Design Act, it needs to be a graphic image displayed on the display part of the article to the design of the application for design registration or a graphic image displayed on another article that is used with the article in an integrated manner.

(74.4.1.1.1.2.2 The graphic image is displayed on the article itself or another article that is used with the article in an integrated manner)

[Examples of registrable designs for a graphic image]

(Example of a graphic image displayed on the display part of an article itself)

“Mobile phone”

[Front view]

(Example of a graphic image displayed on another article that is used with the article in an integrated manner) *

“Magnetic disk recorder”

In this case example, drawings representing the form of the article (e.g. front view, top view, right side view, etc.) shall be depicted in broken lines or even omitted by stating to that effect as an explanation.

[Important]

"GUI" or "Graphical User Interface" 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 and does not become a subject matter of the design protection.

KIPO

☒Yes

If so, what is the legal ground?

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;

What are the details of the legal ground?

[Design Examination Standards]

Part 6, Chapter 8 Examination of GUI on a display

1.1) Definition of GUI on a display

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.

1.2) Requirements for establishment of GUI on a display

The requirements for the establishment of GUI on a display shall be governed by the general requirements for the establishment of design.

(Example)

Example : items not recognized as an article ✖			Example : items recognized as an article ○
"keyboard"	"watch"	"bicycle wheel"	"vehicle front glass panel in which GUI is indicated"

<Contents of Guidelines for the Examination of a GUI on a display>

1. Requirements for Establishment

2. Articles related to GUI on a display

3. One Registration Application for One design

4. Industrial Applicability

5. Novelty

6. Earlier Application

7. Expanded Prior Application

8. Easily Created Design

9. Determination of Similarity

10. Unregistrable GUIs on a display

11. Application for GUIs Accompanying Priority Claim under Treaty

- **USPTO**

☒Yes

If so, what is the legal ground?

35 USC 171, MPEP 1504.01(a), and *Ex parte Strijland*

What are the details of the legal ground?

Computer-generated icons, such as full screen displays and individual icons, are 2-dimensional images which alone are surface ornamentation. See, e.g., *Ex parte Strijland*, 26 USPQ2d 1259 (Bd. Pat. App. & Int. 1992) (computer-generated icon alone is merely surface ornamentation). The 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. Thus, if an application claims a computer-generated icon shown on a computer screen, monitor, other display panel, or a portion thereof, the claim complies with the "article of manufacture" requirement of 35 U.S.C. 171. Since a patentable design is inseparable from the object to which it is applied and cannot exist alone merely as a scheme of surface ornamentation, a computer-generated icon must be embodied in a computer screen, monitor, other display panel, or portion thereof, to satisfy 35 U.S.C. 171 (see MPEP 1504.01(a) and *Ex parte Strijland*)

1.3.4 Is ‘Interior Design’ a subject matter of design protection?

- **CNIPA**

☒Etc. (The case of Notes 3.4 shown at the end of this document is not the subject matter of design protection.)

If so, what is the legal ground?

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.

What are the details of the legal ground?

The Guidelines For Patent Examination: The carrier of a design must be a product.

- **EUIPO**

☒Yes

What is the legal ground?

Article 3(a) CDR.

What are the details of the legal ground?

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 ‘interior designs’, such designs are not excluded from protection given the comprehensive definition of designs at art. 3(a) CDR.

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.

JPO

☒Yes ☒No

If so, what is the legal ground?

Articles 2, 7 and 8 of the Design Act.

(Definition, etc.)

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.

(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.

(Design for a set of articles)

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

What are the details of the legal ground?

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.

Since an object which is industrially mass-produced and handled as movables when distributed on the market is admitted as "an article" on its own, a fixed form of the inside of

a factory-produced product (e.g., bathroom; a construction unit for assembly) may be granted design registration as a design of a part of an article.

In addition, provided that the prescribed requirements are fulfilled, two or more articles would constitute one single design and such a design may be granted design registration as a design for a set of articles.

However, it is generally understood that "Interior Design" (e.g., get-up) means a particular layout/arrangement in the inside of the architecture of such plural articles as floor, wall, ceiling, furniture, some facilities and lighting fixtures. As explained above, since these layouts/arrangements do not fall under the "design" provided for in the Design Act, "Interior Design" in general is not regarded as the subject matter of the design protection.

[Example of registered designs (partial design)]

(Example)

Design registration No. 1499318 “Mist sauna room”

[Examination Guidelines for Design]

Articles subject to the Design Act are tangible objects which are movables distributed on markets.

Examples of subject matter not found to be articles

(i) Subject matter that is not movables, in principle

Land and any fixtures thereto, what is called real estate, is not found to be an article. However, subject matter that becomes real estate when used, but is industrially mass-produced and treated as movables when sold, such as a gate or a prefabricated bungalow, is found to be an article.

(21.1.1.1. The subject matter is found to be an article)

[Examination Guidelines for Design]

Where an application falls under either of the following when making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, the application is regarded as containing two or more designs and is not found to be an application for design registration filed for each design.

(1) <Omitted>

(2) Where drawings of two or more articles are indicated (including the case where multiple articles are arranged in the drawings)

However, this excludes cases where an application for design registration is filed for a design for a set of articles (mention later).

(51.1.2.2 Examples of applications that are not filed for each design)

Design for a set of articles

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

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

(2) The constituent articles are appropriate

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

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

[Examples of registrable designs for a set of articles]

(Example 1) (Example 2)

“Set of kitchen equipment” “Set of storage racks”

(Example 3) (Example 4)

“Set of chairs” “Set of tables”

KIPO

☒No

If so, what is the legal ground?

Article 2 (Definitions)

The terms used in this Act shall be defined as follows:

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;

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.

Article 42 (Design for a Set of Products)

(1) Where two or more products are used together as one set of products, a design for the set of products may be registered as one design, if the design for the set of products has unity as a whole.

(2) The classification of a set of products under paragraph (1) shall be prescribed by Ordinance of the Ministry of Trade, Industry and Energy.

What are the details of the legal ground?

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.

- **USPTO**

☒Yes

If so, what is the legal ground?

35 USC 171

What are the details of the legal ground?

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.

1.3.5 Is ‘Architecture Design’ a subject matter of design protection?

CNIPA

☒Yes ☒Etc.

Architecture Design is a subject matter of design protection while there is limitation provided in the Guidelines For Patent Examination.

“According to Article 2. 4, the following situations are ineligible for patent protection for design:

(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;”

If so, what is the legal ground?

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

What are the details of the legal ground?

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.

[Examples - Requirements for being an article]

(Example 1)

Design Application No. 201530465560.X “Bus shelter”

(Example 2)

Design Application No. 201630246425.0 “Sauna room”

(Example 3)

Design Application No. 201330255283.0 “Mobile house”

EUIPO

☒Yes

What is the legal ground?

Art. 3(a) CDR.

What are the details of the legal ground?

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.

However, 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. This is because a blueprint does not disclose the appearance of a finished product such as a house.

JPO

☒Yes ☒No

If so, what is the legal ground?

Article 2(1) of the Design Act

"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.

What are the details of the legal ground?

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 provided that such a design fulfills all the requirements such as novelty, creativity, etc.

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).

[Examples of registered designs]

(Example 1)

Design registration No. 980108 “Connected easy-assembled construction”

(Example 2)

Design registration No. 980078 “Assembled toilet”

Front view Right-side view

A-A cross-sectional view

[Examination Guidelines for Design]

Articles subject to the Design Act are tangible objects which are movables distributed on markets.

Examples of subject matter not found to be articles

(i) Subject matter that is not movables, in principle

Land and any fixtures thereto, what is called real estate, is not found to be an article. However, subject matter that becomes real estate when used, but is industrially mass-produced and treated as movables when sold, such as a gate or a prefabricated bungalow, is found to be an article.

(21.1.1.1. The subject matter is found to be an article)

KIPO

☒Etc. (Where ‘an architecture design’ is repeatedly producible and transportable, it may be accepted for the design registration.)

If so, what is the legal ground?

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;

What are the details of the legal ground?

[Design Examination Standards]

Part4, Chapter 1. Requirements for establishment

1. Definition of Design

1) Under paragraph (1) of Article 2 (Definition) of the Act, the term “design” means shape, pattern, or color of an article, which invokes a sense of beauty through visual perception.

2. Requirements for Establishment of Design

1) General requirements for establishment of design

If a design fails to fulfill requirements that fall under any of the following subparagraphs, it shall be deemed that such design fails to accord with the definition of design under paragraph (1) of Article 2 (Definition) of the Act.

(1) Requirements for being an article

The term “article” under the Act means, in principle, tangible movables as a specific and independent article.

① Immovables, Provided that if immovables can be repeatedly produced and transported, may be accepted for the design registration.

ⓐ Example of a case where it is not recognized as an article

As the article of the design is deemed an immovable property that should be built th rough the act of constructing and cannot be mass-produced by an industrial manufacturing method and transported due to its materials, structure and shape, it cannot be considered an industrially applicable design (see, Supreme Court Decision 2007Hu4311)

[Product Indication] Sauna

[Description of design] (i) Materials are stones and red clay

(ii) The inner layer laminates stones and red clay, which are excellent in far-infrared radiation. The outer layer maintains internal temperatures constantly for a long period by laminated granites

(iii) As this article is a heavy object, a bottom view is omitted.

ⓑ Example of a case where it is recognized as an article

(Example) a bungalow, a phone booth, a movable booth, an anticrime checkpoint, a platform, a bridge, a mobile lavatory, a fabricated house, etc.

[Examples - Requirements for being an article]

30-2013-0045136 / 2013.09.02
"Booth for display"

30-2012-0019320 / 2012.04.23
"Sauna box"

30-2014-0054801 / 2014.11.14
"Assembly house"

- **USPTO**

☒Yes

If so, what is the legal ground?

35 USC 171

What are the details of the legal ground?

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.

1.3.6 Is 'Architectural plan/drawing' a subject matter of design protection?

- **CNIPA**

☒Etc. (The case of Notes 3.6 shown at the end this document is not the subject matter of design protection.)

If so, what is the legal ground?

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.

What are the details of the legal ground?

The Guidelines For Patent Examination: The carrier of a design must be a product.

- **EUIPO**

☒Yes

What is the legal ground?

Even though there is no specific provision concerning ‘architectural plan / drawing designs’, such designs are not excluded from protection given the comprehensive definition of designs at art. 3(a).

What are the details of the legal ground?

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. This is because a blueprint does not disclose the appearance of a finished product such as a house.

- **JPO**

☒No

If so, what is the legal ground? [Please provide the legislation (including examination guidelines/standards) or precedent]

Article 2(1) of the Design Act

"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.

What are the details of the legal ground?

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 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.

[Examination Guidelines for Design]

In order for the subject matter of an application for design registration to constitute a design, it must be a creation of the form of an article, and because the article and the form are inseparably integrated, creation of the form alone detached from the article, such as creation of the pattern alone or the color alone, is not found to be a design.

Articles subject to the Design Act are tangible objects which are movables distributed on markets.

(21.1.1.1. "The subject matter is found to be an article")

- **KIPO**

☒No

If so, what is the legal ground?

An architectural plan/drawing falls under diagrammatic works in accordance with Article 4.8 of the Copyright Act.

- **USPTO**

☒No

If so, what is the legal ground?

35 USC 171 (Not eligible for protection)

What are the details of the legal ground?

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. MPEP 1504.01

1.3.7 Is 'Food plating design' a subject matter of design protection?

- **CNIPA**

☒Etc. (The case of Notes 3.7 shown at the end this document is not the subject matter of design protection.)

If so, what is the legal ground?

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.

What are the details of the legal ground?

The Guidelines For Patent Examination: The carrier of a design must be a product.

[Examples - Requirements for being an article]

(Example 1)

Design Application No. 201630519489.3 "Decorative candy"

(Example 2)

Design Application No. 201630144074.2 “Cookies（2）”

- **EUIPO**

☒Yes

What is the legal ground?

Art. 3(a) CDR.

What are the details of the legal ground?

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.

- **JPO**

☒No

If so, what is the legal ground?

Articles 2 and 7 of the Design Act.

(Definition, etc.)

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.

(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.

What are the details of the legal ground?

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.

For example, processed foods with an additional constituent such as a skewer may be recognized as one design provided that the article (processed food) is industrially mass-produced in a fixed form and the additional constituent (skewer, etc.) is necessary to preserve its form.

However, it is generally understood that "Food Plating Design" means a particular layout/arrangement of various foodstuffs such as perishable and processed foods on a plate. As explained above, since these layouts/arrangements do not fall under the “design” provided for in the Design Act, “Food Plating Design” in general is not regarded as the subject matter of the design protection.

An application filed for "Food Plating Design" would then be recognized not to be an application filed per design and therefore refused in accordance with the provision of Article 7 of the Design Act (One application per design).

[Examples of registered designs]

(Example 1)

Design registration No. 1154256 “Ice candy with bar”

(Example 2)

Design registration No. 1211064 “Boarded Japanese fish cake” (steamed fish paste)

Perspective view

Front view

[Examination Guidelines for Design]

Where an application falls under either of the following when making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, the application is regarded as containing two or more designs and is not found to be an application for design registration filed for each design.

(1) <Omitted>

(2) Where drawings of two or more articles are indicated (including the case where multiple articles are arranged in the drawings)

However, this excludes cases where an application for design registration is filed for a design for a set of articles (mention later).

(51.1.2.2 Examples of applications that are not filed for each design)

KIPO

☒No

If so, what is the legal ground?

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;

What are the details of the legal ground?

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.

Cake, 30-2016-0044455/2016.9.9.

Hotdog, 30-2015-0012688/2015.3.13.

- **USPTO**

☒Yes

If so, what is the legal ground?

35 USC 171 and MPEP1504.01

What are the details of the legal ground?

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.

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)

1.3.8 Is 'Intangible but visual design' a subject matter of design protection?

(e.g., laser image, pattern of fountain)

- **CNIPA**

☒Etc. (The case of Notes 3.8 shown at the end of this document is not the subject matter of design protection.)

If so, what is the legal ground?

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.

What are the details of the legal ground?

The Guidelines For Patent Examination: The carrier of a design must be a product.

- **EUIPO**

☒Yes

What is the legal ground?

Art. 3(a) CDR

What are the details of the legal ground?

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.

- **JPO**

☒No

If so, what is the legal ground?

Article 2(1) of the Design Act

"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.

What are the details of the legal ground?

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 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.

[Examination Guidelines for Design]

Articles subject to the Design Act are tangible objects which are movables distributed on markets.

Examples of subject matter not found to be articles

(ii) Subject matter that is not solid

An intangible object, such as electricity, light or heat, is not found to be an article. Also, a tangible object that does not have a form of its own, such as gas or liquid, is not found to be an article.

(21.1.1.1. The subject matter is found to be an article)

KIPO

☒No

If so, what is the legal ground?

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;

What are the details of the legal ground?

[Design Examination Standards]

Part4, Chapter 1. Requirements for establishment

1. Definition of Design

1) Under paragraph (1) of Article 2 (Definition) of the Act, the term “design” means shape, pattern, or color of an article, which invokes a sense of beauty through visual perception.

2. Requirements for Establishment of Design

1) General requirements for establishment of design

If a design fails to fulfill requirements that fall under any of the following subparagraphs, it shall be deemed that such design fails to accord with the definition of design under paragraph (1) of Article 2 (Definition) of the Act.

(1) Requirements for being an article

The term “article” under the Act means, in principle, tangible movables as a specific and independent article. Therefore, what falls under any of the following shall not be accepted for the design registration.

② An item without certain shapes

(Example) gas, liquid, electricity, light, heat, sound, radio wave, etc.

USPTO

☒Yes

If so, what is the legal ground?

35 USC 171, MPEP, and *In re Hruby*

What are the details of the legal ground?

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.

"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.

1.3.9 Is ‘the design with no fixed pattern’ a subject matter of design protection?

- **CNIPA**

☒No (The design which has no fixed pattern)

If so, what is the legal ground?

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

The Guidelines For Patent Examination

What are the details of the legal ground?

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.

The Guidelines For Patent Examination ：

According to Article 2. 4, the following situations are ineligible for patent protection for design:

(2) any product which has no fixed shape, pattern or colour because it contains the substance which has no fixed shape, such as gas, liquid or powder;

- **EUIPO**

☒Yes

What is the legal ground?

Art. 3(a) CDR

What are the details of the legal ground?

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.

- **JPO**

☒No

If so, what is the legal ground? [Please provide the legislation (including examination guidelines/standards) or precedent]

Article 2(1) of the Design Act

"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.

What are the details of the legal ground?

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 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.

[Examination Guidelines for Design]

Articles subject to the Design Act are tangible objects which are movables distributed on markets.

Examples of subject matter not found to be articles

(iii) Subject matter which is a collection of powder or granules

Powder and granules are not found to be articles, because although the individual constituent objects are solid and have a certain form, a collection of them does not have a specific form. However, where the individual constituent objects are powder or granules, but a collection of them has a solid form, such as in the case of a sugar cube, the subject matter is found to be an article.

(21.1.1.1 The subject matter is found to be an article)

KIPO

☒No

If so, what is the legal ground?

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;

What are the details of the legal ground?

[Design Examination Standards]

Part4, Chapter 1. Requirements for establishment

1. Definition of Design

1) Under paragraph (1) of Article 2 (Definition) of the Act, the term “design” means shape, pattern, or color of an article, which invokes a sense of beauty through visual perception.

2. Requirements for Establishment of Design

1) General requirements for establishment of design

If a design fails to fulfill requirements that fall under any of the following subparagraphs, it shall be deemed that such design fails to accord with the definition of design under paragraph (1) of Article 2 (Definition) of the Act.

(1) Requirements for being an article

The term “article” under the Act means, in principle, tangible movables as a specific and independent article. Therefore, what falls under any of the following shall not be accepted for the design registration.

③ An item composed of powders or granules

(Example) Cement, sugar, etc.

But a standardized or solidified powder such as cube sugar which collectively form a certain shape can be a subject matter of design protection.

USPTO

☒Yes ☒No (Depends on specifics of design and application.)

If so, what is the legal ground?

35 USC 171 and/or 35 USC 112

What are the details of the legal ground?

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. In presenting the design in the application, a design with multiple states or configurations may be disclosed using figures and description that identifies the varied states or configurations and must satisfy the requirements of 35 USC 112. (e.g., written description and enablement).

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.

If a description in the specification refers to embodiments or modified forms not shown in the drawing, or includes vague and nondescriptive words such as “variations” and “equivalents,” or a statement indicating that the claimed design is not limited to the exact shape and appearance shown in the drawing, the claim should be rejected under 35 USC 112(a) and (b) as nonenabling and indefinite. The reason being the description fails to enable a designer of ordinary skill in the art to make an article having the shape and appearance of those other embodiments, modified forms or “variations” and “equivalents” referred to in the description in the absence of additional drawing views. Furthermore, in the absence of additional drawing views, the description, which is incorporated into the claim, fails to particularly point out and distinctly claim the shape and appearance of those other embodiments, modified forms or “variations” and “equivalents” that applicants regard as their invention. (See MPEP 1504.04, (I)(A))

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. (See MPEP 1502)

1.3.10 Is ‘the design constituted by common shape and fine arts’ a subject matter of design protection?

- **CNIPA**

☒Etc. (The case of Notes 3.10 shown at the end of this document is not the subject matter of design protection.)

If so, what is the legal ground?

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.

What are the details of the legal ground?

The Guidelines For Patent Examination: The carrier of a design must be a product.

EUIPO

☒Yes

What is the legal ground?

Art. 3(a) CDR

What are the details of the legal ground?

"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)

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.

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 possibility of cumulative protection of a creation by both design law and the national copyright law of the Member States: *‘A design protected by a design right registered in or in respect of a Member State in accordance with this Directive shall also be eligible for protection under the law of copyright of that State as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State’*

JPO

☒Yes

If so, what is the legal ground?

Article 2(1) of the Design Act

"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.

(Relationship to registered designs, etc. held by others)

Article 26 (1) Where a registered design uses another person's registered design, patented invention or registered utility model for which an application was filed prior to the date of filing of the application for the said design, or a design similar to another person's registered design, or where part of a design right pertaining to the registered design is in conflict with another person's patent right, utility model right or trademark right obtained based on an application filed prior to the date of filing of the application for the said registered design, or copyright which arose prior to the date of filing of the application for the said registered design, the holder of the said design right or exclusive licensee or non-exclusive licensees of the said design right may not work the said registered design as a business.

(2) Where a design similar to a registered design uses another person's registered design, patented invention or registered utility model for which an application was filed prior to the date of filing of the application for the said design, or a design similar to another person's registered design, or where part of a design right pertaining to designs similar to the registered design is in conflict with another person's design right, patent right, utility model right or trademark right obtained based on an application filed prior to the date of filing of the application for the said registered design, or copyright which arose prior to the date of filing of the application for the said registered design, the holder of the said design right or exclusive licensee or non-exclusive licensees of the said design right may not work such similar design as a business.

What are the details of the legal ground?

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 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 design, the holder of the design right may not work the registered design as a business.

[Examination Guidelines for Design]

Characters and signs indicated on an article will be treated as follows.

i. Characters and signs indicated on an article will be treated as elements constituting a design, except for those as shown in ii.

ii. Characters and signs indicated on an article which are used only for conveying information are not found to be a pattern, and do not constitute a design. However, such characters and signs indicated on an article need not be deleted.

Examples are as follows.

(a) The text part of a newspaper or book

(b) Characters indicating ingredients or explaining the use, in a normal manner

(21.1.2 The subject matter is a specific design, (1)(ix))

KIPO

☒Etc.

If so, what is the legal ground?

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;

What are the details of the legal ground?

“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.

[Design Examination Standards]

Part4, Chapter 3 Novelty

1) A design publicly known or worked in the Republic of Korea or a foreign country before an application for design registration is filed, a design described in a printed publication distributed or made available for public use via telecommunications lines before an application for design registration is filed (hereinafter referred to as the “publicly known design”), or a design similar thereto falls under any subparagraph of paragraph (1) of Article 33 (Requirements for Design Registration) of the Act and shall not be eligible for design registration.

Part4, Chapter 6 Easily Created Design

1. Design that can be easily created

1) A design that a person having ordinary skill in the art to which the design pertains could have been easily created from a publicly known design, the combination thereof, or shape, pattern, color, or the combination thereof that is well known in the Republic of Korea or a foreign country (hereinafter referred to as the “well-known shape, pattern, etc.”) shall not be eligible for design registration under paragraph (2) of Article 33 (Requirements for Design Registration) of the Act.

2) If a design, as what does not simply copy publicly known designs or well-known shape, pattern, etc.,

e.g., uses them almost exactly as they are or diverts them, but chooses or combines them, invokes a new sense of beauty taken as a whole, such design will not be considered an easily created design.

USPTO

☒Yes

If so, what is the legal ground?

35 USC 171, MPEP, and *In re Zahn*

What are the details of the legal ground?

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.

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 all kinds including surface ornamentation as well as configuration of goods." *In re Zahn*, 617 F.2d 261, 204 USPQ 988 (CCPA 1980).

The design for an article consists of the visual characteristics embodied in or applied to an article. Since a design is manifested in appearance, the subject matter of a design patent application may relate to the configuration or shape of an article, to the surface ornamentation applied to an article, or to the combination of configuration and surface ornamentation. 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 (see MPEP 1502).

1.3.11 Does the Act state what shall be excluded from protection?

- **CNIPA**

☒Yes

What are excluded from protection?

Article 5.

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.

No patent right shall be granted for any invention-creation where acquisition or use of the genetic resources, on which the development of the invention-creation relies, is not consistent with the provisions of the laws or administrative regulations.

Article 25.

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**

☒Yes

What are excluded from protection?

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**

☒No

- **KIPO**

☒No

- **USPTO**

☒No

1.3.12 Are there final decisions issued by the trial and appeal board related to 3.1~3.11 above?

CNIPA

☒Yes

If so, what are the details of final decision issued by the trial and appeal board?

Final decision regarding 3.5(Architecture Design)

Application No.: 201030194914.9

Name of product: Commercial Architectural (Zhenbei store)

Invalidation Decision No.: 27336

The decision: Uphold the patent right

Decision point:

With regard to this case, the design of patent concerned is fit for industrial, so the reason of invalidation by petitioner that the patent does not meet the requirements of Article 2.4 is not established. Moreover, the submitted drawings of patent concerned do not have any deficiencies that the petitioner considers to be not clear, therefore, the reason of invalidation by petitioner that the patent does not meet the requirements of Article 27.2 is not established.

EUIPO

☒Yes

If so, what are the details of final decision issued by the trial and appeal board?

1. When examining design applications, EUIPO limits its examination to the formalities (quality of the representation, identification of the product, payment of taxes etc) (art. 45 CDR). Two substantive grounds are however examined: whether the design application complies with the definition given art 3(a) CDR and whether it complies with public policy and morality (art. 47 CDR).

Any decision to refuse a design application under art. 47 CDR is taken by a single examiner. Such a decision can be appealed before the Boards of Appeal of EUIPO (art 55). Further appeals are available before the General Court of the European Union and the Court of Justice of the European Union (art. 61 CDR).

There are few decisions based on the contrariety with the definition given art 3(a) CDR and whether it complies with public policy and morality. An example is attached.

0595-2012-3.pdf

2. All other grounds of invalidity as set out under 3-11 above can be raised in the context of applications for invalidity, either before the EUIPO (art. 24 CDR) or, under certain conditions, before a national court (art. 84 CDR).

Decisions adopted by the EUIPO Cancellation Division are taken by a panel of 3 examiners. Such decisions can be appealed before the Boards of Appeal of EUIPO (art 55). Further appeals are available before the General Court of the European Union and the Court of Justice of the European Union (art. 61 CDR).

JPO

☒Yes

If so, what are the details of final decision issued by the trial and appeal board?

The following is an example of appeal decisions concerning the provision of Article7 of the Design Act (One application per design) related to the above 3.4 and 3.7:

(Example)

Appeal 2010-29058 Appeal against the Examiner's Decision of Refusal

"Hot and cold water mixing faucet"

[Outline]

The examiner determined that "The design application is filed for two designs which are of a 'water discharge port' and 'faucet handle(s)'." and refused the application as violating Article 7 (One application per design).

In response to the request for appeal, the panel of appeal examiners determined that "The water discharge port and the right and left faucet handles have functional relevance of being a hot and cold water mixing faucet and are objects of a single business transaction, and they were created as having a certain regularity of shape. Thus the design in the application is considered as constituting a single unit of creation and can be registered as one design." The panel therefore canceled the original decision and rendered an appeal decision that the design in the application should be registered.

Design registration No. 1424586-"Hot and cold water mixing faucet"

KIPO

☒Yes

If so, what are the details of final decision issued by the trial and appeal board?

(Please provide any examples of decisions that can affect design examination)

With regard to the 3.2.

<2006WON10998 by the Intellectual Property Trial and Appeal Board >

(Summary) Under the Article 2 of the Design Protection 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 accordance with the requirements for establishment of the Design Examination Standards, if a typeface design per Article 2.1.2 of the Design Protection Act fails to fulfill the following requirements and subparagraphs of paragraph (2), it shall be deemed that such design does not accord with the definition of design under paragraph (1) of Article 2 (Definition) of the Act, Provided That, typefaces are deemed to be an article and do not accompany the shape.

① A typeface shall be used for recording, marking, printing, etc.

② A typeface shall be made in a style with common characteristics.

③ A typeface shall be a set of fonts in Korean, English, Chinese alphabets and other languages as well as numerals and special symbols.

Under the Design Protection Act, a typeface means a set of characters made in a style with common characteristics, not every single character. Thus, it does not have to include all sets of Korean typefaces, English typefaces or number typefaces but can consist of either a set of Korean typefaces or English typefaces or number typefaces.

<Drawing of representative letters> <Drawing of designated letters 1>

- **USPTO**

☒Yes

If so, what are the details of final decision issued by the trial and appeal board?

In re Daniels, 144 F.3d 1452, 1456-57, 46 USPQ2d 1788, 1790 (Fed. Cir. 1998)

Ex parte Strijland, 26 USPQ2d 1259

In re Hruby, 373 F.2d 997, 1001, 153 USPQ 61, 66 (CCPA 1967)

Ex parte Cady, 1916 C.D. 62, 232 O.G. 621 (Comm'r Pat. 1916)

In re Zahn, 617 F.2d 261, 204 USPQ 988 (CCPA 1980)

1.4 Are the registrability/patentability/requirements for protection defined in the Act? If so, what is the requirement for protection?

- **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.

KIPO

☒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 applicant for the registration of another design are one and the same person.

[Design Examination Standards]

Part4, Chapter 1. Requirements for establishment

1. Definition of Design

1) Under paragraph (1) of Article 2 (Definition) of the Act, the term “design” means a shape, pattern, or color of an article, which invokes a sense of beauty through visual perception.

2) The object subject to the design protection shall include articles, parts of an article (excluding parts of a set of articles), and typefaces.

3) What fails to accord with the definition of design shall not be accepted for design registration in violation of the body (industrial applicability) of paragraph (1) of Article 33 (Requirements for Design Registration) of the Act.

2. Requirements for Establishment of Design

1) General requirements for establishment of design

If a design fails to fulfill requirements that fall under any of the following subparagraphs, it shall be deemed that such design fails to accord with the definition of design under paragraph (1) of Article 2 (Definition) of the Act.

(1) Requirement for being an article

The term “article” under the Act means, in principle, tangible movables as a concrete and independent article. Therefore, what falls under any of the following shall not be accepted for the design registration. However, an article that falls under item ④ or ⑤ is eligible for registration as a partial design.

① Immovables. Provided that if immovables can be repeatedly produced and transported, may be accepted for the design registration.

② An item without certain shapes

(Example) gas, liquid, electricity, light, heat, sound, radio wave, etc.

③An item composed of powders or granules

(Example) Cement, sugar, etc.

④ Each piece of a composing article. However, an item subject to an independent transaction, as each composing piece of a construction toy, which has various completed forms, shall be eligible for the design registration.

⑤ Parts of an item that cannot be subject to an independent transaction

(Example) Heel of socks, neck of a bottle, etc.

⑥ What is not the form of an item itself

(Example) The design, as a flower shape made by folding handkerchief or towel, which is made in the process to use an item commercially and cannot be deemed as the form of such item itself “Scarf” whose shape is changed to be displayed on a stand

(2) Configuration of design

The term “shape, pattern, color” means the elements of a configuration of a design for the appearance of an article. Because an article means tangible movables, the design composed only of pattern or color, which is not combined with the form or the combinational

design of pattern and color, shall not be recognized, provided that the foregoing shall not apply to typefaces.

① The term “shape” means an outline that occupies a space. All designs excluding typefaces accompany the shape.

② The term “pattern” means line figure, color combination, color gradation, etc., which are shown on the appearance of an article.

ⓐ The term “line figure” means a figure drawn with lines.

ⓑ The term “color division” means that pattern is made not by lines but by colors.

ⓒ The term “color blurring” means that the boundary between colors is blurred so that it looks as if such colors change naturally.

③ The term “color” means the properties of an article to stimulate a human retina by lights reflected on an article. The color under the Act includes transparent color, metallic color, etc.

(3) Visibility of design

The term “through visual perception” means, in principle, to be able to be distinguished with the eye. Therefore, what falls under any of the following shall not be eligible for the design registration.

① What is perceived mainly through senses other than visual perception

② One unit of powders or granules

③ Place that cannot be viewed from the outside, that is to say a place that can be viewed only after being disassembled or destroyed. Provided that, the inside of the structure, such as the opening of a cover, shall be the object of a design.

④ An article whose shape are perceived only after they are magnified by such as a magnifying glass, provided that the design of an article shall be deemed to have the visibility if it is ordinary, to transact such an article, examined the shape by magnifying it.

(4) Aesthetic impression of design

The term “which invokes the sense of beauty” means what is aesthetically processed, that is to say to process the relevant article so that the beauty can be perceived therefrom. Thus, what falls under any of the following shall not be deemed to invoke the sense of beauty.

① What, as whose main purpose is function, action, and effect, invokes almost no sense of beauty

② What, without structure or completion, invokes almost no sense of beauty

USPTO

☒Yes

35 USC 171 – Patents for designs

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.

APPLICABILITY OF THIS TITLE - The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

1.4.1 Is the novelty of a design judged?

CNIPA

☒Yes

If so, what is the legal ground and content?

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.

When is the initial novelty judged?

☒Decision to grant

- **EUIPO**

☒Yes

If so, what is the legal ground and content?

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.

When is the initial novelty judged?

☒ Request for Invalidation Trials

- **JPO**

☒Yes

If so, what is the legal ground and content?

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

When is the initial novelty judged?

☒ Decision to grant

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)

If so, what is the legal ground and content?

[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) A design publicly known or worked in the Republic of Korea or a foreign country before an application for design registration is filed, a design described in a printed publication distributed or made available for public use via telecommunications lines before an application for design registration is filed (hereinafter referred to as the “publicly known design”), or a design similar thereto falls under any subparagraph of paragraph (1) of Article 33 (Requirements for Design Registration) of the Act and shall not be eligible for design registration.

2) Requirements for novelty of partial design

In cases where a partial design that falls under any of the following subparagraphs is publicly known or worked in the Republic of Korea or a foreign country before an application for partial design registration is filed or is published in a printed publication distributed or made available for public use via telecommunications lines before an application for partial design registration is filed, such design falls under any subparagraph of paragraph (1) of Article 33 (Requirements for Design Registration) of the Act and shall not be eligible for design registration.

(1) Design for a whole article that includes a part identical with or similar to the relevant partial design

(2) Partial design that includes a part identical with or similar to the relevant partial design

3) The requirements for novelty of design of a set of articles shall be determined only as a whole set of such articles.

4) The novelty of an application for partially-examined design registration shall not be examined before its registration under paragraph (2) of Article 62 (Decisions to Reject Application for Design Registration) of the Act, provided that if information and evidence are furnished under Article 55 (Furnishing of Information) of the Act, a decision to reject may be made under paragraph (4) of Article 62 (Decisions to Reject Application for Design Registration) of the Act.

When is the initial novelty judged?

☒Decision to grant

USPTO

☒Yes

If so, what is the legal ground and content?

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."

When is the initial novelty judged?

☒ Decision to grant

1.4.2 Is the creativity/non-obviousness of design judged?

CNIPA

☒Yes

If so, what is the legal ground and content?

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.

When is the initial creativity/non-obviousness judged?

☒Request for Invalidation Trials

EUIPO

☒Yes

If so, what is the legal ground and content?

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.

When is the initial creativity/non-obviousness judged?

☒ Request for Invalidation Trials

- **JPO**

☒Yes

If so, what is the legal ground and content?

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

When is the initial creativity/non-obviousness judged?

☒ Decision to grant

- **KIPO**

☒Yes

If so, what is the legal ground and content?

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.

When is the initial creativity/non-obviousness judged?

☒Decision to grant

- **USPTO**

☒Yes

If so, what is the legal ground and content?

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 negatived 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).

When is the initial creativity/non-obviousness judged?

☒Decision to grant

1.5 Is it possible to file more than two designs in one application?

(multiple design application is excluded)

EUIPO

☒Yes

If so, what is the legal ground and content?

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.

Art. 2 CDIR

1. An application may be a multiple application requesting the registration of several designs.

2. When several designs other than ornamentation are combined in a multiple application, the application shall be divided if the products in which the designs are intended to be incorporated or to which they are intended to be applied belong to more than one class of the Locarno Classification.

3. For each design contained in the multiple application the applicant shall provide a representation of the design in accordance with Article 4 and the indication of the product in which the design is intended to be incorporated or to be applied.

4. The applicant shall number the designs contained in the multiple application consecutively, using arabic numerals.

- **JPO**

☒No

If so, what is the legal ground and content?

(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

If so, what is the legal ground and content?

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

- **CNIPA**

☒Yes

If so, what is the legal ground and content?

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.

- **USPTO**

☒Yes

If so, what is the legal ground and content?

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.

1.6 Does the Act specify what shall be unregistrable / ungrantable/ 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 registralibility (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.

Part IV of the Examination Guidelines for Design "Unregistrable Designs".

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/0400.pdf

- **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.

1.6.1 Please provide any major final decisions issued by the trial and appeal board related to 6, above.

- **CNIPA**

Application No: 201330079083.4

Name of the product: massager(ELAMB-18diamond love)

Invalidation decision No: 24664

The decision: The patent right is declared invalid.

Decision point: Any design which is constituted by the shape of sexual organ is contrary to the social morality in China.

Photographs of the application:

- **EUIPO**

C-281-10.docx T-11-08.doc T-15-13.docx T-22-13.docx T-16-16.docx C-361-15P+405-15P -JUDGMENT-EN.docx

These judgments from the General Court of the European Union and the Court of Justice of the European Union were adopted on appeals lodged against decision adopted by the EUIPO Boards of Appeal.

- **JPO**

The following is an example of trial decisions concerning the provision of Article 5(ii) of the Design Act:

(Example)

Trial 1966-9245 Trial for invalidation of design registration

Design registration No. 263261 “Shirt”

[Outline]

The registered design concerned was registered with the Article to the Design being “Shirt”. The gist of the design was a form of a long-sleeve shirt with a figure of a spinning wheel embodied as a pattern on the surface of the left chest pocket and on the outside of the upper part of both the right and left sleeves.

The demandant claimed that the figure concerned was a company emblem used on books/magazines on clothing and handicrafts as a trademark since around 1955 and widely recognized among consumers. However, in the trial it was judged as follows. It was not clear how well known the registered trademark itself was (apart from the huge quantities of distributed magazines), and furthermore, the figure was almost the same as one appearing in the major Japanese dictionaries as a figure showing a spinning wheel since the prewar period (before 1945). Therefore, the figure could not be acknowledged as a well-known trademark even if it was known to the public. In addition, considering the fact that the registered trademark designated Class 26 “Printed Matter” while "shirts" belong to Class 17 and thus it was not restricted by the Trademark Act, it could not be determined that the registered design concerned fell under the provision of Article 5 of the Design Act. As a result, it was not likely that the (registered) design will cause confusion with articles pertaining to other people’s business and the demand for invalidation was rejected.

Design registration No. 263261 “Shirt” Enlarged View of the Pattern on the Shirt

Trademark registration No. 684246 Class 26 “Printed Matter”

- **KIPO**

2015WON3726 by the Intellectual Property Trial and Appeal Board

(Excerpt) Under the Design Protection Act, a design mistakable as related to an article associated with any other person's business cannot be registered. i) This provision can be applied when articles are identical or similar and also be applied regardless of articles as it is to prevent a likelihood of confusion on a business entity rather than an article per se, namely, the source of a product. ii) The major premise to determine the likelihood of confusion is that the design should serve as identification of the source of a product, which is the main function of the trademark. Thus, when determining whether this provision is applied, many factors should be comprehensively considered such as awareness of the design which serves the function of the trademark; a likelihood of confusion on the source of a product by using the motive of the design; and intention of the law to establish the sound transaction order by preventing unfair competition.

(Example)

III. Part 2 : Entitlement for obtaining Industrial Design Protection

1. Entitlement to registration of a design

1.1 Please prescribe requirements for a creator. Can only a natural person be a creator?

- **CNIPA**

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.

- **EUIPO**

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’.

Article 36(3)(e) CDR (Conditions with which applications must comply) provides the following: ‘In addition, the application may contain (…) the citation of the designer or of the team of designers or a statement under the applicant's responsibility that the designer or the team of designers has waived the right to be cited’.

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 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’.

There is no requirement under CDR that the applicant for a Community design be the designer. The applicant for a Community design can be the successor in title of the designer(s), or the employer of the designer(s) (Article 14 CDR).

Article 14(3) CDR (right to the Community design) specifies that ‘where a design is developed by an employee in the execution of his duties or following the instructions given by his employer, the right to the Community design shall vest in the employer, unless otherwise agreed or specified under national law’. While the employer, who can be a legal entity, may claim a right to the design, the employee remains the ‘designer’ and retains the right to be identified as such in the Community design application.

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Only a natural person, or a team of natural persons, can be cited as the designer(s) of the design under Article 18 CDR. This is because the right to be cited, in design law, is the counterpart of the ‘right of attribution’ within the broader notion of ‘moral right’ in copyright law. In most if not all EU countries, legal entities are not vested with a ‘moral right’ and are not considered ‘authors’.

- **JPO**

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)

Since the primary purpose of the Design Act is to encourage creation of designs through their protection (Art. 1 of the Design Act) and 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.

Such persons as minors (infancy) can be a creator of a design while they cannot undertake procedures for design registration by themselves.

- **KIPO**

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.

- **USPTO**

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.

MPEP § 2137.01, subsection II: The definition for inventorship can be simply stated: “The threshold question in determining inventorship is who conceived

the invention. Unless a person contributes to the conception of the invention, he is not an inventor."

1.2 Please describe requirements for joint creators.

CNIPA

For a design jointly made by two or more entities or individuals, the right to apply for a patent belongs, unless otherwise agreed upon, to the entities or individuals that jointly made (Article 8 of the Patent Law of the People's Republic Of China). Any person who, during the course of accomplishing the design, is responsible only for organizational work, or who only offers facilities for making use of material and technical means, or who only takes part in other auxiliary functions, shall not be considered as creator （Rule 13）.

EUIPO

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).

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.

The Community design applicant can also state under its own responsibility that the designer or the team of designers has waived the right to be cited (Article 36(3)(e) CDR). EUIPO does not verify that such a waiver exists. The applicant who makes a false statement is exposed to civil liability under national law.

JPO

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).

KIPO

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, an assistant, a sponsor or trustee will not constitute a co-creator.

USPTO

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

35 U.S.C. § 100(g): The terms "joint inventor" and "coinventor" mean any 1 of the individuals who invented or discovered the subject matter of a joint invention.

MPEP § 2137.01, subsection II: The definition for inventorship can be simply stated: “The threshold question in determining inventorship is who conceived the invention. Unless a person contributes to the conception of the invention, he is not an inventor.”

1.3 Please describe requirements for a successor.

CNIPA

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). Apart from a contract, succession can take place by inheritance or other general succession, the person or persons concerned shall, accompanied by relevant certified documents or legal papers, request the patent administration department under the State Council to register the change in the owner of the patent right (Rule 14). If there are two or more applicants (or patentees), a document certifying that all the right owners have agreed on the assignment or gift shall be submitted.

EUIPO

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'.

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.

Likewise, the employer of the designer(s) is deemed to be automatically vested with the entitlement to the Community design, unless contrary foreseen in the employment contract or in statutory provisions applicable to the relationship employer-employee under the national law governing such relationship. The employer is not required to submit evidence of the employment contract or of the national law which is applicable thereto.

JPO

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).

The succession of the right to obtain a design registration prior to the filing of the application for design registration shall have no effect on any third party unless the successor in title files the application for design registration (Art.

34(1) of the Patent Act applied mutatis mutandis under Art. 15(2) of the Design Act). Where two or more applications for design registration are filed on the same date based on the right to obtain the same design registration based on succession from the same person, any succession(s) by a person(s) other than those selected by consultations between the applicants shall have no effect on any third party (Art. 34(2) of the Patent Act applied mutatis mutandis under Art. 15(2) of the Design Act).

Any succession to the right to obtain a design registration after the filing of the application for design registration shall have no effect, except in the case of general successions including inheritance, without notification to the Commissioner of the Patent Office (Art. 34(4) of the Patent Act applied mutatis mutandis under Art. 15(2) of the Design Act). Where a general succession to the right to obtain a design registration including inheritance thereof occurs, the successor in title shall notify the Commissioner of the Patent Office thereof without delay (Art. 34(5) of the Patent Act applied mutatis mutandis under Art. 15(2) of the Design Act). Where two or more notifications are submitted on the same date regarding successions to the right to obtain the same design registration based on succession from the same person, any notification(s) by a person(s) other than the person selected by consultations between the persons submitting the notifications shall have no effect (Art. 34(6) of the Patent Act applied mutatis mutandis under Art. 15(2) of the Design Act).

In the case of a creation of a design by an employee, etc., where it is prescribed in any agreement, employment regulation or any other stipulation providing in advance that the right to obtain a design registration for any employee creation of a design made by an employer, etc., shall vest in the employer, etc., the said right to obtain a design registration shall belong to the said employer, etc. from its occurrence (Art. 35(3) of the Patent Act applied mutatis mutandis under Art. 15(3) of the Design Act).

- **KIPO**

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. Apart from a contract, succession can take place by inheritance or other general succession. If a right to have a design registered is owned jointly by at least two persons, none of the co-owners may assign his/her share without consent thereto from the rest of the co-owners. This is because the value of the share can be changed if there is no consent from the rest of the co-owners. (Article 54(3) of the Design Protection Act) No person who succeeds to a right to have a design registered before an application is filed for registration of the design shall assert any claim or defense, based on the right, against a third party, unless he/she files an application for registration of the design. (Article 57(1) of the Design Protection Act). If succession to a right to have a design registered arises after an application for registration of the design is filed, the succession shall not take effect, unless a report is filed to change the applicant of the design registration, except for conveyance by inheritance or other general succession. This is to clarify the attribution of a right.

- **USPTO**

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.

Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigns or

legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

An interest that constitutes an assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage. (See also MPEP § 301)

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 partyto the Paris Convention for the Paris Convention or a member of the World Trade Organization; or

the countly 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 you 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) After entering into force of the mediation made by the administrative authority for patent affairs or the judgment rendered by the people's court, or the dispute is settled through negotiations, the person or persons concerned shall, accompanied by relevant certified documents or legal papers, request the patent administration department under the State Council to register the change in the owner of the patent right.(Rule 14.1)

EUIPO

Two alternative actions aim at protecting a legitimate right holder: (1) the claim to entitlement with a view to a change of ownership or (2) a request for a declaration of invalidity.

(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'.

In case of a disagreement on the entitlement to a Community design and the transfer of rights thereon, the person(s) entitled to it may claim to *become recognised as the legitimate holder* or joint holders of the Community design (Article 15 CDR). Such a claim must be brought before a national court.

The effect is that the legitimate holder is substituted in the rights wrongfully obtained by the person who is not entitled to the Community design. The Community design as such remains valid.

The possibility to claim entitlement to, and ownership of a Community design applies both to unregistered and registered Community designs (Article 15(1) CDR).

If the Community design is a registered Community design, the EUIPO register records the change in the ownership resulting from the final court decision (Article 15(4)(c) CDR).

If the Community design is unregistered, there cannot be any entry in the EUIPO register. Only the legitimate holder will be allowed to enforce the rights on this unregistered Community design.

Where there is a complete change of ownership of a registered Community design as a result of legal proceedings, licences and other rights shall lapse

upon the entering in the register of the person entitled to the Community design (Article 16(1) CDR).

Legal proceedings regarding the entitlement to, and ownership of a Community design shall be barred three years after the date of publication of a registered Community design or the date of disclosure of an unregistered Community design, unless the person who is not entitled to the Community design was acting in bad faith at the time when such design was applied for (registered Community design) or disclosed (unregistered Community design) or was assigned to him (both registered and unregistered Community design) (Article 15(3) CDR).

(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.

The effect of the declaration of invalidity is that the legitimate holder, as any other person, cannot claim exclusive rights on the invalidated Community design.

Unlike the request to have a change of ownership, the request to have a Community design invalidated is not subject to prescription.

Such a ground of invalidity must be raised before a national court. EUIPO does not have competence to adjudicate on the entitlement to a 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). If the said design has already been registered, the genuine creator may file a request for invalidation trial of the design registration (Art. 48(1)(iii) of the Design Act). The genuine creator may also request the holder of the design right to transfer the said design right (Art. 26-2(1) 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). If the said design has already been registered, other joint owner may file a request for invalidation trial of design registration (Art. 48(1)(i) of the Design Act). Other joint owner may also request the holder of the design right to transfer his respective share of the said design right (Art. 26-2(1) of the Design Act).

- **KIPO**

(1) Protection of an application by a legitimate right holder where an application filed for registration of a design by an ineligible person

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. However, for the swift process, the duration for which the legitimate right holder can take such action is limited, Provided That,

the foregoing shall not apply where the legitimate right-holder files an application for design registration after 30 days from the date the trial decision to reject the application for design registration becomes final and conclusive. (Article 44 of the Design Protection Act)

(2) Protection of an application by a legitimate right holder after the registration of the application by an ineligible person

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: Provided, That the foregoing shall not apply where the legitimate right-holder files an application for design registration after 30 days from the date the ruling to revoke registration or invalidation trial becomes final and conclusive. (Article 45 of the Design Protection Act)

(3) An application filed by a person unentitled to design registration shall not constitute an earlier application. (Article 46(4) of the Design Protection Act)

- **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

4.1 Is it required to indicate a creator in an application form? If an application is filed without indicating a creator, is the application still valid?

- **CNIPA**

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).

- **EUIPO**

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 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'.

The citation, the waiver and an indication regarding the designer(s) are merely optional and are not subject to examination.

The indication of a designer or team of designer has no bearing on the validity of the Community design application.

JPO

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 the application, the applicant is required to amend the application in the name of the Commissioner of the Patent Office. Unless the applicant amends the application within the designated time limit, the application will be dismissed. (This treatment is not applicable to the international registrations designating Japan under the Geneva Act of the Hague Agreement.)

KIPO

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).

USPTO

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 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.

See also MPEP § 706.03(a), subsection IV and MPEP § 2137.01.

4.2 Is it allowed to change or add a creator in the application proceedings?

- **CNIPA**

It is allowed to change or add a creator in an application form in the application proceedings (Rule 119)

- **EUIPO**

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) CDIR).

Likewise, the name of a designer (or the designation of a team of designers) can be added after the filing of the design

- **JPO**

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;

(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

(2) A document stating the reason for the change (addition or deletion of the creator(s))

- **KIPO**

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)

- **USPTO**

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 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.

4.3 Is it allowed to change or add a creator after the final decision?

- **CNIPA**

It is allowed to change or add a creator in an application form after the final decision. (Rule 119)

- **EUIPO**

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 registration of the design (Article 69(2)(j) CDIR).

Likewise, the name of a designer (or the designation of a team of designers) can be added after the registration of the design.

- **JPO**

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.

However, in the case where a genuine creator requests the holder of the design right who has not succeeded to the right to obtain a design registration to transfer the said design right (Art. 26-2 of the Design Act), 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.

- **KIPO**

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.

- **USPTO**

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.

See also 37 CFR 1.324 and MPEP § 1481.

4.4 When the applicant inherits the right to receive design registration from the creator, at the time of filing, does the applicant need to submit a document certifying that (certification of assignment)?

- **CNIPA**

Where a creator and an applicant are different, it is not necessary to submit a document certifying succession of a design right.

- **EUIPO**

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'.

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.

- **JPO**

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)

- **KIPO**

Where a creator and an applicant are different, it is not necessary to submit a document certifying succession of a design right.

- **USPTO**

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.

37 CFR 1.46(b)(1): If the applicant is the assignee or a person to whom the inventor is under an obligation to assign the invention, documentary evidence of ownership (e.g., assignment for an assignee, employment agreement for a person to whom the inventor is under an obligation to assign the invention)

should be recorded as provided for in part 3 of this chapter no later than the date the issue fee is paid in the application.

See MPEP § 301

4.5 When the description in the column of the creator in the first country listed in the priority certificate differs from the description in the column of the creator listed in the application which is submitted to the second country with priority claim, in that case, the effect of priority claim is acceptable, or not?

- **CNIPA**

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**

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

- **JPO**

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**

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.

- **USPTO**

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.

IV. Summary table

※ **Notes (Part I, 3.1~3.10)**

3.1.Graphic design	3.2.Typeface design	3.3.GUI design	3.4.Interior design	3.5.Architecture design
Logo, DM/081282 (WIPO)	**Typeface,** 30-0564940 (KR)	**GUI for mobile phone,** 30-0701555 (KR)	**Boutique interior,** D395,521 (US)	**Building,** D481,464 S (US)
3.6.Architectural plan/drawing	**3.7. Food design**	**3.8.Intangible but visual design**	**3.9 No fixed pattern design**	**3.10 Common shape and fine arts design**
Architectural drawing	**Cake**	**Laser graphic / Ornamental design for a water fountain**	**Decoration made of sand**	**mouse pad (calligraphy as pattern)/ fabric(painting as pattern)**

Title	**Catalogue of Eligibility for Industrial Design Protection**			
Version	**1.0**	**Date**		
	2.0			
	3.0			
Service				
Approved by			**Status**	**Draft**
Authors				
Contributors				