

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

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

<i>Catalog of Eligibility for Industrial Design Protection</i>	
Phase 1. Objective Eligibility of Industrial Design	
1. What is the law on design protection? (initial enactment date, the latest date of revision) ※NOTE: limited to laws concerning design rights and design patents	
CNIPA	PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA 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 fourth time on October 17, 2020 and came into force on June 1, 2021
EUIPO	Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024 amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002. The Amending Regulation was published on 18 November 2024 and will enter into force on 8 December 2024 (20 days following its publication), but its implementation will be phased. Most amendments will take effect four months after its entry into force (Phase I), while provisions requiring further development through secondary legislation (Implementing and Delegated Regulations) will take effect after 18 months (Phase II).
JPO	Design Act (Act No. 125 of April 13, 1959) The latest revision was on January 1, 2024 by Act No. 51.
KIPO	Design Protection Act (Enactment 1961. 12. 31, Partial Amendment February 6, 2024)
USPTO	35 U.S.C. 171 Patents for designs (Based on Title 35, U.S.C., 1946 ed., § 73 (R.S. 4929, amended (1) May 9, 1902, ch. 783, 32 Stat. 193, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212; R.S. 4933; Amended Dec. 18, 2012, Public Law 112-211, sec. 202(a), 126 Stat. 1535.)

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

CNIPA

Article 2.4: "Design" means, with respect to an overall or partial product, any new design of the shape, the pattern, or their combination, or the combination of the colour with shape or pattern, which is rich in an aesthetic appeal 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 of its decoration, including the movement, transition or any other sort of animation of those features ornamentation (art. 3(1a) EUCDR)

JPO

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

Article 2 (1) The term "design" in this Act means the shape, patterns or colors, or any combination thereof (hereinafter referred to as the "shape or equivalent features"), of an article (including a part of an article; the same applies hereinafter); the shape or equivalent features of a building (including a part of a building; the same applies hereinafter); or a graphic image (limited to one used in the operation of a device or displayed as a result of the device performing its function, and including a part of a graphic image; hereinafter the same applies excluding paragraph (2) of the following Article, Article 37, paragraph (2), Article 38, items (vii) and (viii), Article 44-3, paragraph (2), item (vi) and Article 55, paragraph (2), item (vi)), which is aesthetically pleasing in its visual presentation.

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(a)

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

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

CNIPA

Article 2.4: "Design" means, with respect to an overall or partial product, any new design of the shape, the pattern, or their combination, or the combination of the colour with shape or pattern, which is rich in an aesthetic appeal and is fit for industrial application.

EUIPO

Under Article 3 EUDR

(1) “design” means the appearance of the whole or a part of a product resulting from the features, in particular the lines, contours, colours, shape, texture and/or materials, of the product itself and/or of its decoration, including the movement, transition or any other sort of animation of those features;

(2) “product” means any industrial or handicraft item, other than a computer program, regardless of whether it is embodied in a physical object or materialises in a non-physical form, including:

(a) packaging, sets of articles, spatial arrangements of items intended to form an interior or exterior environment, and parts intended to be assembled into a complex product;

(b) graphic works or symbols, logos, surface patterns, typographic typefaces, and graphical user interfaces;

JPO

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

Article 2 (1) The term "design" in this Act means the shape, patterns or colors, or any combination thereof (hereinafter referred to as the "shape or equivalent features"), of an article (including a part of an article; the same applies hereinafter); the shape or equivalent features of a building (including a part of a building; the same applies hereinafter); or a graphic image (limited to one used in the operation of a device or displayed as a result of the device performing its function, and including a part of a graphic image; hereinafter the same applies excluding paragraph (2) of the following Article, Article 37, paragraph (2), Article 38, items (vii) and (viii), Article 44-3, paragraph (2), item (vi) and Article 55, paragraph (2), item (vi)), which is aesthetically pleasing in its visual presentation.

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;

2-2. The term "image" means a figure, symbol, etc. expressed by digital technology or electronic means [limited to those that are used for the operation of devices or that exhibit a function, and including parts of an image];

USPTO

35 USC 171(a)

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

3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.1. Graphic Design	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes
	The carrier of a design must be a product and 'Graphic Design' has no carrier.	Graphic works or symbols are a product within the meaning of Art. 3(2)(b) EUDR. Graphic works or symbols represented by lines, contours, shapes etc. will therefore be eligible to design protection because they represent "the appearance of a product", as required under Art. 3(1) EUDR.	The Japanese Design Act was amended in 2019 to protect an appearance of a graphic image itself, independent of an article, as the "design" which is the subject matter of design protection. However, that not all graphic images are protected, but only those are used in the operation of a device or displayed as a result of the device performing its function.	'Graphic design' itself cannot meet the article of manufacture requirement but can be accepted for design registration when expressed by digital technology or electronic means [limited to those that are used for the operation of devices or that exhibit a function, and including parts of an image.]	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.
3. Subject Matter					
3.2. Typeface Design	<input checked="" type="checkbox"/> Etc.	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes

	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>Art. 3(2b)(b) EUCDR 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(1a) EUCDR</p> <p>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</p>	<p>Although the 2019 amendment to the Design Law added graphic images to the scope of protection, not all graphic images are protected, but only those are used in the operation of a device or displayed as a result of the device performing its function. Typefaces do not fall into this category and are therefore not protected as graphic images.</p>	<p>The term "typeface" means a set of characters (including those in the form of numerals, punctuation marks, and symbols) made in a style with common characteristics for recording, marking, or printing, in Article 2(2).</p>	<p>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)).</p>
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		letters and numerals being in the size pitch 16".			
<b>3. Subject Matter</b>	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>3.3. GUI Design</b>	<b>☑Yes</b>	<b>☑Yes</b>	<b>☑Yes</b>	<b>☑Yes</b>	<b>☑Yes</b>
	<p>Article 2.4 "Design" means, with respect to an overall or partial product, any new design of the shape, the pattern, or their combination, or the combination of the colour with shape or pattern, which is rich in an aesthetic appeal and is fit for industrial application.</p> <p>GUI is the design of patterns of applied to physical of a product, so it is in conformity with the provisions of Article 2.4.</p>	<p>Art. 3(2)(b) EUDR provides that graphical user interfaces are products. Graphic user interfaces represented by lines, contours, shapes etc. will therefore be eligible to design protection because they represent "the appearance of a product", as required under Art. 3(1) EUDR.</p>	<p>The Japanese Design Act was amended in 2019 to add "images" itself, independent of an article, to the scope of design protection, limited to images used in the operation of equipment and images displayed as a result of the performance of the equipment's functions. GUIs that fall under these categories may be eligible for design registration if they meet the requirements of novelty, creativity, etc.</p> <p>In addition, as has been protected in the past, if a graphic image of GUI is</p>	<p>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.</p> <p>※ The term "display part" of an article means an existing physical screen that visually represents wordings, images, etc.</p> <p>r GUI image itself [see. Article 1(2-2)]</p>	<p>Computer-generated icons, such as full screen displays and individual icons, are 2-dimensional images which alone are surface ornamentation. See, e.g., <i>Ex parte Strijland</i>, 26 USPQ2d 1259 (Bd. Pat. App. &amp; 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.</p>

			properly represented as a design of a part of an article, it will be a subject matter of the design protection.		
<b>3. Subject Matter</b>	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>3.4. Interior Design</b>	<b>☒Etc.</b>	<b>☒Yes</b>	<b>☒Yes</b>	<b>☒No</b>	<b>☒Yes</b>
	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p> <p>For the interior design of automobiles, elevator cars, buildings or other similar products, if the items inside is fixed, its interior design could be a subject matter of design protection.</p>	<p>Art. 3(2)(a) EUDR provides that 'spatial arrangements of items intended to form an interior or exterior environment' are products. The design of an interior environment, represented by lines, contours, shapes etc. will therefore be eligible to design protection because it represents "the appearance of a product", as required under Art. 3(1) EUDR.</p>	<p>The Japanese Design Act was revised in 2019 to protect designs for "interior design". Under the revised law, a design for an article, building, or image that constitutes an interior be applied for and registered as a single design if the interior creates a coordinated aesthetic impression as a whole.</p> <p>The Japanese Design Act was amended in 2019 to add "Buildings" to the scope of protection, making it possible, for example, to obtain a design registration for a fixed form in the interior space of a building as a partial</p>	<p>In accordance with the definitions of Article 2 of the Design Protection Act, a design will become a subject matter of design protection only if it is combined with an article. If an interior design meets the requirements prescribed in Article 42 of the Same Act (at least two articles are used together as a set of articles, a design for the set of products may be registered as one design, if the design for the set of articles is unitary), it may be registered as a set of articles. But if an interior design is characterized only by its layout and/or</p>	<p>35 USC 171 IN GENERAL.— Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefore, subject to the conditions and requirements of this title.</p>

			<p>design of the building. In addition, as has been protected in the past, 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.</p>	<p>arrangement of multiple articles, it will not be a subject matter of the design protection.</p>	
<b>3. Subject Matter</b>	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>3.5. Architecture Design</b>	☒Yes, ☒Etc.	☒Yes	☒Yes	☒Etc.	☒Yes



	<p>Architecture Design is a subject matter of design protection while there is limitation provided in the Guidelines For Patent Examination.</p> <p>“According to Article 2.4, the following situations are ineligible for patent protection for design:</p> <p>(1) Any fixed building, bridge and the like which depends on their specific geographic conditions and cannot be rebuilt elsewhere, such as villa built by a particular lake or hill;”</p>	<p>Art. 3(2)(a) EUDR provides that 'spatial arrangements of items intended to form an interior or exterior environment' are products. The design of an exterior environment (an architecture design), represented by lines, contours, shapes etc. will therefore be eligible to design protection because it represents “the appearance of a product”, as required under Art. 3(1) EUDR.</p>	<p>The Japanese Design Act was amended in 2019 to add “Buildings” to the scope of protection. In addition, as has been protected in the past, 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.</p>	<p>The term “article” under the Act means, in principle, tangible movables as a specific and independent article. Therefore, immovables, provided that if immovables can be repeatedly produced and transported, may be accepted for the design registration. Where ‘an architecture design’ is repeatedly producible and transportable, it may be accepted for the design registration.</p>	<p>35 USC 171</p> <p>IN GENERAL.—Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefore, subject to the conditions and requirements of this title.</p>
<b>3. Subject Matter</b>	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>3.6.Architectural plan /drawing</b>	☒Etc.	☒Yes	☒No	☒No	☒No
	It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the	Even though there is no specific provision concerning ‘architectural plan / drawing designs’, such designs are not	The Japanese Design Act sets forth the “design” which is the subject matter of design protection as a form (an appearance)	An architectural plan/drawing falls under diagrammatic works in accordance with Article 4.8 of the Copyright Act.	A picture standing alone is not patentable under 35 U.S.C. 171. The factor which distinguishes statutory design

	<p>provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>excluded from protection given the comprehensive definition of designs at art. 3(1).</p>	<p>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.</p> <p>However, "Architectural plan/drawing" itself is recognized as a creation of patterns (and colors) alone which is independent from the article, thus it is not found to be a "design" provided for in Article 2 of the Design Act. Therefore, 'Architectural plan/drawing' does not become a subject matter of the design protection.</p>		<p>subject matter from mere picture or ornamentation, per se (i.e., abstract design), is the embodiment of the design in an article of manufacture.</p> <p>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.</p> <p>A claim to a picture, print, impression, etc. per se that is not applied to or embodied in an article of manufacture should be rejected under 35 U.S.C. 171 as directed to nonstatutory subject matter.</p>
<b>3. Subject Matter</b>	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>3.7. Food plating design</b>	<input checked="" type="checkbox"/> Etc.	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes

	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>Even though there is no specific provision concerning 'food plating', such designs are not excluded from protection given the comprehensive definition of designs at art. 3(1) EUDR</p>	<p>The Japanese Design Act sets forth the "design" which is the subject matter of design protection as a form (an appearance) of an individual article (prescribed in Articles 2 and 7. Article 8 (Design for a set of articles) is only an exception.). Although any "design" comprised as "the shape, patterns or colors, or any combination thereof, of an article" may become the subject of design registration, any layout and/or arrangement of plural articles is NOT intended to be a subject matter of the design protection.</p>	<p>If "food plating design" means the unique arrangement/composition of food, it cannot be protected on the ground of Article 2 (Definition) of the Design Protection Act. But if it means a processed food that meets the requirements of the design, it can be registered.</p>	<p>Design is inseparable from the article to which it is applied and cannot exist alone merely as a scheme of surface ornamentation. It must be a definite, preconceived thing, capable of reproduction and not merely the chance result of a method (MPEP 1502)</p>
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3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
3.8. Intangible but visual design	☒Etc.	☒Yes	☒No	☒Maybe	☒Yes ☒No
	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>Art. 3(2) EUDR provides that 'industrial or handicraft items, regardless of whether it is embodied in a physical object or materializes in a non-physical form' are products. An intangible by visual design, represented by lines, contours, shapes etc. will therefore be eligible to design protection because it represents "the appearance of a product", as required under Art. 3(1) EUDR.</p>	<p>The Japanese Design Act sets forth the "design" which is the subject matter of design protection as a form (an appearance) of an individual article. 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.</p> <p>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</p>	<p>In Republic of Korea, there are two main methods for registering new designs like GUIs. The first method follows the design examination guideline(July 1st, 2003) that were in place before 2021, which allows for the registration of designs displayed on the screens of electronic devices. In this method, the indication of the physical product where the GUI is used must be included in the application.</p> <p>The second method, introduced by the revised design protection act [Article 2(2-2)] in 2021, allows for the registration of the image itself as a</p>	<p>MPEP 1504.01: 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. Samsung Electronics Co. v. Apple Inc., 137 S. Ct. 429 (2016) and In re Nuijten, 500 F.3d 1346 (Fed. Cir. 2007), are instructive on the "article of</p>

			<p>Design Act. Therefore, these kinds of objects do not become the subject matter of the design protection.</p>	<p>design. This approach does not require the physical product to be illustrated in drawings; having just the image is sufficient. However, it must clearly indicate the intended use in the indication of product and description of design. Furthermore, this registration is limited to figure or symbol, etc. expressed by digital technology or electronic means [limited to those that are used for the operation of devices or that exhibit a function, and including parts of an image]</p> <p>Before the 2021 revised design protection act [Enforcement Date Oct 21th, 2021.] [Act No.18093, April 20th, 2021., Partial</p>	<p>manufacture” requirement of section 171. The Court confirmed that its definition of “article of manufacture” comported with 35 U.S.C. 171 and 101, specifically noting that “‘article of manufacture’ in [section] 171 includes ‘what would be considered a “manufacture” within the meaning of [s]ection 101.’” See also In re Nuijten, 500 F.3d 1346, 1356 (Fed. Cir. 2007) (determining that the Supreme Court’s “definitions address ‘articles’ of ‘manufacture’ as being tangible articles or commodities,” and thus concluding that “[a] transient electric or electromagnetic transmission does not fit within that</p>
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				Amendment], the following types of industrial designs did not qualify for industrial design protection per se. Instead, if these types of designs were temporarily displayed on a display screen, they can be protected as part of an article.	definition” because during transmission, “energy embodying the claimed signal is fleeting and is devoid of any semblance of permanence,” and does not meet the definitions of “articles” of “manufacture”).
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3. Subject Matter	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>3.9. Design with no fixed pattern</b>	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes, <input checked="" type="checkbox"/> No
	<p>Article 2.4 : "Design" means, with respect to an overall or partial product, any new design of the shape, the pattern, or their combination, or the combination of the colour with shape or pattern, which is rich in an aesthetic appeal and is fit for industrial application.</p> <p>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;</p>	<p>Art. 3(1) EUDR requires the 'appearance of the whole or a part of a product'. There is no statutory requirement that the appearance of such a product be immutable or permanent or capable of being reproduced industrially. It is however usually considered that the scope of protection of a design such as the one given as an example would be limited to what can be seen in the representation, without extending to the concept itself or to the variations and different configurations that the design may have when its elements are moving.</p>	<p>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</p>	<p>The term "article" under the Act means, in principle, tangible movables as a specific and independent article. Therefore, immovables, provided that if immovables can be repeatedly produced and transported, may be accepted for the design registration.</p> <p>An item composed of powders or granules, such as cement and sugar, shall not be accepted for the design registration.</p> <p>But a standardized or solidified powder such as cube sugar which collectively form a certain shape can be a subject matter of design protection.</p>	<p>Designs which satisfy the requirements of 35 USC 171 in that they are deemed to be directed to a design for an "article of manufacture" may be considered eligible subject matter even if the design may have a plurality of configurations or states.</p> <p>However, a design with no fixed pattern and infinite permutations could not be properly claimed in an application such that it satisfies 35 USC 112 and/or 35 USC 171.</p>

			of objects do not become the subject matter of the design protection.		
<b>3. Subject Matter</b>	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>3.10. Design constituted by common shape and fine arts</b>	☒Etc.	☒Yes	☒Yes	☒Etc.	☒Yes
	<p>It has not been explicitly stipulated in the Guidelines For Patent Examination, while it can be concluded from the provision relating to the carrier of a design in the said Guidelines.</p> <p>The Guidelines For Patent Examination: The carrier of a design must be a product.</p>	<p>Even though there is no specific provision concerning ‘design constituted by common shape and fine arts’, such designs are not excluded from protection given the comprehensive definition of designs at art. 3(1) EUDR. 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:</p>	<p>The Japanese Design Act sets forth the “design” which is the subject matter of design protection as a form (an appearance) of an individual article. 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, a design may not be registered if the design may damage public policy or morals, if it risks giving rise to confusion with an</p>	<p>“The design constituted by common shape and fine arts” is a subject matter of design protection as long as it meets requirements of novelty and easily created design.</p>	<p>In a design patent application, the subject matter which is claimed is the design embodied in or applied to an article of manufacture (or portion thereof) and not the article itself. Ex parte Cady, 1916 C.D. 62, 232 O.G. 621 (Comm’r Pat. 1916). "[35 U.S.C.] 171 refers, not to the design of an article, but to the design for an article, and is inclusive of ornamental designs of all kinds including surface ornamentation as well as configuration of goods." In re Zahn, 617 F.2d 261, 204 USPQ</p>



		‘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’	article, building or graphic image connected with another person's business, or if it consists solely of shapes that are essential to ensure the functioning of an article, etc.		988 (CCPA 1980).
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**4. Are the registrability/patentability/requirements for protection defined in the Act? If so, what is the requirement for protection? (relevant ground)**

CNIPA

☒ Yes

PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

**Article 23.**

Any design for which a patent right is to be granted shall not be a prior design; no entity or individual has filed a patent application for the identical design with the patent administration department under the State Council before the filing date and the content of the application is disclosed in patent documents announced after the filing date.

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

Any design for which a patent right is granted must not conflict with the lawful rights acquired by any other person before the filing date.

For the purpose of this Law, "a prior design" refers to any design known to the public domestically and/or abroad before the filing date.

EUIPO

☒ Yes

Designs are liable to be declared invalid if they:

- Do not correspond to the definition of a design (art. 25(1)(a) EUDR)
- Lack novelty (art. 25(1)(b) EUDR in conjunction with art. 5 EUDR)
- Lack individual character (art. 25(1)(b) EUDR in conjunction with art. 6 EUDR)
- Which are dictated by their technical function or by interconnection purposes (art. 25(1)(b) EUDR in conjunction with art. 8 EUDR)
- Designs contrary to public policy or morality (art. 25(1)(b) EUDR in conjunction with art. 9 EUDR)
- Designs filed by an individual or a legal entity which was not entitled (art. 25(1)(c) EUDR)
- Designs which conflict with earlier designs having an earlier date of filing or of priority (art. 25(1)(d) EUDR)
- Designs in conflict with an earlier distinctive sign (art. 25(1)(e) EUDR)
- Designs which conflict with earlier work protected under copyright law (art. 25(1)(f) EUDR)
- Designs conflicting with any of the items protected under art. 6ter of the Paris Convention or of badges, emblems and escutcheons other than those covered by Article 6ter of that Convention and which are of particular public interest in a Member State (art. 25(1)(g) EUDR)

JPO

☒ Yes

(Examiner's Decision of Rejection)

Article 17 The examiner must render a decision to reject an application for design registration if it falls under any of the following items:

- (i) the design in the application for design registration is not registrable pursuant to the provisions of Article 3, Article 3-2, Article 5, Article 8, Article 8-2, Article 9, paragraph (1) or (2), Article 10, paragraph (1), (4) or (6) of this Act, Article 38 of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of this Act, or Article 25 of the Patent Act as applied mutatis mutandis pursuant to Article 68, paragraph (3) of this Act;
- (ii) the design in the application for design registration is not registrable pursuant to the provisions of a relevant treaty;
- (iii) the application for design registration does not comply with the requirements under Article 7; and
- (iv) if the applicant for design registration does not have the right to obtain a design registration for the design.

(Decision to Grant a Design Registration)

Article 18 If no reasons for rejection are found for an application for design registration, the examiner must reach the decision to grant the design registration.

The main requirements for protection defined as reasons for refusal are as follows.

(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) If, 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 or equivalent features or graphic images that were publicly known, contained in a distributed publication, or made available to the public through a telecommunications line in Japan or a foreign country, a person may not have a design registration made for that design (except for designs prescribed in any of the items of the preceding paragraph), notwithstanding the preceding paragraph.

(Prior application)

Article 9(1) Where two or more applications for design registration have been filed for identical or similar designs on different dates, only the applicant who filed the application for design registration on the earliest date may be entitled to obtain a design registration for the design.

(2) Where two or more applications for design registration have been filed for identical or similar designs on the same day, only one applicant, who was selected by consultations between the applicants who filed the applications, is entitled to obtain a design registration for the design. Where no agreement is reached by consultations or consultations are unable to be held, none of the applicants is entitled to obtain a design registration for the design.

(3), (4) and (5) Omitted.

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 registration of another design are one and the same person.

USPTO

☒ Yes

35 USC 171 – patent for designs

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

#### 4.1. Is the novelty of a design judged and when is the initial novelty judged?

CNIPA

☒ Yes

☐ Decision to grant

Article 23.1

Any design for which a patent right is to be granted shall not be a prior design; no entity or individual has filed a patent application for the identical design with the patent administration department under the State Council before the filing date and the content of the application is disclosed in patent documents announced after the filing date.

EUIPO

☒ Yes

☐ Request for Invalidation Trials

Art. 5 EUDR

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 EU 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 EU 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.

JPO

☒ Yes

☐ Decision to grant

(Examination by examiner)

Article 16 The Commissioner of the Patent Office must have an examiner examine applications for design registration

(Examiner's Decision of Rejection)

Article 17 The examiner must render a decision to reject an application for design registration if it falls under any of the following items:

(i) the design in the application for design registration is not registrable pursuant to the provisions of Article 3, Article 3-2, Article 5, Article 8, Article 8-2, Article 9, paragraph (1) or (2), Article 10, paragraph (1), (4) or (6) of this Act, Article 38 of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of this Act, or Article 25 of the Patent Act as applied mutatis mutandis pursuant to Article 68, paragraph (3) of this Act;

(ii) the design in the application for design registration is not registrable pursuant to the provisions of a relevant treaty;

(iii) the application for design registration does not comply with the requirements under Article 7; and

(iv) if the applicant for design registration does not have the right to obtain a design registration for the design.

(Decision to Grant a Design Registration)

Article 18 If no reasons for rejection are found for an application for design registration, the examiner must reach the decision to grant the design registration.

KIPO

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

[Design Protection Act]

Article 33 (Requirements for Design Registration)

(1) A design that may be used for an industrial purpose is eligible for design registration, except in any of the following cases:

1. A design publicly known or worked in the Republic of Korea or a foreign country before an application for design registration is filed;
2. A design described in a printed publication distributed in the Republic of Korea or a foreign country or made available for public use via telecommunications lines before an application for design registration is filed;
3. A design similar to any of the designs specified in subparagraph 1 or 2.

[Design Examination Standards] Part4, Chapter 3 Novelty 1)~4)

USPTO

☒ **Yes** ☒ Decision to grant

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

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

- (1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or
- (2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

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

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

CNIPA

☒ Yes

☒ Decision to grant

The examiner usually examine whether a patent application for design is obviously in conformity with the provisions of Article 23.2 or not.

Article 23.2

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

EUIPO

☒ Yes

☒ Request for Invalidation Trials

Art. 6 EUDR

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 EU 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 EU design, before the date of filing the application for registration or, if a priority is claimed, the date of priority.

2. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

JPO

☒ Yes

☒ Decision to grant

Article 3(2) of the Design Act.

Article 3(2) If, 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 a shape or equivalent features or graphic images that were publicly known, contained in a distributed publication, or made available to the public through a telecommunications line in Japan or a foreign country, a person may not have a design registration made for that design (except for designs prescribed in any of the items of the preceding paragraph), notwithstanding the preceding paragraph.

KIPO

☒ Yes

☒ Decision to grant

Article 33 (Requirements for Design Registration)

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

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

USPTO

☒ Yes

☒ Decision to grant

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

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

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

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



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

**CNIPA** ☒ **Yes**

Article 31.2:

A patent application for a 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 category and sold or used in sets may be filed as one application.

**EUIPO** ☒ **Yes**

Art 37 EUDR

1. A maximum number of 50 may be combined in one multiple application for registered EU designs. Each design contained in a multiple application shall be numbered by the Office in accordance with a system to be determined by the Executive Director.
2. Besides the fees referred to in Article 36(4), the multiple application shall be subject to payment of an application fee in respect of each additional design included in the multiple application and; in the event the application contains a request for deferment of publication, the additional publication fee shall be replaced by a fee for deferment of publication in respect of each design included in the multiple application for which deferment is requested.
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 a registration based on such application may be dealt with separately from the others for the purpose of applying this Regulation. Such a design 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 the conditions set out in the implementing regulation.

**JPO** ☒ **No**

(One application per design)

Article 7 An application for design registration must be filed for each design as provided by Order of the Ministry of Economy, Trade and Industry.

**KIPO** ☒ **No**

Article 40 (One Registration Application for One Design)

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

**USPTO** ☒ **Yes**

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

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

CNIPA

Article 5. 1

No patent right shall be granted for any invention-creation that violates laws or social morality or that is detrimental to the public interests.

Article 25. 1

No patent right shall be granted for any of the following:

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

EUIPO

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

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

JPO

(Unregistrable designs)

Article 5 Notwithstanding the provisions of Article 3, the following designs may not be registered:

- (i) a design that may damage public policy or morals;
- (ii) a design that risks giving rise to confusion with an article, building or graphic image connected with another person's business; or
- (iii) a design consisting solely of shapes that are essential to ensure the functioning of an article or consisting solely of shapes that are essential to the usage of a building, or a design consisting solely of indications that are essential to the usage of the graphic image.

KIPO

Article 34 (Unregistrable Designs) Notwithstanding Article 33, none of the following designs is eligible for design registration:

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

USPTO

MPEP 1504.01(e)

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

## Phase 2. Subjective Eligibility of Industrial Design

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

	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>1.1. Requirements for a creator</b>	<p>A "creator" referred to in the Patent Law means any person who makes creative contributions to design (Rule 14 of the Implementing Regulations of the Patent Law of the People's Republic of China). The creator shall be a natural person, an entity or organization shall not be a creator</p>	<p>Article 18 of the EU Design Regulation (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 EU 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'. That right shall include the right to enter a change of the name of the designer or of the team in the Register.</p>	<p>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)</p> <p>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,</p>	<p>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.</p>	<p>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.</p>

			<p>etc.) cannot be a creator of a design.</p> <p>Such persons as minors (infancy) can be a creator of a design while they cannot undertake procedures for design registration by themselves.</p>		
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	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>1.2. Requirements for joint creators</b>	<p>For an invention-creation accomplished by two or more entities or individuals in collaboration, or accomplished by an entity or an invention-creation accomplished by an entity or individual in execution of a commission given to it or him by another entity or individual, the right to apply for a patent belongs, unless otherwise agreed upon, to the entity or individual that has accomplished the</p>	<p>A ‘team of designers’ may consist of two or more designers, and as such they have the right to be cited either individually or as a team in the EU 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 EUDR). The right to be cited as individual designer(s) or as a team of designers subsists even if this</p>	<p>Where two or more persons have created a design jointly, the right to obtain a design registration for the design is jointly owned. In this case, the application for design registration may only be filed by all the joint owners (Art. 38 of the Patent Act applied mutatis mutandis under Art. 15(1) of the Design Act). If this requirement is not met, the application becomes the subject of refusal (Art. 17(i) of</p>	<p>If at least two persons jointly create a design, such persons shall jointly have the right to register the design. (Article 3(2) of the Design Protection Act) If a right to have a design registered is jointly owned under Article 3 (2), all co-owners shall jointly file an application for design registration. (Article 39 of the Design Protection Act). If an application is filed by only a party of the co-owners, it will be rejected</p>	<p>35 U.S.C. § 116(a): When an invention is made by two or more persons jointly, they shall apply for patent jointly and each make the required oath, except as otherwise provided in this title. Inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the</p>

	invention-creation, or to the entities or individuals that have accomplished the invention-creation in collaboration. (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 14).	application is filed by their employer or their successor in title. The EU 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) EUDR). EUIPO does not verify that such a waiver exists. The applicant who makes a false statement is exposed to civil liability under national law.	the Design Act).	(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.	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.
	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>1.3. Requirements for a successor</b>	The right to file a patent application and a patent right may be transferred. Where the right to file a patent application or a patent right is transferred, the	According to Article 17 EUDR (Presumption in favour of the registered holder of the design), 'The person in whose name the registered	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	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,	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

	<p>parties concerned shall enter into a written contract and register it with the patent administration department under the State Council. The patent administration department under the State Council shall make an announcement about the registration. The transfer of the right to file a patent application or the patent right shall take effect as of the date of registration.(Article 10).</p>	<p>EU 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 an EU design application or enforcing the exclusive rights obtained on the EU 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.</p>	<p>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).</p>	<p>those who have legal capacity (natural and juridical person) are entitled to registration of a design as a successor.</p>	<p>register of interests in patents and applications for patents and shall record any document related thereto upon request, and may require a fee therefor.</p>
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## 2. Do have any provisions prescribing those who are not entitled to registration of a design?

### CNIPA

- (1) Where any foreigner, foreign enterprise or other foreign organization without a habitual residence or business office in China files a patent application in China, the application shall be handled under this Law in accordance with the agreements concluded between the country to which the applicant belongs and China, or in accordance with the international treaties to which both the countries are parties, or in accordance with this Law on the basis of the principle of reciprocity. ( Article 17 )
- (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 EUDR, which would rule out the entitlement to file an EU 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).

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 an Office employee status. See also MPEP § 309

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

CNIPA

Any party involving in a dispute over the ownership of the right of patent application or patent right could apply for mediation with the administrative authority for patent affairs or instituted legal proceedings before the people's court, who has already applied for mediation with the administrative authority for patent affairs or instituted legal proceedings before the people's court, may request the patent administration department under the State Council to suspend the relevant procedures. (Rule 103.1)



**EUIPO**

Two alternative actions aim at protecting a legitimate right holder:

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 EUDR (Presumption in favour of the registered holder of the design), 'The person in whose name the registered EU 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. That right shall include the right to enter a change of the name of the designer or of the team in the Register'.

(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 EU design may also seek the invalidity thereof. According to Article 25(1)(c) EUDR, a EU design may be declared invalid if, by virtue of a court decision, the rights holder is not entitled to the EU 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).

**KIPO**

(1) Where an application filed for registration of a design has been rejected due to ineligibility of an applicant, if a legitimate right-holder subsequently files an application for registration of the design, the filing date of the latter application shall be retrospectively revised to the earlier filing date when the ineligible applicant filed the application. (Article 44 of the Design Protection Act)

(2) If a ruling to revoke registration of, or invalidation trial of a design becomes final and conclusive on the ground that the registrant is unentitled, the application filed by the legitimate right-holder for registration of the design subsequent to the application filed by the person unentitled to design registration shall be deemed filed at the time the application for the revoked or invalidated registration of the design was filed:

**USPTO**

MPEP § 2310: A derivation proceeding is a trial proceeding under 35 U.S.C. § 135 conducted at the Patent Trial and Appeal Board to determine whether (i) an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application, and (ii) the earlier application claiming such invention was filed without authorization. Derivation proceedings are only applicable to applications for patent, and any patent issuing thereon that are subject to first-inventor-to-file provisions of the America Invents Act (AIA). An applicant subject to the first-inventor-to-file provisions may file a petition to institute a derivation proceeding with the Board.

#### 4. Formality concerning indication of a creator and other issues

	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>4.1. Requirements to indicate a creator in an application form.</b>	A creator shall be indicated in an application (Rule 19) ,but that does not have any impact on the establishment of a filing date (Rule 44).	Article 1(2)(d) EUDIR (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 EUDR. The citation, the waiver and an indication regarding the designer(s) are merely optional and are not subject to examination.	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.)	A creator shall be indicated in an application (Article 37 of the Design Protection Act) but that does not have any impact on the establishment of a filing date (Article 38 of the Design Protection Act).	35 U.S.C. § 115(a): An application for patent that is filed under section 111(a) or commences the national stage under section 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.

	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>4.2. Allowing to change or add a creator in the application proceedings</b>	It is allowed to change or add a creator in an application form in the application proceedings (Rule 146 )	<p>Yes.</p> <p>Since the right to be cited as the designer is not limited in time, the designer's name can also be entered into the EUIPO register after the filing of the design (Article 72(2)(j) EUDR.</p> <p>Likewise, the name of a designer (or the designation of a team of designers) can be added after the filing of the design</p> <p>Furthermore, that right shall include the right to enter a change of the name of the designer or of the team in the Register (Article 18 EUDR).</p>	<p>An amendment of the statement of the creator may be made only while the case is pending. Such an amendment must be submitted together with the following documents;</p> <p>(1) Written declarations by the creators (declarations as to whether being a genuine creator or not made by all the persons stated in the application before and after the amendment), and</p> <p>(2) A document stating the reason for the change (addition or deletion of the creator(s))</p>	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)	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.

	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>4.3. Allowing to change or add a creator after the final decision</b>	It is allowed to change or add a creator in an application form in the application proceedings (Rule 146 )	Yes. 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 72(2)(j) EUDR). Likewise, the name of a designer (or the designation of a team of designers) can be added after the filing of the design Furthermore, that right shall include the right to enter a change of the name of the designer or of the team in the Register (Article 18 EUDR).	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	In principle, it is not allowed to change or add a creator in an application form after issuing a decision of granting or refusing a registration, Provided That it is deemed to be an obvious omission or typo, it is allowed.	35 U.S.C. § 256(a): Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent, the Director may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate correcting such error.

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

			under Art. 19 of the Enforcement Ordinance of the Design Act)		inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient
	CNIPA	EUIPO	JPO	KIPO	USPTO
<b>4.5. Priority claim in regards to a creator</b>	CNIPA examines only if the description in the column of the applicant in the first country listed in the priority certificate is the same as the description in the column of the applicant listed in the application which is submitted to the second country with priority claim. Thus, as long as the applicants are the same, the priority claim will be acceptable.	EUIPO examines only if the designation of the applicant in the first country listed in the priority certificate is the same as the applicant listed in the EU 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 an EU design is merely optional and not examined by EUIPO	In the determination of the validity of the effect of a priority claim under the Paris Convention, the identity of the creator is not examined, while the legality of the applicant is examined (i.e. whether the applicant in Japan is either the same person as or his successor to that of the first application and is eligible for the benefits of the treaty).	KIPO examines only if the description in the column of the applicant in the first country listed in the priority certificate is the same as the description in the column of the applicant listed in the application which is submitted to the second country with priority claim. Thus, as long as the applicants are the same, the priority claim will be acceptable.	MPEP § 213.02, subsection II: Pursuant to 35 U.S.C. § 119(a), the foreign application must have been filed by the same applicant as the applicant in the United States, or by applicant's legal representatives or assigns. Consistent with longstanding USPTO policy, this is interpreted to mean that the U.S. and foreign applications must name the same inventor or have at least one joint inventor in common.