



**Assessment of Designs
Report**

October 2025

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Section 1 – Introduction

The ID5 Assessment of Designs project's goal was to develop a Handbook explaining on how the examiners of the five Partner Offices assess the novelty of designs.

The Partners all have proceedings in place to rule on the novelty of a design by substantive examination. The essence of the examination is the comparison of the design with a prior design. However, this comparison is not straightforward and each offices have different practices in place. Therefore, the project was adopted to compare office practices on what constitutes a novel design in the ID5 offices and how this assessment is made.

Section 2 – Framework for novelty analysis

CNIPA:

Article 23.1 of the Patent Law of the People's Republic of China

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.

The prior design refers to the design known to the public before the filing date (or the priority date, where priority is claimed) of the application for the claimed design.

The identical design means that the designs are **identical** or **substantially identical**.

If the product incorporating the claimed design belongs to the same/approximate category with that published in the prior reference, the main differences between two designs lie only in:

- slight change in fine details that cannot be noticed paying normal attention;
- the changes in the parts which cannot be seen easily or cannot be seen at all when they are in use;
- some parts of a product which are proved to be usual designs commonly known in the category of the product;
- that the claimed design is simply a repeated and continuous arrangement or an increase;
- decrease in the continuous number of the prior design as a design unit following the normal arrangement of the category of product;
- the two designs are a mirror image;
- the normal changes in the position or;
- the proportional relationship of the claimed part within the whole product.

The claimed design is **substantially identical** with the prior design, which do not comply with the requirements of Article 23.1 of the Patent Law of the People's Republic of China, and cannot be granted a design patent right.

EUIPO:

In the EU, design protection is granted to a design that is both novel and has individual character (Art. 4 EUDR). Novelty and individual character are assessed in relation to the relevant prior art (Art. 7 EUDR). The tests for these requirements differ: novelty is assessed objectively, essentially determining whether the conflicting designs differ only in “immaterial details” (Art. 5 EUDR). In contrast, the individual character test considers the overall impressions of the designs, as perceived by the informed user, taking into account additional factors such as the designer's freedom.

There is no statutory definition of what constitutes an “immaterial detail”. Novelty is typically denied only when the conflicting designs are identical except for elements that are likely to go unnoticed. Minor differences may also be attributed to the fact that the graphic representations entail some nuances, such as variations of colours in screen displays, and can therefore be regarded as “immaterial detail”. In practice, when it is unclear whether minor differences amount to an “immaterial detail” the decision is often based on the lack of individual character instead. Consequently, there is a very limited amount of case law on the novelty test.

When examining an application for a European Union design, the Office does not examine novelty and individual character of its own motion (Article 63(1) EUDR). However, a European Union design that has been registered in breach of the protection requirements set out in Articles 3 to 9 EUDR is liable to be invalidated if an interested party files a request for a declaration of invalidity (Article 25(1) EUDR). In such proceedings, the Office's examination is limited to the grounds, facts, evidence, and arguments provided by the parties (Article 63(1) EUDR), and does not involve a full search of publicly known designs.

Contested RCD No 5 269-0001 (view No 2)	Earlier design (invented example)
	

JPO:

1. Novelty

Under the Japanese Design Act, Article 3, which specifies requirements on novelty, states that the following designs may not be registered: designs that were publicly known in Japan or a foreign country prior to the filing of the application for design registration (or prior to the priority date if an application is accompanied by priority claim); designs that were contained in a distributed publication prior to the filing date (or priority date); designs that were made publicly available through a telecommunications line prior to the filing date (or priority date); or designs that are similar to any of the above.

(Requirements for Design Registration)

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

- (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 contained in a distributed publication, or designs that were made publicly available through a telecommunications 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.*

The examiner determines whether the filed design has novelty by comparing the filed design against publicly known designs. If, as a result, the two designs are found to be identical, the examiner should determine that the filed design lacks novelty. In addition, even where there are points of difference between the two designs, if the two designs are found to be similar, likewise, the examiner should determine that the filed design lacks novelty.

(1) Determining entity

The determining entity in the determination of similarity is consumers (including traders).

(2) Information that serves as the basis for determination

Information that serves as the basis for determination of novelty and creative difficulty is information that falls under any of the following (i) to (iii), either in Japan or a foreign country, prior to the filing of the application for design registration.

- (i) "Publicly known" (Article 3, paragraph (1), item (i) of Design Act). "Publicly known" means that the contents were known to unspecified persons as information that is not confidential.
- (ii) "Described in a distributed publication" (Article 3, paragraph (1), item (ii) of Design Act). "Described in a distributed publication" means described in a publication which is made available for unspecified persons to view.

- (iii) “Made publicly available through a telecommunications line” (Article 3, paragraph (1), item (ii) of Design Act). “Made publicly available through a telecommunications line” means posted on a webpage, etc. which is made available for unspecified persons to view via telecommunications lines.

2. Approaches for determining similarity

Since the article embodying the design and shape or equivalent features are inseparably integrated in a design, unless the articles embodying the two compared designs are identical or similar, those designs are not similar. Therefore, the examiner first identifies the usage and function, and shape or equivalent features for each of the filed design and the compared design. And then, when all the following are true about those designs, the examiner determines the two are similar.

- (i) In case the filed design is one that requests design registration for the entire article:
 - The usage and function of the article embodying the designs are identical or similar.
 - The shape or equivalent features of the designs are identical or similar.
- (ii) In case the filed design is one that requests design registration for a part of an article:
 - The usage and function of the article embodying the designs are identical or similar.
 - The usage and function of the “part for which the design registration is requested” of the examined design and the part in the prior design that coincides with the “part for which the design registration is requested” are identical or similar.
 - The position, size, and scope of the “part for which the design registration is requested” of the examined design in the shape or equivalent features of the entire article, etc. and those of the part in the prior design that coincides with the “part for which the design registration is requested” in the shape or equivalent features of the entire article, etc. are identical or within the scope of ordinary in the art of the design.
 - The shape or equivalent features of the “part for which the design registration is requested” of the examined design and that of the part in the prior design that coincides with the “part for which the design registration is requested” are identical or similar.

(For Reference)

Part III Requirements for Design Registration Chapter II Novelty & Creative Difficulty Section 1 Novelty
https://www.jpo.go.jp/e/system/laws/rule/guideline/design/shinsa_kijun/document/index/0302_1.pdf

Apart from Novelty explained above, the Japanese Design Act provides the other requirements for design registration based on the relationship between the examined design and the prior design. The Design Act states that: when a design which can be easily created based on published designs (Article 3, paragraph (2)); when a design in the latter application is similar to a part of a design in the prior application which was published in a design bulletin after the filing date of the design in the latter application (Article 3-2); or when a design is similar to the design which was filed on the same date or earlier (Article 9), such design may not be registered.

USPTO:

35 U.S.C. 102 Conditions for patentability; novelty. (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, the test used for infringement, is “the sole test for anticipation.” Under the ordinary observer test, “‘if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.’” *Gorham*, 81 U.S. at 528. See MPEP 1504.02.

KIPO:

[Design Protection Act]

Article 33 (Requirements for Design Registration) (1) A design usable for an industrial purpose is eligible for design registration, except:

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.

[Supreme Court decisions related to assessing design similarity]

“Since a design cannot exist independently of the article and is inseparably connected to it, for a design to be considered identical or similar, the article embodying the design and the form of the design itself must be identical or similar. The identity of the article should be determined based on whether, in light of its purpose, function, and other factors, it can be recognized as the same type of article according to trade conventions. “

Supreme Court Decision of Korea, Case No. 98Hu492 (Dec. 28, 1999)

“The determination of whether designs are similar should not be made by separating and individually comparing each element that constitutes the design. Instead, it should be based on an overall comparison and observation of the designs' appearances, assessing whether they evoke a different aesthetic impression on the observer. Therefore, if the dominant features are similar, the designs should be deemed similar, even if there are minor differences in details.”

Supreme Court Decision of Korea, Case No. 2009Hu4148 (Aug. 26, 2010)

“However, if the common parts of the two designs consist of elements that are naturally expected to exist in the article or represent the basic or functional form of the design, their importance should be assessed as low. Thus, the mere fact that such parts are identical or similar does not necessarily mean that the two designs are identical or similar. Designs that have been commonly used for a long time, are simple, or have been widely and variously created, as well as designs that cannot be significantly altered structurally, should have a relatively narrow scope of similarity in design comparison.”

Supreme Court Decision of Korea, Case No. 2012Hu3794 (April. 11, 2013)

[Design Examination Guidelines(Dec. 21, 2023), p.173 to p.187, Chapter 2 of Part III]

2.1.1 Design similarity is determined only between identical or similar articles.

3.1.3 The method of determining the scope of design similarity is to consider the scope of similarity wider for more novel designs, and narrower as more of the same type of designs are produced.

3.2.3 Parts that are naturally expected to be present in the article are evaluated with lower importance, while parts that allow for various modifications are primarily assessed.

3.3.2 In the case of designs with changing shapes and designs with non-changing shapes, if the posture representing the basic subject in both the stationary and moving states of the design with changing shapes is similar to that of the design with a non-changing shape, it is considered a similar design. However, if the content of the movement is unique, it could be considered a dissimilar design.

3.4.4 If a design for a component that constitutes part of a publicly known whole product is filed, it is considered part of the publicly known design (publicly known design through the whole product) and the provisions of Article 33(1) of the Patent Act (novelty) shall apply.

Section 3 – Examples

Example 1: Different articles

Title: Lip Implant

Claim: The ornamental design for a lip implant as shown and described.

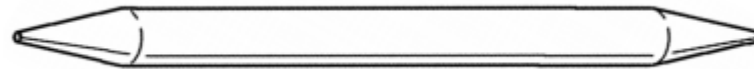


Figure from Examined design



Prior design (Prior art stump tool)

Example 1: Different articles

	Is the examined design novel compared to the prior art shown? (Y/N)	Does the Office consider descriptions recorded in the application and/or prior art as limiting the claim in assessing novelty? If yes, explain the analysis.	Does the Office consider a design for a portion of an article in assessing novelty? If yes, explain the analysis.	Does the Office consider features present in the prior design that are not present in the examined design in assessing novelty? How about features not present in the prior design but present in the application? If yes, explain the analysis.	Does the Office consider features that are functional and/or not visible during end use in assessing novelty? If yes, explain the analysis.	Does the Office consider animation when assessing novelty? If yes, explain the analysis.	How does the Office assess the novelty of a graphical user interface (GUI)?	Notes/Comments
CNIPA	Y	Y The name of the product described in request may determine category of product. If the product incorporating the claimed design belongs to the same/approximate category with that published in the prior reference, compare whether the two designs are identical or substantially identical. For this case, the lip implant is not of same/approximate category as art stump tool, so two designs cannot be compared.		N Novelty assessment should be based on the claimed design without considering features that present in prior designs and that do not present in the claimed design. Conversely, it should. Office should consider features not present in the prior design but present in the claimed design.	For functional features: When the difference between the two designs lies in the special shape exclusively determined by the function of a product, it generally does not notably influence the overall visual effect. For features that are not visible during end use: When the difference between the two designs exists in the parts which cannot be seen easily or cannot be seen at all when in use, the two designs are substantially identical. However, the circumstance where there is evidence showing that the special design in the			

					parts which cannot be seen easily has notable visual effect for a normal consumer makes an exception.			
EUIPO	The different product indications are irrelevant for the novelty test. The additional features on part of the prior design (term “Stump” and surface shading/colouring) must be disregarded according to the EUIPO’s first instance practice (see also response in column 4). The remaining detectable differences in the products’ endings	No. By law, neither a description nor a verbal disclaimer shall alter the scope of protection afforded to the design.		According to the EUIPO’s first-instance practice, the contested design serves as the point of reference for comparing the conflicting designs. This means that features of the earlier design beyond those found in the contested design are disregarded, while additional features of the contested design may contribute to its novelty.	Features that are solely dictated by a technical function, in principle, are disregarded in the comparison of the conflicting designs. In order to assess whether a feature is solely dictated by a technical function, it is examined whether considerations other than the need for that product to fulfil its technical function, in particular those related to the visual aspects, have played a role in the choice of the features. Features may be functional but not solely dictated by a technical function. Apart from being shown visibly in an application for registration of an EU design, design features of a product do not need to be visible at any particular time or in any particular situation of use in order to benefit from design protection. An			

	and proportions can be considered more than “immaterial details”. Therefore, the examined design is novel (but may lack individual character).				exception to that principle applies to the design protection of component parts of a complex product that need to remain visible during normal use of that product.			
JPO	The Prior design does not serve as a ground to determine that the examined design lacks novelty. When the usage and function of the articles embodying the examined design and those of prior design are not similar, the articles embodying the two will be found not similar	Application for design registration in Japan includes columns for details such as “Article embodying the design”, “description” and “description of article embodying the design”. The examiner understands what the article embodying the design is and what the usage and function of the article are by making a comprehensive determination based on the details in the application and the contents in the accompanying reproductions.		If the features are related to usage and function of the articles, those will be taken into consideration for determining similarity between the articles embodying the designs. Also, if the features are related to shapes, those will be taken into consideration for determining the similarity between the shapes of the designs.	Those features will be taken into consideration for determining similarity of usage and function of the article embodying the design.			(For Reference) The Japanese Design Act includes the following provision: (The scope of design registration) Article 24(1) The scope of a registered design must be determined based on the design depicted in the application, and in the drawing or represented in the photograph, model, or specimen attached to the application.

	and thus the examined design and the prior design will be found not similar.							
KIPO	Yes	Yes, According to Article 93 of the Design Protection Act, the scope of protection of a registered design is determined by the design as expressed in the drawings and descriptions.		(May be) No, (On the premise that the goods are identical or similar), The overall appearance is compared. However, if the difference between the prior design and the examined design is <u>merely a minor difference, such as the presence or absence of text</u> , it may be considered that the designs are substantially similar overall, with less weight given to the differences.	(May be) No Functional elements are not considered in the determination of similarity unless they are expressed in the appearance itself. Conversely, if a functional element is expressed in the appearance, it may be taken into account when comparing the designs as a whole. However, a design composed solely of functional features is unlikely to be granted. Even if the shape is not visible in the end use, it can still be assessed if there is a possibility of it being traded.			The articles are different, so novelty can be recognized. Lip implants and stump tools are distinct products. Additionally, their purposes and functions are different, making the possibility of them being interchangeable low. On the other hand, the likelihood of a typical designer functionally modifying these items from different fields is also low, suggesting that, apart from novelty, creativity may be recognized as well.
USPTO	Yes	Yes The title of the design identifies the article in which the design is embodied by the name generally known and used by the public and may contribute to defining the scope of		Yes When determining novelty, the USPTO assesses all differences between the claim and the prior art. In Egyptian Goddess, an en banc panel of the	N/A			When determining novelty of a claimed design, the USPTO uses the ordinary observer test. This means that, “if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are

		the claim. See MPEP § 1504.04, subsection I.A. See <i>Curver Luxembourg, SARL v. Home Expressions, Inc.</i>, 938 F.3d 1334, 1340, 2019 USPQ2d 341902 (Fed. Cir. 2019) ("[I]dentifying the article of manufacture serves to notify the public about the general scope of protection afforded by the design patent"). The title may be directed to the entire article embodying the design while the claimed design shown in full lines in the drawings may be directed to only a portion of the article. However, the title may not be directed to less than the claimed design shown in full lines in the drawings. A title descriptive of the actual article aids the examiner in developing a complete field of search of the prior art and further aids in the proper assignment of new applications to the appropriate class, subclass, and patent examiner, and the proper classification of the patent upon		Federal Circuit "characteriz[ed] the ordinary observer as being 'deemed to view the differences between the patented design and the accused product in the context of the prior art.'" <i>Seaway</i>, 589 F.3d at 1239-40, 93 USPQ2d at 1005, quoting <i>Egyptian Goddess Inc. v. Swissa Inc.</i>, 543 F.3d 665, 676, 88 USPQ2d 1658, 1666-67 (Fed. Cir. 2008) (en banc). The court also explained that "when the claimed design is close to the prior art designs, small differences between the accused design and the claimed design are likely to be important to the eye of the hypothetical ordinary observer." The ordinary observer test requires consideration of the design as a whole. See <i>Seaway</i>, 589 F.3d at 1243, 93 USPQ2d at 1008; <i>Egyptian Goddess</i>, 543 F.3d at 677, 88 USPQ2d 1667. In applying the ordinary observer test, "determine whether 'the deception that				substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.'" <i>Gorham Mfg. Co. v. White</i>, 81 U.S. 511, 528 (1871). Design is inseparable from the article to which it is applied and cannot exist alone merely as a scheme of surface ornamentation. (MPEP §1502). A design claim is limited to the article of manufacture identified in the claim, and does not broadly cover a design in the abstract (MPEP §1504.02). The title and claim identifies a lip implant. As such, the claim is limited to lip implants and does not cover other articles of manufacture. "A design claim is limited to the article of manufacture identified in the claim; it does not broadly cover a design in the abstract." <i>In re SurgiSil, L.L.P.</i>, 14 F.4th 1380, 1382, 2021
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allowance of the application. It also helps the public in understanding the nature and use of the article embodying the design after the patent has been issued. For example, a broad title such as "Adapter Ring" provides little or no information as to the nature and intended use of the article embodying the design. If a broad title is used, the description of the nature and intended use of the design may be incorporated into the preamble.

The description of the article in the claim should be consistent in terminology with the title of the invention. See MPEP 1503.01, subsection I.

When the specification includes a proper descriptive statement of the design (see MPEP § 1503.01, subsection II), or a proper showing of modified forms of the design or other descriptive matter has been included in the specification, the

arises is a result of the similarities in the overall design not of similarities in ornamental features in isolation.'" See *Richardson v. Stanley Works Inc.*, 597 F.3d 1288, 1295, 93 USPQ2d 1937, 1941 (Fed. Cir. 2010), citing *Amini Innovation Corp. v. Anthony California Inc.*, 439 F.3d 1365, 1371, 78 USPQ2d 1147, 1151 (Fed. Cir. 2006) (holding that the overall infringement test is not to be converted to an element-by-element comparison when factoring out the functional aspects of various design elements).

USPQ2d 1008 (Fed. Cir. 2021). See also [MPEP § 1502](#). In *SurgiSil*, the Federal Circuit reversed an anticipation rejection of a lip implant over an art tool because it determined that the Board's anticipation finding "rests on an erroneous interpretation of the claim's scope." *Id.* The court reasoned that where "[t]he claim language recites 'a lip implant,'" and "the application's figure depicts a lip implant, ... the claim is limited to lip implants and does not cover other articles of manufacture." *Id.*

		words "and described" must be added to the claim following the term "shown"; i.e., the claim must read "The ornamental design for (the article which embodies the design or to which it is applied) as shown and described." (MPEP 1503.01 (III))						
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Example 2: Different articles but common functions in claimed parts

Title: Mop Handle

Claim: The ornamental design for a mop handle as shown and described.



**Applicant's design for a
mop handle**

Figure from Examined design



**Prior art handle, disclosed
for a jump rope**

Prior design

Example 2: Different articles but common functions in claimed parts

	Is the examined design novel compared to the prior art shown? (Y/N)	Does the Office consider descriptions recorded in the application and/or prior art as limiting the claim in assessing novelty? If yes, explain the analysis.	Does the Office consider a design for a portion of an article in assessing novelty? If yes, explain the analysis.	Does the Office consider features present in the prior design that are not present in the examined design in assessing novelty? How about features not present in the prior design but present in the application? If yes, explain the analysis.	Does the Office consider features that are functional and/or not visible during end use in assessing novelty? If yes, explain the analysis.	Does the Office consider animation when assessing novelty? If yes, explain the analysis.	How does the Office assess the novelty of a graphical user interface (GUI)?	Notes/Comments
CNIPA	Y	Y The name of the product described in request may determine category of product. If the product incorporating the claimed design belongs to the same/approximate category with that published in the prior reference, compare whether the two designs are identical or substantially identical. For this case, the mop handle is not of same/approximate category as the jump rope handle, so two designs cannot be compared.	Y Position and proportional relationship of part of the solid line protection in the whole product need to be considered. If position and proportional relationship of the partial designs in the whole product are the same and/or there is a scale change, the two partial designs are substantially identical.	N Novelty assessment should be based on the claimed design without considering features that present in prior designs and that do not present in the claimed design. Conversely, it should. Office should consider features not present in the prior design but present in the claimed design.	For functional features: When the difference between the two designs lies in the special shape exclusively determined by the function of a product, it generally does not notably influence the overall visual effect. For features that are not visible during end use: When the difference between the two designs exists in the parts which cannot be seen easily or cannot be seen at all when in use, the two designs are substantially identical. However, the circumstance where there is evidence showing that the special design in the			

					parts which cannot be seen easily has notable visual effect for a normal consumer makes an exception.			
EUIPO	No. The different product indication is irrelevant for the novelty test.	Same answer as for example 1.	Design protection is available for a part of a product. The analysis is explained in the next column.	When the contested design represents only a part of a product, while the earlier design shows the entire product, the comparison is made based on the respective parts of each design. Conversely, when the earlier design represents only a part of a product, the additional elements of the contested design are taken into account.	Same answer as for example 1.			
JPO	The examined design will not be determined that it lacks novelty based on the prior design. When comparing the articles embodying the design, “mop handle” and that of prior design,	When comparing the article embodying the design, “mop handle” and that of prior design, “jump rope”, those articles will be found not similar because the usages and functions are different and accordingly, the handle parts of those two will not be found similar.	When comparing the article embodying the design, “mop handle” and that of prior design, “jump rope”, the usages and functions are not similar (cleaning tool vs. exercise tool). Therefore, even though the handle parts share the same usage and function, that are “to grip and support by hand”, those designs in their entirety will not be found similar.	If the features are related to usage and function of the articles, those will be taken into consideration for finding the articles embodying the designs. Also, if the features are related to shapes, those will be taken into consideration for finding the shapes of the designs.	Those features will be taken into consideration for finding the usage and function of the articles embodying the designs.			Note that there is a possibility that the design of “mop handle” will be found easy to create based on the design of the handle of “jump rope” if the design of “jump rope” was published prior to the filing of application of the design of “mop handle”.

	“jump rope”, the usages and functions are not similar and thus the handle parts of those articles will be found not similar.							
KIPO	Yes	Yes According to Article 93 of the Design Protection Act, the scope of protection of a registered design is determined by the design as expressed in the drawings and descriptions.	N/A	Yes Features present only in the prior design but absent in the Examined design can be considered. However, in this case, the jump rope is depicted as a dashed line, indicating it is a less significant feature. Novelty can be assessed by comparing only the handles intended for comparison.	Yes Although handles are functional in shape, designs serving this purpose can be created in various forms. Therefore, unless it is a common shape typically used in this field, it can be considered when assessing novelty, even if the purposes are somewhat different.			The mop handle and the handle for a jump rope are both designed for the functional purpose of being held by hand. However, as a general rule, the novelty requirement applies when the articles are identical or similar. Exceptionally, even if the articles are not similar, there is a possibility that novelty may be denied if there is a recognized potential for compatibility. In this case, it is anticipated that registration will be more challenging due to a lack of originality(or non-

								creativity) rather than a failure to meet the novelty requirement.
USPTO	No	Yes – see explanation for Example 1	N/A	Yes – See explanation for Example 1	N/A			When a claim is rejected under 35 U.S.C. 102 as being unpatentable over prior art, <i>those features of the design which are functional and/or hidden during end use may not be relied upon to support patentability</i> (MPEP §1504.02). Structure that is not part of the claimed design, but is considered necessary to show the environment in which the design is associated, may be represented in the drawing by broken lines (MPEP §1503.02(III)). The prior design shows the same handle design with the attached rope drawn in broken lines; thus, the rope is not considered a part of the claimed design. When comparing the examined design to the prior design, one should consider only the handles and not the rope of the prior design.

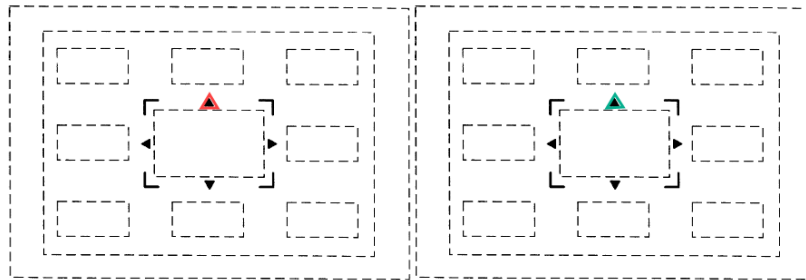
								The examined design indicates that the design is for a mop handle, and the prior design indicates that the design is for a jump rope, despite the handles having the same design. Mere differences in <i>functional considerations</i> do not negate a finding of anticipation under 35 U.S.C. 102 when determining design patentability (MPEP §1504.02).
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Example 3: Animated GUI

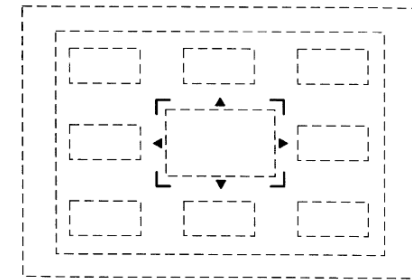
Title: Display screen with animated graphical user interface¹

Description: The appearance of the transitional image sequentially transitions between the images shown in Figs. 1-2. The process or period in which one image transitions to another image forms no part of the claimed design.

Claim: The ornamental design for a display screen with animated graphical user interface as shown and described.



Figures 1 and 2 of Examined design
(animated icon)



Prior design
(static image)

¹ or '(animated) graphical user interface' excluding display screen, as appropriate

Example 3: Animated GUI

	Is the examined design novel compared to the prior art shown? (Y/N)	Does the Office consider descriptions recorded in the application and/or prior art as limiting the claim in assessing novelty? If yes, explain the analysis.	Does the Office consider a design for a portion of an article in assessing novelty? If yes, explain the analysis.	Does the Office consider features present in the prior design that are not present in the examined design in assessing novelty? How about features <u>not present in the prior design but present in the application</u> ? If yes, explain the analysis.	Does the Office consider features that are functional and/or not visible during end use in assessing novelty? If yes, explain the analysis.	Does the Office consider animation when assessing novelty? If yes, explain the analysis.	How does the Office assess the novelty of a graphical user interface (GUI)?	Notes/Comments
CNIPA	N	Y The name of the product described in request may determine category of product. If the product incorporating the claimed design belongs to the same/approximate category with that published in the prior reference, compare whether the two designs are identical or	Y Position and proportional relationship of part of the solid line protection in the whole product need to be considered. If position and proportional relationship of the partial designs in the whole product are the same and/or there is a scale change, the two partial designs are substantially identical.		For functional features: When the difference between the two designs lies in the special shape exclusively determined by the function of a product, it generally does not notably influence the overall visual effect. For features that are not visible during end use: When the difference between the two designs exists in the parts which	Animation is considered when assessing novelty. The novelty of the dynamic graphical user interface is judged by comparing the dynamic change state and animation change trend of this application as a whole design with the prior design. The comparison of designs shall be made through the approach of whole observation and comprehensive judgement.	The novelty judgment standard of dynamic graphical user interfaces is the same as that of general products. The comparison of designs shall be made through the approach of whole observation and comprehensive judgement.	

		substantially identical.			cannot be seen easily or cannot be seen at all when in use, the two designs are substantially identical. However, the circumstance where there is evidence showing that the special design in the parts which cannot be seen easily has notable visual effect for a normal consumer makes an exception.	For this case, the dynamic change of the animated GUI lies only in the color of the arrow. Through the approach of whole observation and comprehensive judgement, the examined design is substantially identical to the prior design.		
EUIPO	Yes. The transition constitutes an additional feature compared to the prior design. Given the limited number of	Same answer as for example 1.	Same answer as for example 2.		Same answer as for example 1.	Yes. Animation can constitute a feature of a design. The analysis is conducted in accordance with the same legal rules and practices applied to other designs.	The analysis is conducted in accordance with the same legal rules and practices applied to other designs.	

	features in the designs at issue, this constitutes more than a mere “immaterial detail”.							
JPO	We do not have any examination standard that is universally applicable to determine similarity between two GUIs, one of which is animated and the other is static, even if those two had the same appearance.	Application for design registration in Japan includes columns for details such as “Article embodying the design”, “description” and “description of article embodying the design”. The examiner considers the usages and functions of the examined design and the prior design by making comprehensive determination based on the details in the	After identifying the commonalities and differences between the examined design and the prior design and making comprehensive determination based on those characteristics, if the commonalities surpass the differences, the two will be found similar (thus the examined design lacks novelty), and if the differences surpass the commonalities, the two will be found not similar.		Statements that are included in the application such as related articles and functional features of GUI will be taken into consideration for determining the usage and function of the GUI in the filed application.	Even if two GUIs have the same appearance, an animated GUI and a static GUI will not be determined as identical designs. The examiner will determine that there is one difference between the examined design and the prior design, that is, whether or not they include a transition. However, we do not have a universally applicable answer regarding whether or not the	We take into consideration the usages and functions of the GUI, and if relevant, what kind of articles is the GUI used for.	

		application and the contents in the accompanying reproductions.				examined design and the prior design will be found similar solely based on such difference. Determination of the similarity between those designs will be made by comprehensively considering the commonalities and differences between the two.		
KIPO	(Maybe) Yes	Yes Since the description of the design includes the animated icon, it is considered when assessing novelty.	Yes In the case of a design concerning a part of an article, factors such as the position, size, and scope of that part can be taken into consideration.		Yes In particular, for GUI designs, functional features can be considered as they are limited to use in the operation of a device or the execution of its functions.	Yes If the states before and after the change share the same function or have a morphological relationship, they are treated as an Animated GUI design. If the change exhibits uniqueness, it can be considered in the assessment of novelty.	In this case, even if there was a similar GUI in the prior design, novelty could be recognized if the indicator with a triangle of a different color, used to move the cursor's position, did not previously exist. However, even if novelty is acknowledged, creativity may be	

							denied if an ordinary designer could easily modify it by referring to other prior designs.	
USPTO	Yes	N/A	N/A		Yes – see explanation for Example 1	Yes	Computer-generated icons, such as full screen displays and individual icons, are 2-dimensional images which alone are surface ornamentation, and are considered an article of manufacture when embodied in or displayed on a display screen or similar article (MPEP §1504.01(a)). Computer generated icons including images that change in appearance during viewing may be the subject of a design claim (MPEP §1504.01(a)(III)).	For this example, consider that there are differences in the examined design and prior design relating to the size or proportion, and color and line fill. If the prior art design does not adequately anticipate all features of the examined design under 35 U.S.C. 102, the examined design may have novelty.

Example 4: Component design and partial design

Title: Container Lid

Claim: The ornamental design for a container lid as shown and described.

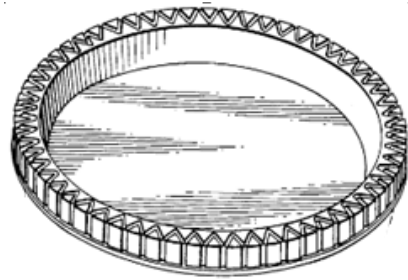
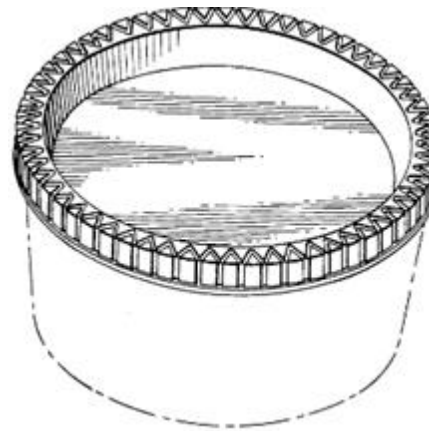


Figure from Examined design



Prior design

Example 4: Component design and partial design

	Is the examined design novel compared to the prior art shown? (Y/N)	Does the Office consider descriptions recorded in the application and/or prior art as limiting the claim in assessing novelty? If yes, explain the analysis.	Does the Office consider a design for a portion of an article in assessing novelty? If yes, explain the analysis.	Does the Office consider features present in the prior design that are not present in the examined design in assessing novelty? How about features not present in the prior design but present in the application? If yes, explain the analysis.	Does the Office consider features that are functional and/or not visible during end use in assessing novelty? If yes, explain the analysis.	Does the Office consider animation when assessing novelty? If yes, explain the analysis.	How does the Office assess the novelty of a graphical user interface (GUI)?	Notes/Comments
CNIPA	N	Y The name of the product described in request may determine category of product. If the product incorporating the claimed design belongs to the same/approximate category with that published in the prior reference, compare	Y Position and proportional relationship of part of the solid line protection in the whole product need to be considered. If position and proportional relationship of the partial designs in the whole product are the same and/or there is a scale change, the two partial designs are substantially identical.	N Novelty assessment should be based on the claimed design without considering features that present in prior designs and that do not present in the claimed design. Conversely, it should. Office should consider features not present in the prior design but	For functional features: When the difference between the two designs lies in the special shape exclusively determined by the function of a product, it generally does not notably influence the overall visual effect. For features that are not visible during end use: When the difference between the two			

		whether the two designs are identical or substantially identical.	For this case, the two designs belong to approximate categories. When compared, the office should consider position and proportional relationship of the partial designs in whole product. Since the position and proportional relationship are subject to scale changes, the two designs are substantially identical.	present in the claimed design.	designs exists in the parts which cannot be seen easily or cannot be seen at all when in use, the two designs are substantially identical. However, the circumstance where there is evidence showing that the special design in the parts which cannot be seen easily has notable visual effect for a normal consumer makes an exception.			
EUIPO	No. The conflicting designs are identical. The visually disclaimed portion of the prior design is irrelevant	Same answer as for example 1.	Same answer as for example 2.	Same answer as for examples 1 and 2.	Same answer as for example 1.			

	for the comparison.							
JPO	The examined design is not novel.	The article embodying the examined design is “container lid” and the article embodying the prior design can be identified as a “container”. Since the articles embodying the two designs are different, the examined design will not be found similar to the prior design. However, the drawing of the prior design, “container” includes the shape of a lid part which corresponds with the shape	The article embodying the examined design is “container lid” and the article embodying the prior design is “container”. Although the articles embodying the two designs are different, since the shape of the lid part has been published as a part of the article embodying the design, “container”, “container” can serve as the prior design for comparison.	Since the article embodying the examined design is “container lid” and the article embodying the prior design is “container”, the prior design will be found to have a feature of the main body of the container included.	Those features will be taken into consideration as the usage and function of the container.			The article embodying the examined design is “container lid” and the article embodying the prior design can be identified as a “container”. The articles embodying the two designs are not similar and thus the two designs will be found not similar. However, the shape of the lid part has been published as a part of the “container” design. Note from Section 1, Chapter 2, Part 3 of Examination Guidelines for Design Not only a design for an article that has become publicly known as a result of being

		of the examined design. Therefore, although the articles embodying the two designs are different as in “container lid” for the examined design and “container” for the prior design, “container” can serve as the prior design for comparison.						described in a publication, etc., but also a design for an article that is included in and not similar to the said article (for example, the design for a component of the said article) should be treated as information that serves as the basis for determination of novelty if the specific shape or equivalent features of the design itself can be identified. (For Reference) The Japanese Design Act includes the provision below and also the provisions of prior application as prescribed in Article 9 of the Design Act. Article 3-2 of the Design Act
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								It is the provision which provides that a design, which is identical or similar to a part of a design which has been filed earlier and is registered, cannot be registered because such design is not a novel creation. (from “Outline of the Design System” on the JPO’s website)
KIPO	No	Yes, According to Article 93 of the Design Protection Act, the scope of protection of a registered design is determined by the design as expressed in	N/A	No In this case, while the prior design includes a body portion that is not present in the Examined design, the subject of comparison is the container lid, so the lower part of the container does	Yes Not only the end use but also the process of opening and closing the lid can be considered. If the bottom surface of the lid differs from conventional designs and implements unique functional			The requirement for novelty is to determine whether the creation is the earliest of its kind. Therefore, if the prior design is a whole product, including both the container lid and the body (regardless of whether it is

		the drawings and descriptions.		not need to be considered.	advantages through its shape, this can be taken into account when assessing novelty.			depicted in dashed or solid lines), and the examined design corresponds to a component of that product, novelty cannot be recognized.
USPTO	No	N/A	Yes	Yes – see explanation for Example 1	Yes			When a claim is rejected under 35 U.S.C. 102 as being unpatentable over prior art, those features of the design which are functional and/or hidden during end use may not be relied upon to support patentability (MPEP §1504.02). Structure that is not part of the claimed design, but is considered necessary to show the environment in which the design is associated, may be represented in the

								drawing by broken lines (MPEP §1503.02(III)). The prior design shows the same lid design with the attached container (the environment in which the design is associated) in broken lines; thus, the actual container itself is not considered a part of the claimed design of the lid. If the prior art design adequately anticipates all features of the examined design under 35 U.S.C. 102, the examined design may have not novelty. Whether the prior design is merely a partial design of an entire lid as shown in the examined design should be considered.
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