



知产视野



Comparison of Chinese and Japanese Design Systems - Part I

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Bo SHENG is a patent attorney at Tee & Howe Intellectual Property Attorneys. Mr. SHENG specializes in IP affairs related to patents and designs, including patent drafting, prosecution, re-examination and invalidation, non-litigation services such as validity opinions and free-to-operation analysis, with a profession in the fields of mechanics, electronics and designs. Especially, Mr. SHENG is very familiar with the design systems of China, Japan, US and Europe and he is well-experienced in handling design matters. Mr. SHENG started his IP career in 2004 and joined Tee & Howe in 2007. He is qualified by the Supreme Court to appear both in civil and administrative courts. Mr. SHENG has represented numerous domestic and international clients in IP affairs. Mr. SHENG is proficient in both oral and written English.

I. Relevant Law

In China, "Design", along with an invention or a utility model, is defined under the Patent Law of China. No independent legislation is applied to a design in China.

In Japan, "Design" is legislated independently of an invention or a utility model and is defined under the Design Act of Japan.

II. Protectable Subject Matter

The Patent Law of China (Article 2.3) stipulates: "Design" means any new design of the shape, the pattern, or their combination, or the combination of the color with shape and pattern, of a product, which creates an aesthetic feeling and is fit for industrial application.

In Chinese design practice,

1. "Design" must be incorporated into a product as a carrier. Handicrafts, agricultural products, livestock products, and natural objects which cannot be repeatedly reproduced cannot be used as carriers for the "Design" in the legal sense; and

2. The color itself of a product cannot constitute the "Design" in the legal sense.

As the Design Act of Japan (Article 2) stipulates, "Design" means the shape, the pattern, or the color, or their combination, of a product or a part of a product, which visually induces an aesthetic feeling.

Pursuant to the above article,

1. "Design" must rely on an article. The creation deviating from the article, such as the creation of only pattern or color, is not considered as the "Design" in the legal sense.

2. Buildings, indoor decorations and GUIs are protectable subject matter under the Design Act of Japan. Designs that are independent of articles or buildings are not protected by the Design Act, except for GUIs. For example, graphic designs themselves are not protectable subject matter.

3. "Design" to be registered must be in its normal form of the article. For example, a handkerchief being bundled into a flower for the purpose of sales exhibition is not protectable subject matter.

4. The overall of the design must be recognizable by naked eyes.

III. Examination and Duration of Patent Right for Design

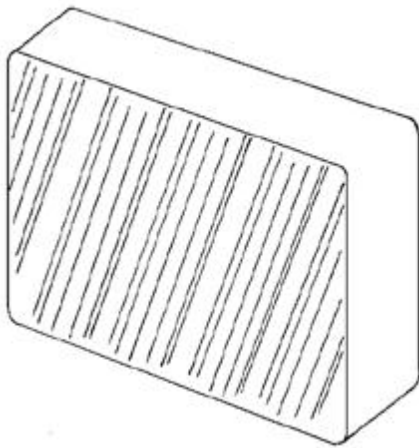
	Formalities Examination [Ⓔ]	Substantive Examination [Ⓔ]	The Time Limit of Responding an Office Action (if there is) [Ⓔ]	Appeal [Ⓔ] (if there is) [Ⓔ]	Administrative Litigation [Ⓔ] (if there is) [Ⓔ]	The Term of Examination [Ⓔ]	The Duration of Patent Right for Design [Ⓔ]
China [Ⓔ]	√ [Ⓔ]	√ [Ⓔ] (if there is an obvious substantive deficiency) [Ⓔ]	2 months, and can be extended to 4 months in total [Ⓔ]	Request within 3 months while receiving a Decision of Rejection [Ⓔ]	Institute within 3 months while receiving an Appeal Decision of Rejection [Ⓔ]	3 to 6 months from the date of filing [Ⓔ]	10 years; will be 15 years in accordance with the amended Patent Law which will be enforced on June 1 st , 2021 [Ⓔ]
Japan [Ⓔ]	√ [Ⓔ]	√ [Ⓔ]	3 months, and can be extended to 4 months in total [Ⓔ]	Request within 3 months while receiving a Decision of Rejection [Ⓔ]	Institute within 120 days while receiving an Appeal Decision of Rejection [Ⓔ]	1 year from the date of filing [Ⓔ]	25 years [Ⓔ]

IV. Dotted and Surface Shading Lines in Drawings

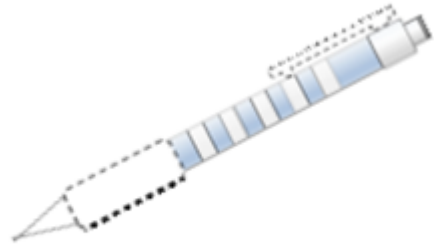
In Chinese design practice, any redundant lines, such as dotted lines, broken lines, surface shading lines or central lines, are not allowed in the drawings of claimed design.

Differently from China, the broken lines and the surface shading lines are allowed in Japan. Some examples will be given below.

1. Fine lines (surface shading lines) are rendered to specify the surface shape of the three-dimensional object.



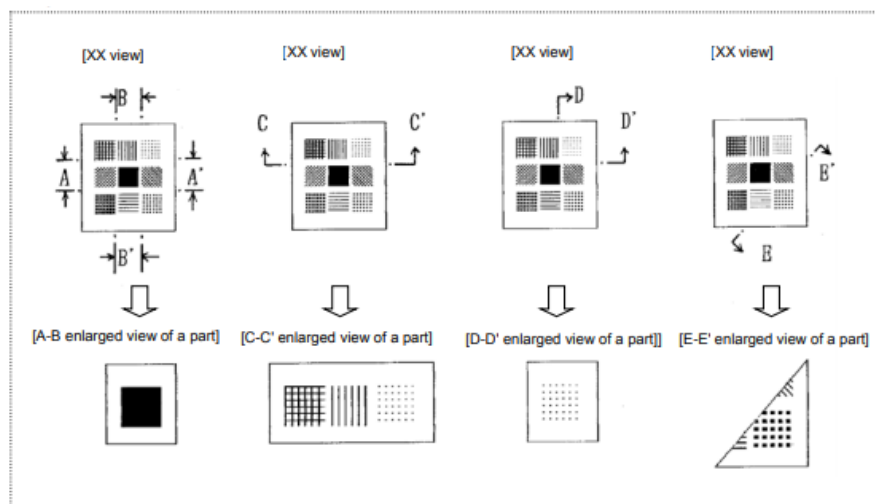
2. Dotted lines represent a portion or portions of working environment but form no part of the claimed design.



V. Enlarged Part of Design

In Chinese design practice, a part of the claimed design to be zoomed in is marked in the corresponding drawing by a closed circle or box and a letter.

According to practice in Japan, a part to be zoomed in is indicated by arrows and letters outside of the corresponding drawing.



VI. Color Protection

In Chinese design application, whether the color is protected relies on the applicant's request. In other words, the color will be excluded from the scope of a design patent if the applicant does not claim the

color protection in the brief description.

By contrast, in Japan, the color is naturally included in and defines the scope of a design.

VII. Brief Description

Pursuant to the Patent Law of China, the brief description is a necessary document for the filing of a design application. The brief description mainly includes the usage or function of the designed article, the essential feature of the claimed design, the designation of one of views to be published, the reason for omitting any of views, the request for color protection, the description of transparent part, and the like. The brief description may be used to interpret of claimed design as shown in the drawings or photographs.

In Japan, the brief description mainly includes the purpose of use, the state of use, and the operation of the article which could assist in understanding the article into which the claimed design is incorporated. In addition, details of various features of the claimed design, which is similar to an invention or a utility model, may be filed. The detailed description of various features can help the Examiner appropriately and quickly determine a range of searches. However, it is not allowed for the Examiner to reject the design application directly on the ground of the detailed description of the features of the claimed design.

References:

1. The Official Website of Japan Patent Office
2. 探讨「日本外观设计实质审查制度」对我国的借鉴意义, IPR Daily.cn
http://www.iprdaily.cn/article_18450.html
3. 「日本外观设计制度」的 8 个显著特点, IPR Daily.cn
http://www.iprdaily.cn/article_18711.html

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