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News

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The Bill for the Act of Partial Revision of the Patent Act in Japan

The Bill for the Act of Partial Revision of the Patent Act has become effective on April 1, 2020. As you may have already known, the above Act includes major changes of Design Law as follows.

Expansion of the scope of designs subject to protection

The scope of designs subject to protection is expanded to cover graphic images that are not recorded or shown on articles as well as exterior designs of buildings. Under the New Law, the following three types of designs are defined in Article 2.

- 1) Shape, pattern or color of an article
- 2) Graphic images (not recorded or shown on articles) (New)
- 3) Building (New)

Graphic images are protected under the Old Act only if it is recognized as the design of an article (such as recorded on PC etc.). Buildings are protected under the Old Act only if it is recognized as the design of an article such as an assemble room. New Act protects graphic images and buildings even if they are not closely connected with articles which are tangible and movable objects. For example, GUI projected on places other than an article (such as roads or walls) is the subject of design protection. GUI provided each time of use through the network is also the subject of design protection.

In addition, the protection also expands to interior designs of buildings etc. (stores, offices and other facilities) if they create a unified aesthetic impression.

Related Design System

The Related Design System allows to register a design similar to the design for which the applicant has filed an application or a design similar to the design for which the applicant has made a registration (principal design). Under the current system, the applicant has to file the similar design before the publication date of the principal design. The New Law allows to file the similar design (not only similar design to principal design, but also the one similar only to the related design) for 10 years from the filing date.

Duration

The term of the design right will become 25 years from the filing date from 20 years from the

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registration date. If you have a design registration and file a related design, the term of the design protection, if it is registered, is 25 years of the filing date of the related design although the term of the protection of the principal design remains 20 years from the registration date. Thus the term of the design protection may become substantially longer by filing the related design.

Higher of standard of creative difficulty

Under the Old Law, the standard of creative difficulty by a person ordinarily skilled in the art of the design is based on shape, patterns or colors, or any combination thereof that were publicly known in Japan or a foreign country. Under the New Act, it adds the two new basis of creativity in addition to “publicly known”, namely, “described in a distributed publication” and “had been available to the public through telecommunication line”. It seems that the possibility of refusal based on the creativity may increase.

See below for the outline of the new law.

https://www.jpo.go.jp/e/resources/report/sonota-info/document/pamphlet/isho_kaisei_en.pdf

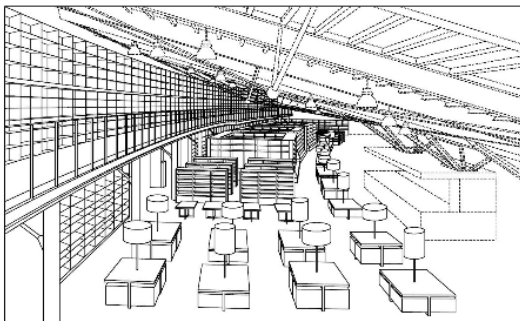
See below for New examination Guidelines

https://www.jpo.go.jp/e/system/laws/rule/guideline/design/shinsa_kijun/document/index/overview20200401.pdf

The New Trademark Regulation in Japan

The protection of design of shops and restaurant etc. is discussed in Japan not only in the Design Law area as mentioned above, but also in Trademark Law area. The new Trademark Regulation allows the trademark application for 3D (three dimensional) mark by showing the representation with dotted lines for the effective protection of 3D designs such as interior design of the shop or restaurant. In addition, detailed descriptions may be used when necessary. The above regulation has become effective on April 1, 2020. The Trademark Examination Guidelines are also revised.

The following is the example of applications based on the above new regulation.



Appl.No.2020-35438 (April 1, 2020)

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If you have any questions, please feel free to contact us.