

On Rules for Examining Partial Designs

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I. Legal value of partial designs

The China's Patent Law taking effect on 1 June 2021 clarifies that patent protection shall be conferred on partial

形,其中第一種情況即為,“首次申請是對整個產品形狀要求登記的外觀設計,而在日本提交外觀設計申請請求對首次申請中作為整個產品外觀設計中的部分要求優先權”。

相比之下,美國有關優先權的規定更容易理解。而日本為何採用這樣的規則,有些令人費解。

根據日本有關優先權的規則,在先申請為發明,也可以作為在後外觀設計申請的優先權基礎。而發明與外觀設計能夠重疊的,只能是公開的內容而不是保護範圍。

如果由此推定,問題的關鍵在於虛部不能作為公開內容,又無法解釋日本外觀設計審查中有關新穎性判斷規則。《日本局部外觀設計審查規則》第 71.4.4 條規定:外觀設計法第 3 條 2 款也適用於如下情形,當一項在後申請的局部外觀設計採用的是一份在先申請中的部分作為其局部外觀設計“請求外觀設計登記的部分”,則不能認為是一個新的外觀設計。

這種規則,關注的是在先申請公開了什麼,而不是在先申請要求註冊什麼。

目前,筆者尚未發現日本上述規則之間的法理邏輯,也未得到支撐其特殊性的公共政策信息。因此,日本式的做法是否值得我國借鑒,還需慎重。法律作為一種規則體系,其邏輯的一致性也是體現法律的形式要求。在沒有實質正義的特殊需求的前提下,相互一致的邏輯規則相較於相互矛盾的邏輯規則更值得借鑒。■

designs of a product. So far, years - long debates over whether partial designs are eligible for patent protection have been eventually settled.

Protection of partial designs, as a legislative achieve-

¹ 1902 年 5 月 9 日修改法案中規定:“第 4929 條 任何人發明任何用於製品上的新的、原創的裝飾性設計,只要在其發明前未在本國已知或已用且沒有在本國或外國獲得專利或公開出版,在申請日其兩年前也沒有在美國公開使用或銷售,除其被證明已經被放棄,均可在滿足法律規定的繳費及其他程序要求的前提下,與 4886 節規定的發明或發現一樣獲得專利權”。

² MPEP 1504 Examination [R-10.2019] In design patent applications, ornamentality, novelty, nonobviousness enablement and definiteness are necessary prerequisites to the grant of a patent. Trade journals as well as available foreign patent databases are also to be consulted.

³ 參見 Design Law in Europe, by Uma Suthersanen, Ph.D, London Sweet &Maxwell 2000, 16-005 段。

⁴ 同上註,16-013 段。

⁵ 同註 3,16-014 段。

⁶ 同註 3,16-017 段。

⁷ 同註 3,13-008 段。

⁸ 同註 3,6-008 段。

⁹ 同註 3,6-044 段。

¹⁰ 同註 3,6-046 段。

¹¹ 同註 3,6-010 段。

¹² Protection for Spare Parts in the Proposals for a European Design Law, IIC 06/1994, Articles Friedrich-Karl Beier.

¹³ 參見 MPEP 15.44。

¹⁴ 參見 MPEP15.73。

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ment satisfying industrial needs and complying with international rules, is a much-anticipated move. People value such a legislative achievement divergently due to different perspectives or expectations. Some are happy for the possible lowering of the threshold required for granting a patent, while some are worried about the glut of low-quality designs in the market.

As a matter of fact, the most direct effect of conferring protection on partial designs is that applicants have more options for expressing their intended scopes of rights. This is a delightful progress that benefits more than right holders.

Unlike lowering the threshold required for granting a patent, broadening the range of options available for expressing the intended rights does not change the center of gravity, but the precision, of the scale. Looking through the history of the patent system, an obvious changing trend is that the restrictions on forms of expression of rights gradually decrease. For instance, means-plus-function claims, Markush claims and product-by-process claims inevitably occur as a result of removal of previous restrictions on forms of expression of rights, which is rooted in the essence of the patent law for encouraging invention-creations and the increasingly diversified types of invention-creations.

Under the background of China's strengthened intellectual property protection, providing applicants with more tools to ensure that their claims are expressed accurately and reasonably is a policy that consolidates the foundation of intellectual property protection.

Therefore, the most important legal value of protecting partial designs is to guarantee that the scope of protection of a design is more compatible with its contribution.

This value is realized depending on two factors. One the one hand, applicants can more flexibly select the scope of protection that matches their contributions; and on the other hand, patent application documents can provide a clear basis for examination so as to ultimately make the patent right compatible with its contributions. Defining a partial design, expressing a partial design and interpreting the scope of protection of a partial design shall meet the boundary conditions that a right scope is clear, a patent-eligible subject matter is definite and the examination is comparable.

Rule 27.2 of the Implementing Regulations of the Patent Law, which is in the process of soliciting opinions, stipulates that "anyone who applies for a partial design patent shall file a view of an entire product, and clearly state the

contents that are sought for protection by a combination of broken lines and solid lines or by other means". The contents shown in broken lines are called unclaimed part and those shown in solid lines are called claimed part.

The above provision involves how to claim a partial design. What need to be further clarified are, on the one hand, whether any part of an entire product can be claimed as a partial design; and on the other hand, what is the necessary information that an unclaimed part needs to convey? What is the role that the unclaimed part plays, especially in determining the scope of protection, the basis for claiming a priority, and whether amendments extend beyond the scope of disclosure contained in the original application?

The above issues can be boiled down to two basic ones: one is how to define a partial design, and the other is about the function of the unclaimed part. To solve the two issues, we need to bear in mind that legislative techniques may vary over time, but should not be deviated from the legal value; and experiences of other countries can be used as a reference, but should be selected with systematic thinking.

II. Learning from experiences of other countries with systematic thinking

In the absence of domestic practice, learning from experiences of other countries is surely a practical route. It should be noted, however, that the design protection systems of various countries differ in origin, scheme and related legal infrastructures, and therefore different legal tools are used to deal with similar issues. We should pay special attention to making analysis under the guidance of correlative thinking, and find the underlying causes from the respective origin and evolution of each design protection system so as to decide whether foreign experience is applicable to China.

In the countries where a partial design protection system has been established, protection can be broadly classified into two types: a design protection system under a patent or quasi-patent framework and a design protection system under a quasi-copyright framework.

1. Design protection system under a patent or quasi-patent framework

(1) Design protection system under a patent framework

Design protection has been incorporated into the patent system for at least a hundred years in the U.S.¹ So far,

there are only three special provisions on designs in the U.S. Patent Act, namely, Sections 171 to 173 under 35 U.S.C. Chapter 16, while general provisions shall apply under other circumstances. "In design patent applications, ornamentality, novelty, nonobviousness enablement and definiteness are necessary prerequisites to the grant of a patent."²

The U.S. design protection system is most typically characterized in that:

First, design patent application documents include a claim, description and drawings (or photographs). Different from a utility patent, the scope of a design patent defined by its claim shall be a reference to the drawing, namely, "as shown" or "as shown and described".

Second, a design patent involves an inventive step (i.e., nonobviousness).

Third, a design patent is granted after substantive examination.

Thus, the U.S. design protection is typically a legal system under the patent framework.

(2) Design protection system under a quasi - patent framework

The design laws of Japan and South Korea, though enacted separately, are obviously associated with the patent laws.

First, the last article in nearly every chapter of the design laws is related to application *mutatis mutandis* of provisions of the patent laws (see Articles 15, 19, 36, 41, 45, 52 and 68 of the Design Act of Japan; and Articles 4, 24, 30, 61, 67, 72, 75, 81 and 89 of the Industrial Design Protection Act of South Korea).

Second, requirements for design registration include novelty and that a person skilled in the art cannot "easily create" the design based on a prior design (see Article 3 of the Design Act of Japan; and Article 5 of the Industrial Design Protection Act of South Korea).

2. Design protection system under a quasi - copyright framework

The design protection system first originated in European countries. The first design law was issued in Britain in 1787, namely the Act for the Encouragement of the Arts of Designing and Printing of Linens, Cottons, Calicoes and Muslin. That copyright law was under a quasi - copyright framework mainly because "the textile design industry had early associations with subject matter such as engravings and prints, the latter having been brought under the aegis of copyright law"; and "there appears to have been no dis-

tinction between the terms 'copyright' and 'patents'".³

In the following two hundred years, design law in Britain had gradually adopted some patent approaches. "It is difficult to discern any sign, on the part of legislators...of the deliberate adoption of a patent approach. The reasons extolled for recommending the introduction of registration were as follows: manufacturers had specifically requested that a record of designs be kept by the establishment of a central registration system; registration was required as a cheap alternative to dispute settlement; registration of designs would enable the publicizing of designs and an information source to the public..."⁴ "Subsequent Design Acts up to 1907 emphasized the industrial nature of design protection by bringing registration and administrative tasks within the ambit of the Patent Office."⁵

In Britain, subject matters susceptible to design protection were similar to those to copyright protection. To solve the problem of overlap between the design law and copyright law in the protection of an article, Britain introduced its quixotic "more than 50 test", that is, a design that was reproduced or intended to be reproduced in more than fifth single articles shall be protected under the design law; otherwise, the design shall be protected under the copyright law.⁶

Through more than two hundred years of evolution, the design protection system in Britain still retains some copyright characteristics, such as protection is also provided for unregistered designs.

Similarly, France adopts a preservation and disclosure system for designs, that is to say, initial protection may be conferred on designs without examination. In France, the proprietor of a design may gain protection under three main types of laws: copyright law, *sui generis* industrial design law, and general unfair competition law⁷.

In order to unify different approaches on design protection adopted by the EU member states, the European Parliament and the Council approved the Directive on the Legal Protection of Designs (98/71/EC) (hereinafter referred to as the Directive) in 1998, which also shows a rather strong copyright overtone.

First, the definitions of design and related products in the Directive cover a wide range.

"Article 1 Definitions

For the purpose of this Directive:

(a) 'design' means the appearance of the whole or a part of a product resulting from the features of, in particular,

the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;

(b) ‘product’ means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;

(c) ‘complex product’ means a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.”

As for the types of protectable products, “the official commentary confirms that the enumeration of products is not intended to be exhaustive; rather, it is illustrative of the types of design that will be deemed protected under the law. The Directive clearly covers all kinds of three-dimensional and two-dimensional products. Will protection also extend to environmental designs such as landscape, interior design, window display, or television set design? Two factors suggest an affirmative answer. Firstly, the revised Community Design Regulation adopts the Locarno International Classification for registration purposes, and the Locarno International Classification clearly makes several references to environmental designs…… Secondly, the Commission has argued that it sees no reason why the multiplicity of elements which give a new underground station a specific ‘style’ or ‘atmosphere’ cannot be protected under the new design regime……”⁸

Second, requirements for granting a design patent include novelty and individual character. According to the Directive, the latter means:

“Article 5 Individual character

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 before the date of filing of the application for registration or, if 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.”

It should be noted that:

First, individual character is judged through one-to-one comparison, rather than comparison with a combination of prior designs.

Second, the test of “overall impression” suggests “a visual test as determined by the eye of the informed user, and the recital language bears this out”.⁹ This directly ob-

tained sensory impression is widely divergent from the criteria of “nonobvious” and “not easy to make” in terms of manner and degree.

Third, as for “the degree of freedom of the designer”, “in assessing the individual character of the design, the statute provides that there must be an objective consideration of the margin of latitude available to the designer. The application of this cautionary proviso will undoubtedly take into account the functional character of the design, especially where designers have no or little alternative forms or shapes to emulate.”¹⁰

Fourth, there are no requirements on “industrial applicability”. “Most national design legislation traditionally requires that a design exhibit industrial character or some quality of repeatability. This requirement has been omitted from the Directive, and a product can be the result of an industrial process or be the result of traditional craftsmanship.”¹¹

By studying the above two types of systems, it can be found that they differ in their focus and perspective on some issues because of their different roots.

For instance, the U.S. design law rooted in the patent system is more concerned about whether a part inseparable from a product is patent-eligible as a partial design. In *In re Zahn* (1980), for example, the issue lied in whether a shank portion inseparable from a drill can be patented as a partial design of the whole drill.

In contrast, the European design laws developing under the quasi-copyright framework pay more attention to whether a part manufactured and sold separately from a combination product is patent-eligible as the design of the product. The European Commission’s Green Book on EU Design Directives and Regulations includes provisions relating to spare parts, wherein it is stipulated that the use of the design by third parties, after 3 years from introducing the product incorporating the design or to which the design is applied, shall not be considered infringement of rights under the related provisions of this Decree-Law provided that the following conditions are met:

a) the product designed is part of a complex product upon whose appearance the design is dependent;

b) the use is for repair purposes so as to restore the original appearance of a complex product;

c) the public is not misled as to the origin of the product used for repair.¹²

Apparently, there are mature rules for solving these is-

sues under the patent framework.

III. Defining partial designs

Whether and how to further define partial designs is not a matter of whether the scope of patent-eligible subject matters should be broader or narrower, but a matter of whether the boundary of rights is clear and how to conduct comparative examination.

For instance, in such a case that a waist line is provided on the outer surface of the sidewall of a bus body, if only the waist line is expressed in solid lines and claimed as a partial design, what should be its scope of protection? Does it cover any identical ornamental lines at any position on any outer surface, or only those at the position of the outer surface of the bus type shown in dotted lines? Different understandings will lead to different bases for comparison in patent examination, especially in examination of inventive step, and different conclusions for literal infringement, especially infringement under the doctrine of equivalents, in patent enforcement.

It can be found through comparing relevant rules and statutes that these issues are handled differently among countries and regions with different criteria for patentability and different examination mechanisms.

First of all, countries or regions having different patentability standards pay different attention to the definition of partial designs. The United States, Japan and South Korea all take inventive step as one of the requirements for granting a design patent right. In particular, examination on inventive step may involve the combination of different references. Therefore, the definition of a partial design attracts much higher attention in these countries than in many European countries. However, since the United States has a patent examination mechanism different from that of Japan and South Korea, they deal with similar issues in different manners.

As for subject matters eligible for design protection, the U.S. Patent Act has always define the design as being applied to “an article of manufacture” without specifying whether it is applied to “an article of manufacture as a whole” or to “a portion of an article of manufacture”. In this sense, judicial precedents clarify, rather than broaden, the scope of protection, that is to say, judicial precedents clarify that the patent law is meant to protect designs applied to products, rather than the products themselves, and there-

fore partial designs are under statutory protection.

Thus, the United States does not set forth any specific provisions relating to the boundary of partial designs, but places emphasis on the expression that delimits the scope of protection of partial designs. Chapter 1503 of the Manual of Patent Examining Procedure (MPEP) specifies in detail the requirements for the description and claim, title, and broken and solid lines in drawings or photographs of a partial design, as well as the functions and mutual relationships thereof in determining the scope of protection.

On the basis of detailed rules on the expression, once a partial design is clearly claimed, different types of problems can be solved under different legal provisions accordingly, which are identical with those for a design of a whole product.

For instance, irrespective of whether a subject matter is a whole design or partial design of a product, it must comply with the following requirements: first, a design is inseparable from the article to which it is applied, and cannot exist alone merely as a scheme of ornamentation; and second, a design must be a definite preconceived thing, capable of reproduction, and not merely the chance result of a method or of a combination of functional elements.¹³ For instance, if a partial design of a brick lies in a centrally concave edge, we need to be aware that such an edge is a structural feature of the article of manufacture, i.e. the brick, and the characteristics of the brick determine that the function of the edge should be to fittingly match with the edges of adjacent bricks. It can be then inferred that the edge claimed as a partial design results from a certain connecting method (such as a “tenon-and-mortise” structure), and thus fails to satisfy the ornamental requirement for a subject matter eligible for design protection. This is essentially similar to the method used in deciding that the whole contour design of a cam is not patentable as a design.

The same rule is also applied in examining inventive step. For instance, as for the combination of references, MPEP 1504.03 stipulates that:

“The question in design cases is not whether the references sought to be combined are in analogous arts in the mechanical sense, but whether they are so related that the appearance of certain ornamental features in one would suggest the application of those features to the other.

Thus, if the problem is merely one of giving an attractive appearance to a surface, it is immaterial whether the surface in question is that of wall paper, an oven door, or a

piece of crockery……

On the other hand, when the proposed combination of references involves material modifications of the basic form of one article in view of another, the nature of the article involved is a definite factor in determining whether the proposed change involves [patentable] invention.”

In comparison with some countries where similar issues are handled from the aspect of the eligibility of subject matters, the U.S. approach has the following advantages. First, the legal logic of the rules is coherent. The U.S. approach highlights that what is crucial for partial designs does not lie in the subject matters sought to be claimed, but in whether the scope of protection can be clearly delimited and how to make comparative judgment during patent examination. Second, it can avoid the consequence of a Procrustean bed. As a matter of fact, in the face of an endless stream of types of products, objectively recognizing the limitations of human imagination may help rule makers be more rational, leaving room for necessary adjustment to cope with potential complex situations in the future. This explains why the United States does not adopt prohibitive definition of partial designs, but adopts pertinent provisions to solve relevant issues in specific cases, such as whether the scope of protection is clear, whether claims are supported, and how to define a subject matter sought for protection in the judgment of inventive step. This way of thinking is worthy of learning.

However, an ignorable fact is that, unlike Japan, South Korea and China, the United States grants design patents after substantive examination. Therefore, tailored application of different provisions at a suitable examination phase is obviously advantageous in the countries where a design patent is granted after substantive examination.

While in countries, such as Japan, South Korean and China, where design patents are preliminary examined only, if all the problems related to the unclear scope of partial designs are left to be solved in post-grant proceedings, problematic patents may increase, and some applications that could be improved through amendments during prosecution may lose such opportunities. Therefore, in terms of subject matters eligible for design patent protection, Japan and South Korea require that a partial design be directed to a whole design unit, which is reasonable in reducing defects left in the granted patent.

With reference to the reasonable substantive law of the United States and the precautionary procedures of Japan

and South Korea, China might preliminarily challenge applications, in which partial designs are improperly defined, with applicable articles, such as on subject matters eligible for design patent protection and requirements on drafting application documents, during preliminary examination, so as to enable applicants to make rational choices on the premise of knowing potential adverse consequences. If the applicant can expound the claimed scope of protection and the reasonableness thereof, it may also become reference in subsequent right validity or enforcement cases.

IV. Function of unclaimed part

One of the dilemmas facing a partial design is that it is undesired to incorporate all the external features of a product into the scope of protection, while it cannot deviate from the product to which it is applied. Thus, carefully tradeoffs in expressing the unclaimed part according to its function are a legitimate and rational choice for the applicant. As to its function, the unclaimed part is crucial in determining the scope of protection, as well as the originally disclosed content.

1. The function of the unclaimed part in determining the scope of protection

The views about the function of the unclaimed part in determining the scope of protection may go to extremes. One is that all the information expressed by the unclaimed part delimits the scope of protection, which obviously does not comply with the basic logic of protecting partial designs. The other is that the unclaimed part only indicates the type of product to which a partial design is applied (such as in some European countries). In consideration that under most circumstances, the product name is sufficient to indicate its type, the latter view renders the unclaimed part nearly meaningless.

As stated above, the design protection system under the patent or quasi-patent framework emphasizes the bond between a design and a product to which the design is applied. Thus, in the practices of the United States, Japan and South Korea, the unclaimed part at least defines the nature of the product, and the position and dimension of design relative to the product.

The association between a partial design and a product to which the partial design is applied does not merely lie in the type or nature of the product. Under many circumstances, the location and relative dimension of the design

also affect the visual effect it produced. For instance, if the nature of the product, and the relative location and dimension of the design were ignored, the waist line of a bus would be only a geometric element. On the contrary, in consideration of the dynamic characteristics of the vehicle, it will become apparent that a significantly long line disposed on the sidewall of the vehicle body along its running direction produces a dynamic visual effect that is completely different from that brought by a design arranged on the front portion of a vehicle, or vertically arranged on the sidewall or in short lines, since the sidewall of the body is parallel to the running direction of the vehicle.

For the above reasons, it is suggested that in researching, exploring and determining the function of the unclaimed part in defining the scope of protection, the competent department should bear in mind the relation between a partial design and a product to which the partial design is applied during the judgement, and take the limiting effect of the product type, and the relative position and dimension as non-exhaustive examples, in order to provide a clear direction for constantly improving relevant regulations and leaving a discretionary room for complex and diverse situations.

2. The function of the unclaimed part as the original disclosure

Whether the unclaimed part can be regarded as the originally disclosed content may affect the judgment on whether an amendment extends beyond the scope of original disclosure, whether the subject matter of an application is the same as that of a priority, and whether an application possesses inventive step.

(1) Judgment on whether an amendment extends beyond the scope of original disclosure

The MPEP has expressly confirmed the function of the unclaimed part as the originally disclosed content, which stipulates that “an amendment that changes the scope of a design by either converting originally - disclosed solid line structure to broken lines or converting originally - disclosed broken line structure to solid lines would not introduce new matter because such amendment would not introduce subject matter that was not originally disclosed”.¹⁴

Since, in the United States, the rules for amending the design application documents are the same as those for amending substantial patent application documents, any amendment is allowed as long as it does not introduce new matter that is not included in the original disclosure. This

clarified that both the unclaimed part and the claimed part can serve as the basis of original disclosure.

Article 17-2 of the Japanese Design Act stipulates that an amendment made to any statement in the description shall not change the “gist” thereof.

According to the Examination Guidelines for Design of Japan, “even where there was no statement concerning the way of specifying the ‘part for which the design registration is requested’ in the column of ‘Description of the Design’ in the application as originally filed, and the ‘part for which the design registration is requested’ is unclear and no specific design can be inevitably derived even by comprehensive determination based on the statement in the application and drawings, etc. attached to the application, an amendment to supplement a statement concerning the way of specifying the ‘part for which the design registration is requested’ in the column of ‘Description of the Design’ of the application changes the gist.”

It can thus be seen that the “gist” is directly relevant to the design “for which the design registration is requested”, rather than the disclosed design, and therefore is different from original disclosure.

(2) Priority

Article 4.A(1) of the Paris Convention for the Protection of Industrial Property (hereinafter referred to as the “Paris Convention”) stipulates that any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

Article 4.H of the Paris Convention stipulates that priority may not be refused on the grounds that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

According to the above provisions, priority shall be granted on the basis of the disclosed contents, rather than the scope of protection defined by claims.

Since the United States definitely distinguishes the scope of protection and the disclosure of a partial design application documents, either broken lines or solid lines will not affect the determination of the contents disclosed in the earlier application.

The rules of Japan are obviously different from those of

the United States. Article 71.13 of the Examination Guidelines for Design stipulates the cases under which a priority claim under the Paris Convention is not effective, wherein the first case is “where the first application is an application disclosed as a design for which the design registration is requested for the form of the entire article and the application for design registration filed in Japan is an application for design registration for a part of the article that is disclosed as a whole design in the first application”.

In contrast, the provisions on priority of the United States are easier to understand, but why Japan adopts such provisions is rather puzzling.

According to the provisions on priority of Japan, an earlier application for invention can also serve as the priority of a later design application. However, the invention can only overlap with the design in the disclosed contents, rather than the scope of protection.

If it is inferred from the above that the critical issue lies in that the unclaimed part cannot be regarded as the disclosed contents, it is impossible to explain the rules for inventive step assessment in the design examination in Japan. Article 71.4.4 of the Examination Guidelines for Design stipulates that the provision of Article 3-2 of the Design Act also applies to the case where a partial design in a later application is not found to be a creation of a new design as it serves as the “part for which the design registration is requested” of a partial design in a later application.

Such a rule is concerned about what is disclosed in the earlier application, rather than what is registered in the earlier application.

Since the legal logic between the above-mentioned Japan’s rules is still ambiguous, without further public policy information in support of this extraordinariness, we should be prudent towards the Japanese practice. The logical consistency of law, as a system of rules, is also required. Consistent logic is more valuable than contradictory one in the absence of special requirements for substantial justice. ■

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¹ The Revised Statutes of the United States approved on 9 May 1902 stipulate: “Section 4929. Any person who has invented any new, original, and ornamental design for an article of manufacture, not known or used by others in this country before his invention thereof, and not pat-

ented or described in any printed publication in this or any foreign country before his invention thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings had, the same as in cases of inventions or discoveries covered by section forty-eight hundred and eighty-six, obtain a patent therefor.”

² MPEP 1504 Examination [R-10.2019] In design patent applications, ornamentality, novelty, nonobviousness enablement and definiteness are necessary prerequisites to the grant of a patent. Trade journals as well as available foreign patent databases are also to be consulted.

³ Uma Suthersanen (2000). *Design Law in Europe* (para. 16-005). London Sweet & Maxwell.

⁴ See supra note 3, para. 16-013.

⁵ See supra note 3, para. 16-014.

⁶ See supra note 3, para. 16-017.

⁷ See supra note 3, para. 13-008.

⁸ See supra note 3, para. 6-008.

⁹ See supra note 3, para. 6-044.

¹⁰ See supra note 3, para. 6-047.

¹¹ See supra note 3, para. 6-010.

¹² *Protection for Spare Parts in the Proposals for a European Design Law*. IIC 06/1994, Articles Friedrich-Karl Beier.

¹³ MPEP 15.44.

¹⁴ MPEP 15.73.

Over 30% Current Patents Commercialized in China

Commercialization rate of China’s valid invention patents reached 34.7% in 2020. The yearly rates throughout the entire 13th Five-Year Plan (2016-2020) sit firmly above 30% while the rates of companies are even higher at above 40%, according to the 2020 China Patent Investigation Report issued by the CNIPA.

The report investigated 24 provinces (autonomous regions, municipalities), 15,000 patentees and 42,000 patents as 82.2% questionnaires were actually filled in. The report shows, in 2020, 16.5% of China’s valid invention patents received R&D investments of more than 1 million yuan, up 4.4% year-on-year, obviously suggesting companies are more generous in infusing more capital to R&D.

Source: CNIPA