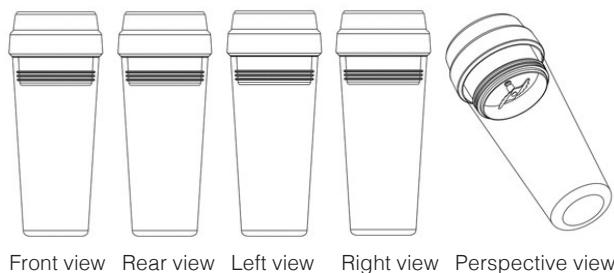


# Standard of Clear Indication of Designs in Patent Invalidation Proceedings

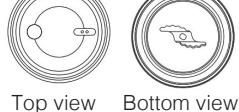
Xu Yuanyuan, Chen Wenzhe\* and Yuan Ting\*

## I. Introduction

Article 26 of China's Patent Law requires that the claims of a patent application for invention or utility model shall define the extent of the patent protection sought for in a clear and concise manner. Likewise, Article 27.2 of China's Patent Law requires that a patent application for design shall clearly indicate the design of the product for which patent protection is sought, which is also a requirement aimed to delimit the scope of protection of a patent. In patent invalidation proceedings, how can we judge whether a design patent application satisfies the requirement of clear indication? What is the judging standard of clear indication especially when drawings are filed in a design patent application? What factors shall be taken into account during the judgment? Starting from a typical invalidation case, this article is going to analyze controversial issues in the judgment as to clear indication of designs, elaborate the judging standard of clear indication of a design, and clarify crucial factors that need to be considered in the process of judgment.



Front view Rear view Left view Right view Perspective view



Top view Bottom view

Fig. 1

As shown in Fig. 1, the patent in suit, which relates to a portable juicer<sup>1</sup>, is a design patent with drawings. The views of the patent in suit include six orthographic projection views and one perspective view, which illustrate the juicer from multiple perspectives.

As shown in the front, rear, left and right views of the patent in suit, the top surface of the juicer lid appears to be a plane without any outward protrusion design. Further to the top view, it can be seen that there is a circular switch and a runway-shaped charging port in the center of the top surface of the lid, and the perspective view illustrates a portion of the profile of the top surface of the lid. It can thus be seen that except the bottom view, other views of the patent in suit show the design of the top surface of the lid. Does the design patent meet the requirement that the design shall be clearly indicated?

In this case, the invalidation petitioner asserted that the views of the patent in suit are not clearly indicated such that there are several possibilities for the shape of the top surface of the lid. For example, the peripheral part of the lid can be concave with respect to the central part thereof (as shown in Fig. 2), or the switch button and the charging port on the lid can be convex with respect to other parts (as shown in Fig. 3). The petitioner argued that the shape of the top surface of the lid of the portable juicer cannot be solely determined from the views of the patent in suit alone. As such, the patent in suit does not meet the requirement of clear indication.

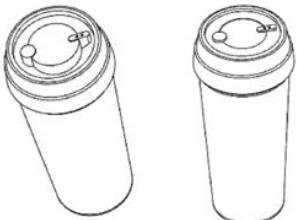


Fig. 2

Fig. 3

The petitioner in this case argued that the patent in suit does not meet the requirement of clear indication on the grounds that the shape of the top surface of the lid of the portable juicer cannot be solely determined from the views of the patent in suit alone. In other words, if more than one possible shape can be derived from some of the lines that outline the design in the views, the requirement that the design shall be clearly indicated is by no means satisfied. Under such circumstances, is the above view tenable? Is the view in line with the legislative intent of the provision on clear indication of design under China's Patent Law? Does the view conform to the protection of design patents in practice?

It can be made sure that under the petitioner's judging standard, a huge number of existing patents for design expressed in the form of drawings would not meet the requirement that the design shall be clearly indicated.

For instance, Fig. 4 shows the design of a hair dryer. If the design of the hair dryer is interpreted merely in accordance with the views, the concentric hole in the head of the hair dryer can be understood as either hollow or solid. Fig. 5 shows the design patent in relation to a coffee machine. Judging merely from the views, the design of capsule-like holes densely distributed on the top surface of the coffee machine can be understood as either a pattern or heat dissipation holes. Fig. 6 is a design patent in relation to a plug. Judging merely from the views, the grid on the surface of the plug can be understood as either a pattern or an anti-slip texture.



Fig. 4

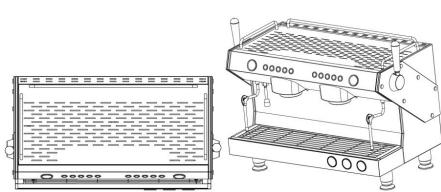


Fig. 5

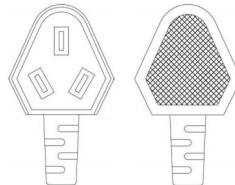


Fig. 6

It can be known from the above cases that for design patent applications with drawings, multiple interpretations of the design expressed by lines are likely to be made if judged merely on the basis of what shown in the views, that is to say, it is difficult to solely determine the product design based on the views alone. For such design patents, what standard should be adopted to determine whether a design meets the requirement of clear indication and what factors should be borne in mind when making such a determination? We cannot answer these questions without delving into the provisions on clear indication of designs in China's Patent Law.

## II. Interpretation of laws and regulations on clear indication of designs

First, the requirement that the design shall be clearly indicated in China's Patent Law is set to delimit the scope of protection of a patent. Regarding the scope of protection of the design patent, Article 64.2 of China's Patent Law reads that “[f]or the patent right for design, the scope of protection shall be confined to the design of the product as shown in the drawings or photographs. The brief description may be used to explain the design of the product as shown in the drawings or photographs.” This provision clarifies the status of the views of a design and the brief explanation in determining the scope of protection of the patent, as well as their respective functions. What's more, Article 27.2 of China's Patent Law clarifies that the views of the design shall clearly indicate the design of the product for which patent protection is sought. In the examination practice of patent grant and invalidation, judgment is usually made from the aspects of sufficiency, clarity, accuracy and consistency of views so as to further decide whether the views of the product design clearly delimit the scope of protection. This is in line with Article 15 of the Provisions (I) of the Supreme People's Court on Several Issues Concerning the Application

of Law in the Trial of Administrative Cases Involving Patent Grant and Invalidation<sup>2</sup>, which reads that “where there are contradictions, omissions, or ambiguities in the drawings or photographs of a design, which render average consumers unable to determine the design to be protected based on the drawings or photographs and the brief description, the people’s court shall determine that the design does not comply with Article 27.2 of China’s Patent Law that ‘the drawings or photographs shall clearly indicate the design of the product for which patent protection is sought’.”

Secondly, the Guidelines for Patent Examination set forth detailed provisions on the drawings or photographs of the design: so far as the product with a three-dimensional design is concerned, if the essential features of the design of the product involve six sides, the applicant shall submit orthographic projection view of six sides; if the essential features of the design of the product involve the view of one side or several sides only, the applicant shall submit the orthographic projection view of the side or sides concerned, and submit the orthographic projection view or the perspective view of the other sides. The applicant may omit the view of the side which cannot be seen easily or cannot be seen at all when in use, and indicate the reason of the omission of the view in the brief description. So far as the product with a two-dimensional design is concerned, if the essential features of the design of the product involve the view of one side only, the applicant may submit the orthographic projection view of the relevant side only; if the essential features of the design of the product involve the view of two sides, the applicant shall submit the orthographic projection views of the two relevant sides. It can be seen that the Guidelines for Patent Examination provide for no requirement for the exact number of views, but specify the minimum requirements for views that should be submitted. In brief, irrespective of whether it is the product with a three-dimensional design or the product with a plane design, the applicant shall submit the orthographic projection view of the side which contains the essential features of the design of the product, and may submit the orthographic view or the perspective view of other sides. In addition, as regards the circumstances under which special views such as exploded views or sectional views should be further submitted, the Guidelines for Patent Examination stipulate that the applicant shall do so “if necessary”. In other words, if the claimed design still cannot meet the requirement of clear indication with its orthographic projection views and perspective view, then the exploded

view, sectional view, etc. thereof should be submitted; or otherwise, it is not necessary to submit these special views.

Regarding the form of the views of a design, there are primarily two forms in China at present: drawings and photographs. Drawings are usually graphs presented by lines (see Fig. 7), and photographs are usually product photographs (see Fig. 8). These two forms of views are also the internationally recognized forms of design views. As illustrated in Figs. 7 and 8, the applicants may choose either form of views for products of the same type when submitting patent applications.

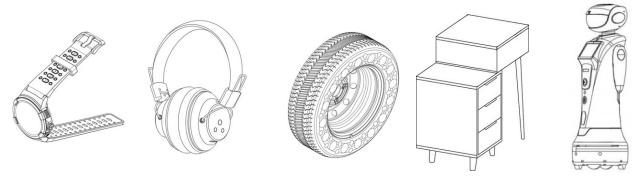


Fig. 7

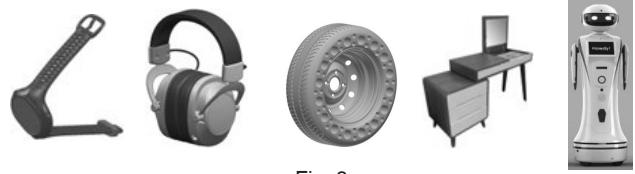


Fig. 8

These two forms of views have their own characteristics. Visually speaking, photographs can demonstrate more design details of the product and appear to be more vivid than drawings. In this sense, will the drawings presented by lines affect the judging subject’s understanding of the product design? The answer is definitely negative on the grounds that the judging subjects of the designs, i.e. the average consumers, shall have a basic ability to read and recognize images. Therefore, the judging subjects should be able to accurately understand the claimed design of the product regardless of whether the design is presented in the drawings or photographs.

Third, Article 64.2 of China’s Patent Law stipulates that the brief description can be used to interpret the design of the product in the determination of the scope of protection of the design patent. Moreover, Rule 31.1 of the Implementing Regulations of China’s Patent Law reads that the brief description of a design shall indicate the title and use of the product incorporating the design and the essential feature of the design, and designate a drawing or photograph which best shows the essential feature of the design. Where the view of the product incorporating the design is omitted or where concurrent protection of colors is sought, this shall

be indicated in the brief description. This provision clearly states what should be included in the brief description of the design so as to exert its function of explaining the scope of protection of the patent right.

Finally, in addition to the views and brief description of the design, another important factor that guarantees the legal certainty of the scope of protection of the design patent is the judging subject of the design — average consumers. The underlying logic is also the case for invention and utility model patents. Article 2 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Disputes over Patent Infringement<sup>3</sup> reads that the court shall determine the contents of a claim based on the terms of the claim in combination with the understanding of the claim by a person skilled in the art after reading the description and drawings. By analogy, the content of a design should be determined based on the views in the form of drawings or photographs in combination with the understanding of the views by an average consumer after reading the brief description. Design patents are in most cases visual and more straightforward than invention and utility model patents. Designs of products commonly seen in daily life can be substantially understood by people even not in a position of average consumers. However, industrial products are of great variety and design innovations are advancing by leaps and bounds. Consumers in daily life are usually not capable of objectively and accurately understanding and evaluating design patents. Therefore, for the sake of ensuring the legal certainty of the scope of protection of design patents and avoiding subjective assumption, whether the design is clearly indicated and the scope of protection thereof should be determined by an average consumer as the judging subject.

By sorting out the laws and regulations in relation to the clear indication of designs as mentioned above, we can know that to determine whether a design meets the requirement of clear indication, it is required to judge whether the product design shown in views is definite and specific and whether it suffices to delimit the scope of protection of the patent. What needs to be emphasized is that such a judgment should be made based on the views, together with the brief description, by average consumers with corresponding knowledge and cognitive abilities so as to delimit the claimed design.

The criterion that the design shall be able to be solely determined based on the views alone is not tenable. The

reason is that most product designs presented in drawings cannot be solely determined merely from the graphics composed of lines in the views without taking account of the knowledge and cognitive abilities of the judging subjects. No matter whether a sectional view or more orthographic views are provided, some of the lines in the drawing or the design presented in the form of drawings can always be interpreted in multiple ways. Therefore, objective and reasonable judgement on whether a design satisfies the requirement of clear indication should be made by an average consumer as the judging subject according to the design of the product as shown in the views and the brief description, so as to understand and further determine the product design.

### III. Analysis of typical cases in relation to clear indication of designs

Now we turn back to the invalidation case concerning the portable juicer after clarifying the judging standard of clear indication of designs and the vital factors to be considered. The views of the patent in suit include six orthographic projection views and a perspective view, and the brief description indicates the name and use of the product incorporating the design and the essential features of the design, and that the perspective view best illustrates these essential features. The key issue in this case is whether the design of the top surface of the juicer lid is clearly indicated. The petitioner asserted that the top surface of the juicer lid may be convex or concave, whereas the patentee argued that the whole top surface of the juicer lid is planar. The following steps should be followed in judging whether the patent in suit meets the requirement of clear indication, and whether the scope of protection of the patent in suit can be determined.

First, according to the views of the patent in suit, the front, rear, left and right views all show that the top surface of the juicer lid is planar without any outward protrusion design, which is the objective content of the drawings. Second, in the light of the requirements for views in the Guidelines for Patent Examination, the top surface of the juicer lid does not contain any special concave-convex design, so there is no need to submit more views. It can be seen that average consumers can determine the design of the claimed portable juicer according to the views of the patent in suit and the drawing rules, that is, the top surface of the juicer lid is a conventional plane. In this case, it can be

known after further reading the brief description that the perspective view is the drawing best demonstrating the essential features of the design, and primarily shows the interior design of the portable juicer, especially the inner side of the lid. That is to say, the brief description does not highlight any design on the top surface of the juicer lid. In summary, average consumers can understand and determine the design of the portable juicer based on the views and in conjunction with the brief description.

Moreover, as known from the prior designs for portable juicers, the portable juicers are provided with functional members such as blades on the inner side of the juicer lid. The juicer will be turned upside down and the juicer lid will be used as the base of the juicer during operation. It can be seen that the top surface is designed as a plane due to the practical needs of such products. This explains why the top surface of the juicer lid is conventionally designed to be planar. Therefore, the prior designs for portable juicers further confirmed the conclusion that the top surface of the juicer lid of the patent in suit is planar.

Here is another invalidation case in relation to a design patent with drawings, through which the judging standard of clear indication of designs will be further expounded. As shown in Fig. 9, the design patent<sup>4</sup> relates to a single pop-up lid for a direct-drinking water bottle used for cars and includes six orthographic projection views. The brief description indicates that the essential feature of the design lies in the top of the lid, including open and close buttons, a conical outer ring and a water outlet, and the rear view best shows the essential feature of the design. Similar to the portable juicer case, the key issue in this case is whether the design of the upper end face of the lid meets the requirement of clear indication. The invalidation petitioner in this case asserted that it is impossible to determine whether the upper end face of the lid has a rounded transition or the transition of other shape, or whether the circular buttons in the center of the top surface of the lid are flush with or higher/lower than the upper end face. The patentee argued that the upper end face of the lid employs no arc shape, but is connected with the circumferential wall at a right angle.

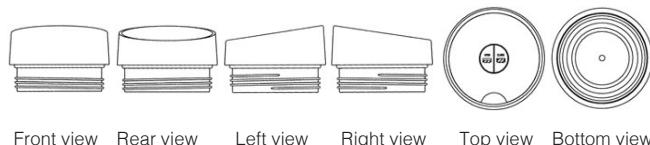


Fig. 9

In this case, as for whether the upper end face of the lid meets the requirement of clear indication, the collegial panel reasoned that first, among the six orthographic projection views of the patent in suit, only the top view shows the open and close buttons, and the water outlet on the upper end face of the lid; and in the rear view, looking from the lower side of the outer ring to the higher side, there are no open and close buttons or water outlet, which means that the upper end face of the lid is concave within the conical outer ring. Under such circumstances, average consumers cannot determine the specific shape of the upper end face of the claimed lid according to the views of the patent in suit and the drawing rules. Moreover, the brief description indicates that the essential feature of the patent lies in the design of the top of the lid, which further proves that the upper end face of the lid is the essential feature of the patent in suit. However, average consumers still cannot determine whether the upper end face of the lid is planar, arc-shaped or of other shape according to the views, together with the brief description, of the patent in suit. The patentee agreed that the upper end face of the lid is concave within the conical outer ring, but argued that there is no rounded shape on the upper end face of the lid and the upper end face is connected with the circumferential wall at a right angle. Said assertion is not shown in the views of the patent in suit and lacks factual support.

Similarly, as known from the prior designs of lids of water bottles for cars, the designs of the upper end faces of the lids of such products are of a great variety, wherein some upper end faces within the outer ring of the lid are concave and then convex from outside to inside, some are gently arc-shaped, and some have a multi-level progressive concave upper face. It can be seen that in this case, without objective information from the views of the patent in suit, average consumers cannot determine the specific shape of the upper end face of the lid from the views, even though in combination with the brief description. As a result, the design of the lid of the patent in suit does not satisfy the requirement of clear indication.

By comparing the above-mentioned two invalidation cases, namely the portable juicer case and the "Single Pop-Up Lid for a Direct-Drinking Water Bottle for Cars" case, it can be found that the key issue thereof lies in whether the design of the upper end face of the lid satisfies the requirement of clear indication. In the portable juicer case, the top surface of the lid may be interpreted in several ways merely

based on the graphics shown in the drawings without taking other factors into account. Nevertheless, according to the design shown in the views, drawing rules and the brief description, average consumers can understand and determine that the top surface of the lid adopts a conventional planar design, rather than a concave or convex design. In the “Single Pop-Up Lid for a Direct-Drinking Water Bottle for Cars” case, the views only show that the upper end face of the lid is concave within the conical outer ring. Average consumers still cannot determine the specific shape of the upper end face of the lid based on the views together with the brief description, which means other views, such as a sectional view, are necessary to further show the design of the upper end face of the lid so as to enable the design patent to meet the requirement of clear indication.

#### IV. Judging standard of clear indication of designs

Regarding whether a design patent meets the requirement of “clear indication”, the judging standard and important factors that need to be considered in the process of determination are enumerated as follows: first, it is required to determine whether the product design in the views is definite and specific and suffices to delimit the scope of protec-

tion thereof. Second, it should be emphasized that the design patent protects a product design, not simply a graphic design, and it is wrong to interpret the lines of a drawing without bearing the understanding of the industrial product in mind. This is the exact reason why the claimed design should be determined by average consumers on the basis of the views, along with the brief description, and in consideration of the general rules for drawing and graphic reading. ■

The authors’ affiliation: Reexamination and Invalidation Department of the Patent Office, CNIPA

\* All authors contributed equally to this article.

<sup>1</sup> The Invalidation Decision No. 59484 issued by the CNIPA.

<sup>2</sup> The Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Administrative Cases Involving Patent Grant and Invalidation (I) (No. Fa-shi 8/2020, which came into effect as of 12 September 2020).

<sup>3</sup> The Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Disputes over Patent Infringement (No. Fa-shi 21/2009, which came into effect as of 1 January 2010).

<sup>4</sup> The Invalidation Decision No. 19275 issued by the CNIPA.

### 2025 High-Level Forum on China’s IP Protection Held in Beijing

On 21 April, the 2025 High-Level Forum on China’s Intellectual Property (IP) Protection was held in Beijing. The forum was co-hosted by China Intellectual Property News (CIPN) and World Intellectual Property Organization (WIPO) Office in China. The theme of this year’s forum was “Opportunities and Challenges: Intellectual Property Governance in the Context of Artificial Intelligence.” Shen Changyu, Commissioner of the China National Intellectual Property Administration (CNIPA), Gong Ming, Deputy Prosecutor-General of the Supreme People’s Procuratorate of China, Sun Shuo, Vice Mayor of the People’s Government of Beijing Municipality and Kenichiro Natsume, Assistant Director General of WIPO attended the opening ceremony and delivered speeches. The ceremony was moderated by CNIPA Deputy Commissioner Hu Wenhui.

During the keynote speeches, speakers from univer-

sities and innovative enterprises shared their approaches and initiatives to promote the sound and coordinated development of IP and AI.

Since its inception in 2016, the High-Level Forum has been successfully held eight times, receiving widespread attention and enthusiastic participation from all sectors of society. This year’s forum featured three sub-forums, focusing on leveraging Geographical Indications to empower rural revitalization, empowering high-quality economic development through the Patent Reexamination and Invalidation System, and IP Protection & Innovation Ecosystem Construction in the AI era. Participants included representatives from national ministries and commissions, universities and research institutes, enterprises, and IP service agencies.

Source: CNIPA