

Bilingual Chinese-English Translation¹ of CNIPA Amendment of the Patent Examination Guidelines (Design Genetic Resource PTE)

<p>《专利审查指南》（2010年2月1日起施行）</p>	<p>《专利审查指南修改草案（再次征求意见稿）》（修订格式）</p>
<p>Chapter 3 of Part I</p> <p>7.4 Nonpatentable Situations for Design for Patent</p> <p>According to Article 2.4, the following situations are ineligible for patent protection for design:</p> <p>(1) any fixed building, bridge and the like which depends on their specific geographic conditions and cannot be rebuilt elsewhere, such as villa built by a particular lake or hill;</p> <p>(2) any product which has no fixed shape, pattern or color because it contains the substance which has no fixed shape, such as gas, liquid or powder;</p>	<p>Chapter 3 of Part I</p> <p>7.4 Nonpatentable Situations for Design for Patent</p> <p>According to Article 2.4 of the Patent Law, the following situations are ineligible for patent protection for design:</p> <p>(1) any fixed building, bridge and the like which depends on their specific geographic conditions and cannot be rebuilt elsewhere, such as villa built by a particular lake or hill;</p> <p>(2) any product which has no fixed shape, pattern or color because it contains the substance which has no fixed shape, such as gas, liquid or powder;</p> <p>(3) any component part of the product which cannot be partitioned or sold and used</p>

¹ THE USPTO IS PROVIDING THIS TRANSLATION SOLELY AS A CONVENIENCE TO THE ENGLISH-READING PUBLIC. WE HAVE ATTEMPTED TO PROVIDE AN ACCURATE ENGLISH TRANSLATION OF THE CHINESE DOCUMENT, BUT DUE TO THE NUANCES IN TRANSLATING FROM CHINESE TO ENGLISH, SLIGHT DIFFERENCES MAY EXIST. WE WILL MAKE EVERY EFFORT TO CORRECT ERRORS BROUGHT TO OUR ATTENTION.

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PATENT AND TRADEMARK OFFICE



<p>(3) any component part of the product which cannot be partitioned or sold and used independently, such as the heel of socks, the peak of a hat, the handle of a cup, and so on.</p> <p>(4) in the case of any product consisting of several component parts which have different shape or pattern, if each component part itself cannot be sold and used independently, such component part is not the subject matter under protection of the patent for design. For example, a jigsaw toy consisting of plug-in pieces of varied shape is a patentable subject matter only when one application relating to all the pieces is filed;</p> <p>(5) any product which cannot be perceived by the visual sense or be determined with the naked eye, and the shape, pattern or colour of which has to be distinguished by means of specific instruments, for example, a product whose pattern is only visible under an ultraviolet lamp;</p> <p>(6) any design for which the protection is sought is not the design of the state of normal product, for example the design of the state of an animal made with a handkerchief;</p>	<p>independently, such as the heel of socks, the peak of a hat, the handle of a cup.</p> <p>(43) in the case of any product consisting of several component parts which have different shapes or patterns, if each component part itself cannot be sold and used independently, such component part is not the subject matter under protection of the patent for design. For example, a jigsaw toy consisting of plug-in pieces of varied shape is a patentable subject matter only when one application relating to all the pieces is filed;</p> <p>(54) any product which cannot be perceived by the visual sense or be determined with the naked eye, and the shape, pattern or colour of which has to be distinguished by means of specific instruments, for example, a product whose pattern is only visible under an ultraviolet lamp:</p> <p>(6) any design for which the protection is sought is not the design of the state of normal product, for example the design of the state of an animal made with a handkerchief;</p> <p>(75) any design of which the main portion is the original shape, pattern or colour of the natural object, such design normally includes</p>
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<p>(7) any design of which the main portion is the original shape, pattern or colour of the natural object, such design normally includes two situations, the natural object itself and the imitational design of the natural object;</p>	<p>two situations, the natural object itself and the imitational design of the natural object;</p>
<p>(8) any work which belongs wholly to the field of fine arts, penmanship or photography;</p> <p>(9) any design which is constituted only by geometric shapes or patterns of common sight in the field of the relevant product;</p> <p>(10) the pronunciations or meanings of the words and numerals shall not be the contents of design protection; and</p> <p>(11) the pattern shown in the game interface and the HCI-unrelated display device, such as the wallpaper of an electronic screen, the picture of the device power-on or power-off, and the graphic and textual typesetting of the HCI-unrelated website web page</p>	<p>(86) any work which belongs wholly to the field of fine arts, <u>calligraphy</u> or photography;</p> <p>(97) any design which is constituted only by geometric shapes or patterns of common sight in the field of the relevant product;</p> <p>(108) the pronunciations or meanings of the words and numerals shall not be the contents of design protection; and</p> <p>(119) the pattern shown <u>in the game interface and the HCI-unrelated display device, such as the wallpaper of an electronic screen, the picture of the device power-on or power-off, and the graphic and textual typesetting of the HCI-unrelated website web page:</u></p> <p>(10) any partial design which cannot constitute an independent area or a relatively complete design unit on a product, for example, the turning line of the handle of a cup, or the irregular part of <u>spectacle lenses cut arbitrarily;</u> and</p> <p>(11) any design in which the partial design requested for patent protection is only <u>pattern or combination of pattern and color on the product surface, for example, the patterns on the motorcycle surface.</u></p>

<p>9.1 Two or More Similar Designs of the Same Product</p> <p>According to Article 31.2, two or more similar designs for the same product may be filed as one application.</p> <p>No more than 10 similar designs in one application may be claimed. If more than 10 similar designs in one application have been claimed, the examiner shall issue the office action. If the applicant fails to overcome the defect after amendments, the application shall be rejected.</p>	<p>9.1 Two or More Similar Designs of the Same Product</p> <p>According to Article 31.2 of the Patent Law, two or more similar designs for the same product may be filed as one application.</p> <p><u>The whole design of the same product and any partial design thereof may not be filed as one application.</u></p> <p>No more than 10 similar designs in one design patent application may be claimed. If more than 10 similar designs in one application have been claimed, the examiner shall issue the office action. If the applicant fails to eliminate the defect after amendments, the patent application shall be rejected.</p>
<p>Chapter 1 of Part II</p> <p>3.2 Inventions-Creations Excluded from Patent Protection under Article 5, Section 2</p> <p>According to Article 5, Section 2, no patent right shall be granted for any invention-creation where acquisition or use of the genetic resources, on which the development of the invention-creation relies, is not consistent with the provisions of the laws and administrative regulations.</p> <p>According to Rule 26.1, the genetic resources referred to in the Patent Law mean the material obtained from such as human body, animal, plant, or microorganism</p>	<p>Chapter 1 of Part II</p> <p>3.2 Inventions-Creations Excluded from Patent Protection under Article 5.2 of the Patent Law</p> <p>According to Article 5.2 of the Patent Law, no patent right shall be granted for any invention-creation where acquisition or use of the genetic resources, on which the development of the invention-creation relies, is not consistent with the provisions of the laws and administrative regulations.</p> <p>According to <u>Article 29.1 of the Rules for the Implementation of the Patent Law of the People's Republic of China (the "Rules for the Implementation")</u>, the genetic resources referred to in the Patent Law mean the material obtained from such as human body, animal, plant, or microorganism which contains</p>

<p>which contains functional units of heredity and is of actual or potential value. The invention-creation is developed relying on the genetic resources referred to in the Patent Law means that the invention-creation is developed relying on the use of the heredity function of the genetic resources.</p> <p>In the above-mentioned provisions, heredity function refers to the ability of organism to pass on traits or characteristics from an ancestor to a descendent through reproduction, or allow the entire organism to be reproduced.</p> <p>Functional unit of heredity refers to a gene, or a DNA or RNA fragment having heredity function of an organism.</p>	<p>functional units of heredity and is of actual or potential value, <u>and the information which is generated through the use of such material.</u></p> <p>The invention-creation is developed relying on the genetic resources referred to in the Patent Law means that the invention-creation is developed relying on the use of the heredity function of the genetic resources.</p> <p>In the above-mentioned provisions, the heredity function refers to the ability of organism to pass on traits or characteristics from an ancestor to a descendent through reproduction, or allow the entire organism to be reproduced.</p> <p>The functional unit of heredity refers to a gene, or a DNA or RNA fragment having heredity function of an organism.</p>
<p>"Material obtained from such as human body, animal, plant or microorganism which contains functional units of heredity" refers to carrier of functional units of heredity, which includes not only a whole organism, but also a part of it, such as organ, tissue, blood, body fluid, cell, genome, gene, DNA or RNA fragment, etc.</p>	<p>"Material obtained from such as human body, animal, plant or microorganism which contains functional units of heredity" refers to the carrier of functional units of heredity, which includes not only a whole organism, but also a part of it, such as an organ, tissue, blood, body fluid, a cell, a genome, a gene, and a DNA or RNA fragment.</p>

<p>With regard to an invention-creation, using the heredity function of the genetic resources refers to, for example, isolating, analyzing and/or processing the functional units of heredity to develop the invention-creation and to realize the value of the genetic resources.</p>	<p>With regard to an invention-creation, using the heredity function of the genetic resources refers to, for example, isolating, analyzing, processing the functional units of heredity or <u>analyzing and utilizing the genetic information generated by the functional units of heredity</u> to develop the invention-creation and to realize the value of the genetic resources.</p>
<p>"Acquisition or use of the genetic resources is not consistent with the provisions of the laws and administrative regulations" means that the acquisition or use of the genetic resources is not beforehand approved by relevant administrative departments or licensed by relevant right holder in accordance with the provisions of relevant laws and administrative regulations of China. For example, in accordance with the provisions of Animal Husbandry Law of the People's Republic of China and Measures for Examination and Approval in respect of the Entry and Exit of Genetic Resources of Livestock and Poultry and in respect of Research in Their Utilization in Cooperation with Foreign Entities", in the case of exporting abroad the genetic resources that have been included in the directory for protection of the genetic resources of livestock and poultry in China,</p>	<p>"Acquisition or use of the genetic resources is not consistent with the provisions of the laws and administrative regulations" means that the acquisition or use of the genetic resources <u>contravenes the prohibitive provisions of the laws and administrative regulations, or is not</u> beforehand approved by relevant administrative departments or licensed by relevant right holder in accordance with the provisions of relevant laws and administrative regulations of China. For example, in accordance with the provisions of the Animal Husbandry Law of the People's Republic of China and <u>the Measures of the People's Republic of China for the Examination and Approval of Entry & Exit of Genetic Resources of Livestock and Poultry</u>, and the Research in Their Utilization in Cooperation with Foreign Entities in the case of exporting abroad the genetic resources that have been included in the directory for protection of the genetic resources of livestock and poultry in China, relevant formalities for examination and approval shall be gone through, where certain genetic resources that have been included in the directory for protection of the genetic resources of livestock and poultry are exported abroad from China, but no formality for</p>

relevant formalities for examination and approval shall be gone through, where certain genetic resources that have been included in the directory for protection of livestock and poultry are exported abroad from China, but no formality for examination and approval has been gone through, no patent right shall be granted for any invention-creation developed relying on such genetic resources.

examination and approval has been gone through, no patent right shall be granted for any invention-creation developed relying on such genetic resources. For another example, where, in accordance with the provisions of the Biosecurity Law of the People's Republic of China and the Regulations of the People's Republic of China on the Administration of Human Genetic Resources, the information of China's human genetic resources is provided for or open to foreign organizations, the party concerned shall report to the administrative department of science and technology under the State Council in advance and submit relevant information backup. Should such action possibly affect the public health, national security and public interests of China, it shall undergo the security examination. If the completion of an invention-creation relies on the information of China's human genetic resources, which are provided for foreign organizations, such invention-creation shall not be granted any patent right if relevant formalities are not complied with.

	<p style="text-align: center;"><u>Chapter 3 of Part IV</u></p> <p style="text-align: center;"><u>7. Service Concerning International Applications of the Design</u></p> <p style="text-align: center;"><u>Where, in the reexamination and examination procedures of a request for invalidation, any international application of the design involves the delivery of documents to the party that does not have a domicile in China, such documents may be delivered by post, facsimile, email or announcement or otherwise. In the case of the delivery by announcement, relevant documents shall be deemed to have been served at the date following one month from the date of announcement.</u></p>
<p style="text-align: center;">Chapter 7 of Part V</p> <p style="text-align: center;">1.2 Specified Time Limit</p> <p style="text-align: center;">...</p> <p>A specified time limit shall be in general two months. In the procedures of substantive examination of a patent application for invention, the time limit for the applicant to respond to the first office action shall be four months. A one-month or shorter time limit may be specified for a less complicated act.</p>	<p style="text-align: center;">Chapter 7 of Part V</p> <p style="text-align: center;">1.2 Specified Time Limit</p> <p style="text-align: center;">...</p> <p>A specified time limit shall be in general two months. In the procedures of substantive examination of a patent application for invention, the time limit for the applicant to respond to the first office action shall be four months. <u>For any international application of the design, the time limit for the applicant to</u></p>

<p>The time limit mentioned above shall be calculated from the date on which the party concerned document presumably receives the notification.</p>	<p><u>respond to the rejection notification shall be four months.</u> A one-month or shorter time limit may be specified for a less complicated act. The time limit mentioned above shall be calculated from the date on which the party concerned presumably receives the notification.</p>
<p>Chapter 9 of Part V</p>	<p>Chapter 9 of Part V</p>
<p>2. Termination of Patent Right 2.1 Termination Due to Expiration of Term of Patent Right</p> <p>The duration of patent right for inventions shall be twenty years, and the duration of patent right for utility model and patent right for design shall be ten years, counted from the filing date. For example, if the filing date of a patent application for utility model is September 6, 1999, the term of the patent right is from September 6, 1999 to September 5, 2009, and the date of termination of the patent right is September 6, 2009 (the date can not be postponed in case of statutory holidays).</p>	<p>2.4. Termination of Patent Right 2.4.1 Termination Due to Expiration of Term of Patent Right</p> <p>The term of patent right for inventions shall be twenty years, the term of patent right for utility model shall be ten years, and <u>the term of patent right for design shall be 15 years</u>, counted from the application date. For example, if the application date of a patent application for utility model is September 6, 1999, the term of the patent right is from September 6, 1999 to September 5, 2009, and the date of termination of the patent right is September 6, 2009 (the date cannot be postponed in case of statutory holidays).</p> <p><u>If the patent right for invention is found to involve any grant term extension of a patent or patent term extension (PTE) of a drug, the date of termination of the patent right shall be deemed to be the date of termination following the term extension. For example, if the application date of the patent for invention is September 6, 2021, the term of the patent shall be from September 6, 2021 to September 5, 2041. If the expiry date of the patent right following the grant term extension of a patent is December 1, 2041, the date of termination of the</u></p>

	<p><u>patent right of the patent for invention shall be December 2, 2041 (the date cannot be postponed in case of statutory holidays) .</u></p> <p>When the term of a patent right expires, it shall be registered in the Patent Register and announced in the Patent Gazette respectively in time, and it shall be handled to be invalid.</p>
	<p><u>Part VI International Applications of the Design</u></p> <p><u>Chapter 1 Affairs Processing of Application for International Registration for the Design</u></p> <p><u>1. Introduction</u></p> <p><u>This chapter concerns some special provisions according to which, on the basis of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (the "Hague Agreement"), the applicant files an application for international registration for the design and pays relevant fees through the Patent Office, and undergoes the formality examination and affair processing of his filed application for international registration for the design that designates China ("international application for the design"). For any matter not described or specified in this chapter, refer to the provisions of Part I and Part V of the Guidelines for Patent Examination ("Guidelines").</u></p>

	<p><u>2. Filing of Applications for International Registration for the Design</u></p> <p><u>2.1 Filing Means</u></p> <p><u>An application for international registration for the design may be directly filed to the International Bureau of World Intellectual Property Organization (WIPO). If the applicant has a domicile or a place of office in China, he may file an application for international registration for the design to the International Bureau through the Patent Office.</u></p> <p><u>In the case of the filing of an application for international registration for the design through the Patent Office, any other subsequent document in the international procedures shall be filed to the International Bureau directly.</u></p>
	<p><u>2.2 Delivery and Nondelivery</u></p> <p><u>2.2.1 Determination of Date of Receipt</u></p> <p><u>As for an application for international registration for the design which is filed to the International Bureau through the Patent Office, if the International Bureau receives such application within one month after the Patent Office receives it, the date on which the Patent</u></p>

	<p><u>Office receives it shall be deemed the date on which the International Bureau receives the said application; otherwise, the date on which the International Bureau really receives the application shall be deemed the date of receipt.</u></p>
	<p><u>2.2.2 Conditions for Delivery</u></p>
	<p><u>If an application for international registration for the design meets the following conditions, the Patent Office will deliver such application to the International Bureau:</u></p> <ul style="list-style-type: none"> <u>(1) where at least one of the applicants has a domicile or a place of business in China;</u> <u>(2) where at least one of the applicants chooses China as the contracting party to the applicant;</u> <u>(3) where documents of the international application of the design are written in English;</u> <u>(4) where the formal form as specified in the Hague Agreement is used;</u> <u>(5) where the application contains the drawings or photographs of a design;</u> <u>(6) where the application contains the Chinese communication information in Chinese mainland;</u> <u>(7) where the application document must exclude any information that is contrary to laws, social morality or is detrimental to public interests.</u> <p><u>If an application for international registration for the design is designated for China, the applicant may submit such application of Chinese version.</u></p> <p><u>2.3 Procedures for Delivery and Nondelivery</u></p> <p><u>2.3.1 Document Processing</u></p>

Upon receipt of an application for international registration for the design, the Patent Office will process the relevant documents as follows:

(1) Determine the date of receipt: If the applicant submits such application, the date on which the Patent Office receives it will be deemed the date of receipt;

(2) Number submission: The Patent Office will number the submission according to the application receipt sequence.

2.3.2 Delivery Procedure

If an application for international registration for the design meets the delivery conditions, it will be delivered according to the following procedure:

(1) Issue to the applicant the delivery notification of an application for international registration for the design, and notify the applicant of the delivery number, delivery period and document list;

(2) Deliver to the International Bureau the document and the date of receipt and other data of such application.

2.3.3 Nondelivery Procedure

If an application for international registration for the design does not meet the delivery conditions, the applicant will be issued a nondelivery notification of such application, and be notified of the reason for such nondelivery.

Should an application for international registration for the design presented to the Patent Office face to face not meet the delivery conditions, the Patent Office shall explain the

	<p><u>reason to the party concerned directly and reject such application.</u></p>
	<p><u>3. Affair Processing of International Applications of the Design</u></p> <p><u>3.1 Determination of the Application Date in China</u></p> <p><u>Pursuant to the Hague Agreement, an international application of the design designating China, of which the international registration date is determined, shall be deemed a design patent application that has been filed to the Patent Office. The international registration date shall be deemed the application date, as mentioned in Article 28 of the Patent Law.</u></p> <p><u>3.2 Grant of National Application Number</u></p> <p><u>After an international application of the design is published by the International Bureau, the Patent Office will grant a national application number to the international application of the design delivered by the International Bureau, and conduct the subsequent examination.</u></p> <p><u>3.3 Acceptance of Other Documents</u></p> <p><u>3.3.1 Acceptance Conditions for Other Documents</u></p> <p><u>Upon publication of an international application of the design by the International Bureau, the party to such application shall, when going through relevant formalities at the Patent Office, file the specified documents of Chinese version which meet the conditions, indicate the national application number, and</u></p>

perform the entrustment formalities under the provision of Article 18 of the Patent Law.

Other provisions shall be governed by Chapter 3, Section 3.1 of Part V.

3.3.2 Procedure for Acceptance of Other Documents

The provision of Chapter 3, Section 3.2 of Part V of the Guidelines shall apply when it comes to the procedure of acceptance of other documents.

3.4 Acceptance of Divisional Applications

For a divisional application filed in respect of any international application of the design, besides compliance with the provision of Chapter 3, Section 2.3.2.1 of Part V of the Guidelines, the Patent Office shall examine whether the original application date and the original application number are indicated in the request of the divisional application. The application date corresponding to the original application shall be the international registration date thereof, and the international registration number corresponding to the original application shall be indicated as the application number thereof. In that case, the divisional application shall be accepted as a national application.

3.5 Procedure of Announcement

The decision, once made, on protecting an international application of the design will be announced by the Patent Office. The announced contents shall include: the bibliographic data, a drawing or photograph of the patent right.

The bibliographic data shall mainly include: the classification number, the patent number, the international registration number, the announcement number of grant of patent (publishing number), the application date, the announcement date of grant of patent, priority matters, matters concerning the patentee, the title of the product using the design. Where any bibliographic data content in the announcement is recorded in the published international registration text, such content shall be consistent with such international registration text. The patent right of the design shall come into effect as of the announcement date in China. Upon announcement by the Patent Office, the applicant for the international application of the design may request the Patent Office to issue the duplicate of the patent register of the international application of the design as evidence of grant of protection in China. The pamphlet of a design patent shall include the head page, the drawings or photographs and the brief explanation. Among them, the drawings or

photographs and the brief explanation shall be offered in such a text form as determined in the declaration on the grant of protection published by the International Bureau.

Any other matter announced by the International Bureau shall be subject to the announcement of the International Bureau, unless the matter involves the transfer of rights.

3.6 Examination of Relevant Formalities

3.6.1 Changes in Bibliographic Data

Where, for the applicant for an international application of the design (or the patentee), there is any change to his right, name and/or address and agency matters in the International Bureau, the party concerned shall complete the formalities through the International Bureau.

Where, for the applicant for an international application of the design (or the patentee), there is a change to his right, the party concerned shall not only complete the formalities through the International Bureau, but also submit corresponding documentary evidence to the Patent Office under the provisions of the Rules for the Implementation. The documentary evidence in question shall follow the provisions of Chapter 1, Sections 6.7.2.2 and 6.7.2.6 of Part I of the Guidelines. If such documentary evidence is made in any foreign language, it shall be accompanied by its Chinese bibliographic reference translation. Should the party concerned not submit any documentary evidence or the submitted evidence is ineligible, the Patent Office shall notify the International Bureau that the right change has yet to come into effect in China.

	<p><u>3.6.2 Restoration of the Right</u></p> <p><u>Where, due to failure to promptly respond to the rejection notification, the patent application of the party to an international application of the design is deemed to have been withdrawn, the party in question may, in accordance with the provision of Chapter 7, Section 6 of Part V of the Guidelines, request the restoration of its right.</u></p> <p><u>3.6.3 Termination of the Unextended Patent Right</u></p> <p><u>Where, upon announcement of grant of a patent right to an international application of the design by the Patent Office, the patentee fails to deal with the formalities of patent right extension according to the Hague Agreement, the patent right shall terminate on the date following five years or ten years from the application date in China.</u></p> <p><u>3.6.4 Waiver of Partial Rights</u></p> <p><u>Where, upon announcement of grant of a patent right to an international application of the design by the Patent Office, the patentee requests the International Bureau to allow him to waive his partial rights against China, the effective date of such waiver shall be deemed the record date in the International Bureau.</u></p>
	<p><u>4. Special Provisions on Fee Payment</u></p> <p><u>4.1 Fee Payment of International Procedures</u></p> <p><u>The applicant for an application for international registration for the design shall directly pay the International Bureau related fees of international procedures. Where he files his application document through the Patent Office, he may pay the International Bureau the</u></p>

fees of such application for international registration for the design through the Patent Office.

Where such fees are paid through the Patent Office, the party concerned shall take the service number as a basis and pay the relevant fee online or in person directly to the Patent Office. The party concerned shall indicate the correct service number and the name of the fees. In the case of fee payment contrary to the aforementioned provisions, the party shall be deemed to fail to go through the fee payment formalities.

The relevant fees of the international application paid through the Patent Office shall be all transferred to the International Bureau. The date on which the account of the International Bureau receives fees shall be deemed the date of fee payment. The International Bureau collects the separately designated fees on an international application of the design, and transfers them to the Patent Office. The Patent Office will not refund the aforesaid fees. To learn about matters concerning fees of international procedures, the party concerned may contact the International Bureau directly.

4.2 Fee Payment of the Patent Office

Where, upon publication of an international application of the design by the International Bureau, the party concerned shall pay the Patent Office relevant fees based on the national application number or the international registration number.

Chapter 2 Examination of International Applications of the Design

1. Introduction

The examination of the international application of the design means that under the provisions of the Patent Law and the Rules for the Implementation thereof, the Patent Office examines an application for international registration for the design which is filed by the applicant designating China in accordance with Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (the "Hague Agreement"). On the basis of the provision of Article 143 of the Rules for the Implementation, if an international application of the design is found after an examination that there is no grounds for rejection, the Patent Office shall make a decision on protecting the design patent, and notify the International Bureau of this matter.

This chapter concerns the Patent Office's scope of examination on the international application of the design as follows:

- (1) examination of obviously substantive defects
- (2) ,including whether or not the application obviously falls under the circumstances, as specified in Article 5.1 or 25.1.6 of the Patent Law, or Article 11 of the Rules for the Implementation, or obviously fails to conform with the provisions of Articles 2.4, 23.1, 23.2, 27.2, 31.2, and 33 of the Patent Law, and Article 142 of the Rules for the Implementation, or is not entitled to a patent right in accordance with the provisions of Article 9 of the Patent Law;

	<p><u>(2) examination of other documents and relevant formalities, including whether or not other documents and formalities relating to an international application of the design are in conformity with the provisions of Articles 18 and 24 of the Patent Law, Articles 3.1, 18, 33.4, 34.3, 139, 140 and 141 of the Rules for the Implementation.</u></p> <p><u>This chapter only sets out and specifies the special matters concerning the aforesaid examination. For the other same matters as those in a national application, not stated by this chapter, refer to the provisions of Chapter 3 of Part I, Chapter 5 of Part IV, and Chapter 10 of Part V of the Guidelines.</u></p> <p><u>2. Principles of Examination</u></p> <p><u>An international application of the design shall be examined on the basis of the following principles:</u></p> <p><u>(1) The form or content of an international application of the design shall apply to the provisions of the Hague Agreement, and Common Regulations under the 1999 Act and the 1960 Act thereof, and the examiner shall not reject any international application of the design on the grounds for form defects of the application document.</u></p> <p><u>(2) The examination of obviously substantive defects, other documents and relevant formalities shall be under the provisions of the Patent Law, the Rules for the Implementation, and the Guidelines.</u></p>
	<p><u>3. Procedure of Examination</u></p> <p><u>3.1 Issuance of Declaration on Protection Grant</u></p>

Where an international application of the design is found after an examination that there is no grounds for rejection, the examiner shall issue a declaration on protection grant to the International Bureau. The protected international application of the design includes the international application which complies with grant conditions without necessity of issuing a rejection notification to the International Bureau, and the international one which complies with grant conditions after response to a rejection notification.

3.2 Issuance of a Rejection Notification

Where obviously substantive defects exist in an international application of the design, the examiner shall issue a rejection notification to the International Bureau.

The rejection notification shall include all grounds for the rejection of the application, and the referenced legal terms. If such grounds for the rejection involves the provisions of Articles 23.1 and 23.2 or 9 of the Patent Law, they shall include the information on the prior design relating to the international application of the design or the domestically same design patent application or patent.

3.3 Response to a Rejection Notification

After receiving a rejection notification, the applicant shall, in accordance with the provision of Article 18 of the Patent Law, go through the entrustment formalities and make a response within a specified time limit. In light of the provision of Article 3.1 of the Rules for the Implementation, the applicant shall submit

	<p><u>and state his opinion in Chinese in its response, or revise the application document. Where the revision of the document involves the brief explanation, the title of the product, and the view description, the applicant shall file the relevant documents of English version.</u></p> <p><u>If any new defect in the response document can be eliminated by rectification, the examiner shall conduct a comprehensive examination, and issue the notification to make rectification to the applicant. If the defect as an obviously substantive defect cannot be rectified, the examiner shall issue the office action to the applicant.</u></p> <p><u>3.4 Making of a Rejection Decision</u></p> <p><u>Where in his filed response document to a rejection notification or the office action, the applicant fails to eliminate the obviously substantive defect indicated by the rejection notification or the office action, the examiner may make a decision on rejecting the application.</u></p> <p><u>The contents of a rejection decision shall be under the provision of Section 3.5, Chapter 3 of Part I of the Guidelines.</u></p> <p><u>3.5 Interlocutory Examination and Handling after Reexamination</u></p> <p><u>The provision of Section 3.6, Chapter 3 of Part I of the Guidelines shall apply.</u></p>
	<p><u>4. Acknowledgement of the Text as an Examination Basis</u></p> <p><u>4.1 Text as an Examination Basis</u></p> <p><u>The text as a basis for examining an international application of the design may include:</u></p>

	<p><u>(1) the text of the international application of the design in English published by the International Bureau;</u></p> <p><u>(2) the revised text submitted under Article 141 of the Rules for the Implementation; and</u></p> <p><u>(3) the supplemented and corrected English text submitted under Article 50 of the Rules for the Implementation.</u></p> <p><u>4.2 Effect of Documents of International Application of the Design Published by the International Bureau</u></p> <p><u>In accordance with the provision of Article 14.1 of the Hague Agreement, an international application of the design shall have the same effect as the design patent application filed in China as of the international registration date.</u></p>
	<p>5. Examination of Documents of International Applications of the Design</p> <p>5.1 Examination of Bibliographic Data</p> <p>The bibliographic data of an international application of the design shall be subject to those published by the International Bureau. Generally, the examiner shall not examine such bibliographic data, unless the applicant revises the bibliographic data for eliminating the defects indicated in the notification issued by the Patent Office.</p> <p>5.2 Examination of Drawings or Photographs</p> <p>5.2.1 Titles of Views and Markings Thereof</p> <p><u>For international applications of the design, their titles of views and markings thereof shall be deemed to comply with the provision of Section 4.2.1, Chapter 3 of Part I of the Guidelines.</u></p>

5.2.2 Clear Expression of Drawings or Photographs

Article 27.2 of the Patent Law provides that the drawings or photographs submitted by the applicant shall clearly show the design of the product requested for patent protection.

The examiner shall examine whether the drawings or photographs filed by the applicant contain any obviously substantive defect that affects the clear expression of the whole or partial design of the product requested for patent protection.

5.3 Examination of brief description

In accordance with the provision of Article 142 of the Rules for the Implementation, where an international application of the design published by the International Bureau contains the description with essential features of the design, the applicant shall be deemed to have submitted the summary under the provision of Article 31 of the Rules for the Implementation.

In accordance with the provision of Article 64.2 of the Patent Law, the brief description of an international application of the design shall be used to explain the design of the product as shown by the relevant drawings or photographs. The examiner shall examine whether the drawings or photographs of the design in combination with the contents of the brief description and the title of the product clearly express the whole or partial design of the product requested for protection.

5.4 Examination under Articles 5.1, Article 25.1.6, and 2.4 of the Patent Law and Article 11 of the Rules for the Implementation

The provisions of Sections 6 and 7, Chapter 3 of Part I of the Guidelines shall apply.

5.5 Examination under Articles 9, 23.1 and 23.2 of the Patent Law

The provisions of Sections 11 and 8, Chapter 3 of Part I of the Guidelines shall apply.

5.6 Examination under Article 31.2 of the Patent Law

For any international application of the design, the examiner shall examine whether it is in conformity with the provision of Article 31.2 of the Patent Law.

Where an international application of the design contains two or more designs, the applicant may actively file a divisional application or do so on the basis of the examination opinions of the examiner. A divisional application shall be deemed a national application.

In accordance with the provision of Article 141 of the Rules for the Implementation, the applicant shall actively file a divisional application within two months after the International Bureau publishes the international application of the design.

To file a divisional application under the examination opinions of the examiner, the applicant shall complete the filing within two months from the domestic announcement date of the original application at the latest. After the aforesaid time limit expires, or where the original application has been rejected, or is deemed to have been withdrawn or to have not been restored in terms of the right, the applicant shall not generally file a divisional application any more.

	<p><u>Other provisions on divisional applications shall be governed by the provision of Section 9.4, Chapter 3 of Part I of the Guidelines.</u></p> <hr/> <p><u>5.7 Examination under Article 33 of the Patent Law</u></p> <p><u>The provision of Section 10.2, Chapter 3 of Part I of the Guidelines shall apply.</u></p>
	<p><u>6. Examination of Other Documents and Relevant Formalities</u></p> <p><u>6.1 Entrustment of Patent Agency</u></p> <p><u>In responding to the rejection notification or handling other patent affairs, the applicant for an international application of the design shall abide by the provisions of Article 18.1 of the Patent Law and Article 18 of the Rules for the Implementation.</u></p> <p><u>If, during the filing of an international application of the design, the applicant has entrusted a patent agency which is in conformity with the provision of Article 18 of the Patent Law, the applicant shall go through the entrustment formalities under the provision of Section 6.1.2, Chapter 1 of Part I of the Guidelines when dealing with relevant patent affairs through the Patent Office.</u></p> <p><u>The provision of Chapter 1, Section 6.1.3 of Part I of the Guidelines shall apply when it comes to the cancellation and discharge of entrustment.</u></p> <p><u>6.2 Priority Examination</u></p> <p><u>In accordance with the provision of Article 137 of the Rules for the Implementation, the international registration date of an international application of the design shall be</u></p>

deemed the date of application, as referred to in Article 28 of the Patent Law.

Unless otherwise specifically stipulated in this section, other provisions on priority shall follow the provision of Section 5.2, Chapter 3 of Part I of the Guidelines. Where an international application of the design has claimed any priority and this practice is accepted by the International Bureau, the fee for claiming the priority shall not be collected.

6.2.1 Claim to Foreign Priority

6.2.1.1 Prior Application and Subsequent Application Claiming Priority

Where the applicant claims any priority on the grounds of prior filing of an international application of the design, he shall be deemed to claim a foreign priority in light of the provision of Article 29.1 of the Patent Law.

6.2.1.2 Declaration of Claiming Priority

In accordance with the provision of Article 139 of the Rules for the Implementation, where the international application of the design published by the International Bureau contains one or more priorities, the applicant for such application shall be deemed to have put forward a written declaration under the provision of Article 30 of the Patent Law.

6.2.1.3 Duplicate of Prior Application Document

In accordance with the provision of Article 139 of the Rules for the Implementation, where the applicant of an international application of the design claims any priority, he shall, within three months from the date of publication of an international application, file the duplicate

of the initially filed patent application to the Patent Office. The duplicate of the prior application document is allowed to exclude the Chinese bibliographic reference translation of the duplicate. In the case of failure to file such duplicate within the specified time limit, the applicant shall be deemed not to claim the priority.

6.2.1.4 Applicant of Subsequent Application

In accordance with the provision of Article 34.3 of the Rules for the Implementation, in the event of any inconsistency between the applicant as recorded in the duplicate of the prior application document and the applicant of the subsequent application, the applicant shall, within three months after the date of publication of the international application, file relevant documentary evidence to the Patent Office. In the case of failure to file such evidence within the specified time limit, the applicant shall be deemed not to claim any priority.

6.2.2 Claim to National Priority

6.2.2.1 Prior Application and Subsequent Application Claiming Priority

Where the applicant claims a priority on the grounds of earlier filing of a design application in China, he shall be deemed to claim a national priority in light of the provision of Article 29.2 of the Patent Law.

Where, prior to the international registration date of a subsequent international application of the design, the Patent Office has issued to an prior application the notification to grant a patent right and the notification to

go through the registration formality, and if the applicant has gone through such registration formality, the applicant for the subsequent application shall be deemed not to claim the priority.

6.2.2.2 Declaration of Claiming Priority

In accordance with the provision of Article 139 of the Rules for the Implementation, where the international application of the design published by the International Bureau contains one or more priorities, the applicant for such application shall be deemed to have put forward a written declaration under the provision of Article 30 of the Patent Law.

6.2.2.3 Duplicate of Prior Application Document

The provision of Section 5.2.2.3, Chapter 3 of Part I of the Guidelines shall apply.

6.2.2.4 Applicant of Subsequent Application

In accordance with the provision of Article 34.3 of the Rules for the Implementation, in the event of any inconsistency between the applicant as recorded in the duplicate of the prior application document and the applicant of the subsequent application, the applicant shall, within three months after the date of publication of the international application, file relevant documentary evidence to the Patent Office. In the case of failure to file such evidence within the specified time limit, the applicant shall be deemed not to claim a priority.

6.2.2.5 Procedure of Deemed Withdrawal of Prior Application

Where, in a subsequent international application of the design, the applicant claims one or more national priorities, which is deemed to comply with the relevant provisions upon preliminary examination, and if the corresponding prior application relates to a design patent application without fulfillment of a registration formality, that prior design application shall be deemed to have been withdrawn.

In this situation, the applicant shall not request the restoration of such withdrawn prior application.

6.2.3 Withdrawal of a Claim to Priority

The applicant shall not request the Patent Office to withdraw the claim to priority.

6.2.4 Restoration of a Claim to Priority

Where, in an international application of the design, the applicant is deemed not to claim any priority, the claim to any priority shall not be restored.

6.3 Non-prejudicial Disclosures

In accordance with the provision of Article 140 of the Rules for the Implementation, where the claim of the applicant involves one of the following circumstances, as specified in Article 24.2 or 24.3 of the Patent Law, the applicant shall, when filing an international application of the design, make a declaration, and shall, within two months from the date of publication of the international application of the design, file the specified documentary evidence to the Patent Office.

In accordance with the provision of Article 33.4 of the Rules for the Implementation, where the claim of the applicant involves one

	<p>of the circumstances, as specified in Article 24.1 or 24.4 of the Patent Law, the patent administrative department under the State Council may, when it deems necessary, request the applicant to submit the relevant documentary evidence to the Patent Office within a specified time limit.</p> <p>The examiner shall examine whether the date and content indicated in the documentary evidence are obviously related to the design requested for protection.</p>
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