

Standing Committee on the Law of Trademarks,  
Industrial Designs and Geographical Indications

Seventeenth Session

Proposal of Japan

For the Second Questionnaire

Concerning the Draft Questionnaire on Industrial Design Law and Practice

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Document prepared by  
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“Question concerning the purpose and philosophy of domestic legislations for protection of industrial designs and the basic information”

Q101: Summary of the purpose and philosophy of domestic legislations for protection of industrial designs.

Q102: The basic information

Category of the legislation

- |                           |     |    |
|---------------------------|-----|----|
| - Design Law (separately) | yes | no |
| - A part of Patent Law    | yes | no |
| - A part of Copyright Law | yes | no |
| - Others                  | yes | no |

The official name of the legislations

The date of issue of the legislations

The date of enforcement of the legislation

I. INDUSTRIAL DESIGN APPLICATION

(a) Reproduction of Industrial Design

From Q1 through Q9 at SCT/17/6 Annex

(b) Description

From Q10 through Q11 of SCT/17/6 Annex

(c) Design Specimen

From Q12 through Q14 of SCT/17/6 Annex

(d) Indication of Products

From Q15 through Q16 of SCT/17/6 Annex

(e) Multiple Design Application

From Q17 through Q19 of SCT/17/6 Annex

(f) Claim

From Q20 through Q22 of SCT/17/6 Annex

(g) Creator of Design

From Q23 through Q27 of SCT/17/6 Annex

(h) Filing Date

From Q28 through Q29 of SCT/17/6 Annex

Japan proposes the following idea concerning Q29 of SCT/17/6 Annex

Q29: If the industrial design application does not contain all indications and elements required, the applicant may complement the industrial design application.

Yes No

If yes, the term for complement shall be limited.

Yes No

The time limit is

- |  |     |    |
|--|-----|----|
| - within _____ months from the filing date.    | Yes | No |
| - from the filing date until the registration. | Yes | No |
| - from another timing                          | Yes | No |

The contents which may be complemented shall be restricted or limited.

Yes No

Japan proposes the following additional item (i) just after I. Industrial Design Application

(h) Filing Date of SCT/17/6 Annex.

(i) Object which may be filed (Object of Protection)

Q103: Filing industrial design shall be composed of

- |  |     |    |
|--|-----|----|
| - shape only.                                    | Yes | No |
| - pattern only.                                  | Yes | No |
| - colors only.                                   | Yes | No |
| - combination of shape, pattern and/or color(s). | Yes | No |
| - others.  | Yes |    |

Q104: Applicant may file the following as object for application design.

- |                                   |     |    |
|-----------------------------------|-----|----|
| - a typeface, letter or character | Yes | No |
| - graphical user interface        | Yes | No |
| - trade dress                     | Yes | No |

Q105: Applicant may file an industrial design in a part of an article/product.

Yes No

Q106: Applicant may file plural industrial designs which have a kind of relationship concerning the surface appearance between these designs.

Yes No

If yes,

Applicant shall draw the said industrial designs in one industrial design application.

Yes No

Applicant shall draw each design in one industrial design application.

Yes No

Q107: If the answer of Q106 is yes, the kind of relationship is

– similarity of industrial designs. Yes No

– embodiments in a single inventive concept of design patent.

Yes No

– others

Yes

Japan proposes the following additional item (i) just after I. Industrial Design Application

(h) Filing Date of SCT/17/6 Annex.

Q108: If the answer of Q17 is no, applicant may divide one industrial design application which includes two or more industrial designs into two or more new industrial design applications.

Yes No

If yes, the term for division shall be limited.

Yes No

The time limit is

– within \_\_\_\_\_ months from the filing date.

Yes No

– from the filing date until the registration.

Yes No

– from another timing.

Yes No

Japan proposes the following additional item (i) just after I. Industrial Design Application

(h) Filing Date of SCT/17/6 Annex.

(k) Grace period

Q109: Grace period (“allowed term of exception of lack of novelty of industrial design”) before the filing date is allowed.

Yes No

If yes, the term is \_\_\_\_\_ months.

If yes, prescribed procedure is required.

Yes No

## II. EXAMINATION AND OPPOSITION

### (a) Examination

From Q30 through Q34 of SCT/17/6 Annex

Japan proposes the following additional questions, concerning Q31 through Q33 at II. Examination and Opposition (a) Examination of SCT/17/6 Annex.

Q110: The Office, in the condition of fulfillment of formal requirements of industrial design application,

– exams substantial requirements after the industrial design registration.

Yes No

– exams substantial requirements before the industrial design registration.

Yes No

– does not exam substantial requirements.

Yes No

Q111: If the Office exams substantial requirements, that substantial examination

– shall be done by petition of the applicant.

Yes No

– shall be done by petition of the third party.

Yes No

– shall be done for all industrial design applications.

Yes No

Q112: The contents which have been amended by the applicant overstep the scope of identity of contents which had been filed at first in an industrial design application, the said industrial design application shall be considered to be filed at the date of the amendment.

Yes No

If yes,

– the Office sends the notification which informs the said fact.

Yes No

– others

Yes

Q113: If the Office finds the reasons of refusal of the industrial design application during the examination concerning the substantial requirements for the said application, the Office shall notify the reasons of refusal to the applicant before the Office sends the final decision of refusal. Yes No

If yes, the applicant shall be given the opportunity to mention his or her opinion concerning the reasons of refusal against the Office. Yes No

Q114: If the answer of Q113 is yes and the case is in the situation that the reasons of refusal have not also dissolved even though the applicant has mentioned the opinion, the Office shall notify the final decision which the industrial design application shall be refused. Yes No

Japan proposes the following idea concerning Q34 at II. Examination and Opposition (a)  
Examination of SCT/17/6 Annex

Q115: On average, the duration from the date of filing industrial design application through the date of dispatching the first notification or decision concerning the result of examination by the Office is \_\_\_\_\_ months.

Japan proposes the following additional item (c) before II. Examination and Opposition (b)  
Opposition of SCT/17/6 Annex.

(c) Dispute settlement systems between applicant and the Office

Q116: The registration system provides a system to reconcile the dispute between the Office and the applicant who has been sent the final decision of refusal of industrial design application. Yes No

If yes, that system is following.



- Administrative appeal (ex. Appeal board at the Office) or judicial appeal which applicant pleads objection against the final decision of refusal of industrial design application

Yes No

- Some systems which civilian agencies or associations intervene the case

Yes No

- Others

Yes

Q117: The duration of request an administrative appeal or judicial appeal against the final decision of refusal of industrial design application is limited.

Yes No

Japan proposes the following additional item (d) just before II. Examination and Opposition (b) Opposition of SCT/17/6 Annex.

(d) Dispute settlement systems between parties

Q118: The registration system provides a system to reconcile the dispute between the parties, except for dispute between the Office and the applicant who has been sent the final decision of refusal of industrial design application.

Yes No

If yes, that system is following.

- Administrative trial (ex. Trial board at the Office) or judicial trial which the third party pleads opposition against that industrial design registration

Yes No

- Administrative trial (ex. Trial board at the Office) or judicial trial which the third party pleads invalidation of that industrial design registration.

Yes No

- Some systems which civilian agencies or associations intervene the case

Yes No

- Others

Yes

(b) Opposition

From Q35 through Q42 at SCT/17/6 Annex

Japan proposes the following additional item (e) just after II. Examination and Opposition  
(b) Opposition of SCT/17/6 Annex.

(e) Administrative trial or judicial trial in which invalidation of the industrial design registration is pleaded

Q119: Administrative trial or judicial trial in which invalidation of the industrial design registration is pleaded may be requested

- by any person. Yes No
- by any person who has his or her rightful profit. Yes No
- by person who shall be provided in the domestic legislation. Yes No

Q120: The duration that administrative trial or judicial trial in which invalidation of the industrial design registration is pleaded may be requested shall be limited.

Yes No

Q121: In the case of administrative trial or judicial trial in which invalidation of the industrial design registration is pleaded, the reason which the registration design is decided as invalidation is that the said design

- is not an independent creation. Yes No
- is not new. Yes No
- is not original. Yes No
- does not differ significantly from known design. Yes No
- is essentially dictated by technical or functional considerations. Yes No
- is contrary to morality or public order. Yes No
- should not be registered for other reasons, namely: \_\_\_\_\_.

Q122: Administrative trial or judicial trial in which invalidation of the industrial design registration is pleaded shall be judged by the following person.

- |  |     |    |
|--|-----|----|
| - One trial examiner   | Yes | No |
| - Collegial body which is composed of plural trial examiners | Yes | No |
| - Judicial judges  | Yes | No |

Japan proposes the following additional item (f) after II. Examination and Opposition (b) Opposition of SCT/17/6 Annex.

(f) Procedures which may be taken to the administrative office in the case that civil suit concerning infringement of industrial design right is instituted to a court of justice

Q123: In the case that civil suit concerning infringement of industrial design right is instituted to a court of justice, the party shall request to an administrative office to make a formal search report about prior publicly known designs of the said registered design or a formal report concerning technical opinion as to registrability of the said registered design, and shall submit the report to the court of justice.

Yes No

Q124: The said formal reports at Q 123 may be used for the other purposes concerning the industrial design right, for example, enforcements at the Customs.

Yes No

### III. PUBLICATION AND DEFERMENT OF PUBLICATION

#### (a) Publication

From Q43 through Q46 at SCT/17/6 Annex

#### (b) Deferment of Publication

Q47 at SCT/17/6 Annex

#### IV. MANAGEMENT OF REGISTRATIONS

##### (a) Renewal

Japan proposes the following additional questions just after Q48 at IV. Management of Registration (a) Renewal of SCT/17/6 Annex.

Q125: According to the applicable law, the registration of an industrial design is effected

- |  |     |    |
|--|-----|----|
| – from the date of filing application.   | Yes | No |
| – from the date of publication of the industrial design.                           | Yes | No |
| – from the date of registration of the industrial design in the domestic Register. | Yes | No |
| – from another timing.   | Yes | No |

From Q49 through Q52 of SCT/17/6 Annex

##### (b) Licenses

From Q53 through Q56 of SCT/17/6 Annex

##### (c) Fee Structure

From Q57 through Q61 of SCT/17/6 Annex

## V. COMMUNICATION WITH THE OFFICE

### (a) Means of Communication

From Q62 through Q63 of SCT/17/6 Annex

### (b) Signature and Authentication

From Q64 through Q67 of SCT/17/6 Annex

## VI. BORDERLINES WITH TRADEMARKS

### (a) Subject Matter Enjoying Coexisting Protection

From Q68 through Q69 of SCT/17/6 Annex

### (b) Cross-cutting Issues

From Q70 through Q73 of SCT/17/6 Annex

### (c) Coexisting Protection in Practice

From Q74 through Q76 of SCT/17/6 Annex