HAGUE AGREEMENT CONCERNING
THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

– NOTIFICATION OF REFUSAL –
Rule 18(2) of the Common Regulations

I. Office sending the notification:
Federal Service for Intellectual Property (Rospatent)
30-1, Berezhkovskaya nab., 125993, Moscow, G-59, GSP-3, Russian Federation

II. Number of the international registration: **DM/210617**
Date of filing of the international application: 02.10.2020

III. The scope of the refusal:

Refusal for all industrial designs

IV. Grounds for refusal:

The claimed industrial design is ”Lipstick case”.
The holder is L'OREAL.
The priority date is 02.10.2020.
The date of priority is stated by the date of filing of the international application, as the claimed industrial design of the international registration is not identical in terms of the scope of legal protection to the industrial design represented in the certified copy of the first application 007788690-0001, 03.04.2020, EM on the basis of which the priority is claimed.
The result of patentability examination of the claimed industrial design revealed the following.
The claimed industrial design meets the patentability requirements in accordance with Article 1352 of Part IV of the Civil Code of the Russian Federation.
However, the international registration WO DM/210616 for the identical industrial design "Lipstick case" was revealed (the holder is L'OREAL, the priority date is 02.10.2020).
The grant of legal protection to identical industrial designs with the same priority date is not allowed by the applicable law of the Russian Federation.
Under clause 1 of Article 1383 of Part IV of the Civil Code of the Russian Federation if the applications for identical industrial designs with the same priority date were filed by the same applicant, the legal protection is granted for the one of these applications selected by the applicant.
Within twelve months from the date of the notification of refusal indicated under item VIII, the applicant must report about his selection.
The applicant must submit his response to this notification directly to Rospatent and through a patent attorney registered in the territory of the Russian Federation (clause 2 of Article 1247 of Part IV of the Civil Code of the Russian Federation) without forwarding it to the International Bureau of WIPO.

V. Information relating to an earlier industrial design:

VI. Corresponding essential provisions of the applicable law:

Article 1383 of Part IV of the Civil Code of the Russian Federation.

VII. Information relating to subsequent procedures:

The decision of the federal executive authority for intellectual property **may be legally disputed by the applicant by submitting an objection** to the federal executive authority for intellectual property **within seven months from the date of the notification of refusal indicated under item VIII** (clause 3 of Article 1387 of part IV of the Civil Code of the Russian Federation).
Under clause 2 of Article 1247 of Part IV of the Civil Code of the Russian Federation citizens permanently residing outside the Russian Federation and foreign legal entities shall deal with the federal executive authority for intellectual property through patent attorneys registered in the territory of the Russian Federation.
The list of patent attorneys is provided on **Rospatent website** under the section **Activities - Patent Attorneys** at:
https://rospatent.gov.ru/en/activities/patent_attorneys.

VIII. Date of the notification of the refusal: 19.02.2021

IX. Signature of the Office making the notification:

Director General  Grigoriy Ivliev

Annex 1

Extract from Chapter 72 "Patent Law" of Part IV of the Civil Code of the Russian Federation

Article 1231.1. The objects that include official symbols, names and distinctive marks

1. Legal protection is not granted as an industrial design or means of individualization to objects that contain, reproduce or imitate the official symbols, names and distinctive marks or their recognizable parts:

1) state symbols and signs (flags, state emblems, orders, banknotes and the like);

2) abbreviated or full names of international and intergovernmental organizations, their flags, emblems, other symbols and signs;

3) official counter marks, guarantee seals or hallmarks, seals, awards and other insignias.

2. The official symbols, names and distinctive marks, their recognizable parts or imitations, specified in clause 1 of this article, may be included in an industrial design or means of individualization as an unprotected element, in case of consent from the relevant competent government authority, the body of an international or intergovernmental organization.

Article 1247. Patent attorneys

1. The proceedings with the federal executive authority for intellectual property shall be carried out by the applicant, the right owner, another person independently or through a patent attorney registered by the said federal authority, or through another representative.

2. Persons permanently residing outside the Russian Federation and foreign legal entities shall deal with the federal executive authority for intellectual property through patent attorneys, registered by the said federal authority, unless the otherwise is specified by an international treaty of the Russian Federation.

If the applicant, the right owner, or another person deal with the federal executive authority for intellectual property independently or through a representative who is not registered as a patent attorney by the said federal authority, they must, upon the request of the said federal authority, provide the address for correspondence within the Russian Federation.

The authority of a patent attorney or other representative shall be certified by a power of attorney.

3. A citizen of the Russian Federation permanently residing within its territory may be registered as a patent attorney. Other requirements for a patent attorney, the procedure for their attestation and registration, as well as their competency in dealing with cases of the legal protection of the results of intellectual activity and means of individualization, shall be established by law.

Article 1349. The objects of patent rights

1. The objects of patent rights are the results of intellectual activity in the scientific and technical sphere that meet the requirements for inventions and utility models established by the Civil Code of the Russian Federation, and the results of intellectual activity in the area of design that meet the requirements for industrial designs established by the Civil Code of the Russian Federation.

2. The provisions of the Civil Code of the Russian Federation shall apply for inventions that contain information constituting a state secret (secret inventions), unless otherwise is provided for by special rules under articles 1401-1405 of the Civil Code of the Russian Federation and by other legal acts issued in accordance therewith.

3. In accordance with the Civil Code of the Russian Federation the legal protection is not granted to utility models and industrial designs, which contain information constituting state secrets.

4. The following can not be the objects of patent rights:

1) methods of cloning of a human being and a clone thereof;

2) methods of modification of the genetic integrity of a human being germ cell lines;

3) the use of human embryos for industrial and commercial purposes;

4) the results of intellectual activity specified in clause 1 of this article, if they are contrary to public interest, principles of humanity and morality.

Article 1352. Conditions of patentability of an industrial design

1. A solution of an external appearance of the article manufactured industrially or made by artisans shall be protected as an industrial design.

An industrial design shall be granted legal protection if the design by its essential features is new and original.

The essential features of an industrial design shall include features determining the aesthetic characteristics of the external appearance of the article, in particular, the shape, configuration, ornamentation, combination of colors, lines, contours of the article, texture or material of the article.

The features, which are solely determined by a technical function of the article, are not the features of the

industrial design for which legal protection is granted.
2. An industrial design is new if the sum of its essential features reflected on reproductions of the external appearance of the article is not known from the information that has become public worldwide before the priority date of the industrial design.
3. An industrial design is original if its essential features are determined by the creative nature of the special features of the article, in particular, if a solution of an external appearance of the article of similar purpose which produces the same overall impression on the informed consumer as the industrial design pictured on the reproductions of the article external view is unknown from the information that has become public worldwide before the priority date of the industrial design.
4. When determining the novelty and originality of an industrial design all applications for the inventions, utility models, industrial designs and the applications for the state registration of trademarks, service marks which have been filed in the Russian Federation by other persons or legal entities with the possibility for anyone to have access to the documents of the mentioned applications according to clause 2 of Article 1385, clause 2 of Article 1394, clause 1 of Article 1493 of the Civil Code of the Russian Federation are also considered (under the condition of an earlier priority date).
Disclosure of information relating to an industrial design by its author, applicant, or other person who have received this information directly or indirectly from them (also as a result of exposition of the industrial design at an exhibition), that made the information on the essence of the industrial design public shall not be a circumstance that prevents the recognition of the patentability of the industrial design considering that the application for granting a patent for the industrial design has been filed to the federal executive authority for intellectual property within twelve months from the date of the information disclosure. The burden of proof that the circumstances have taken place by virtue of which the disclosure of information does not prevent the recognition of the patentability of the industrial design shall be the responsibility of the applicant.
5. Legal protection as an industrial design shall not be granted to:
1) solutions that are solely determined by the technical function of the article ;
2) solutions that could mislead the consumer in a way of recognition of the article manufacturer, or the place of article manufacturing, or goods for which the article is a container, packaging, labeling, particularly the solutions identical to ones specified in clauses 4-10 of Article 1483 of the Civil Code of the Russian Federation, or producing the same overall impression, or including the mentioned objects, if the rights for the mentioned objects emerged earlier than the priority date of the industrial design, except in case the legal protection of the industrial design is sought by a person or legal entity who have the sole right for such object.
Granting of legal protection for the industrial designs which are identical to the objects specified in clause 4, sub-clauses 1, 2 of clause 9 of Article 1483 of the Civil Code of the Russian Federation, or producing same overall impression, or including the mentioned objects is allowed with the permission of the owners or persons authorized by the owners or ones who possess the rights for the mentioned objects.
Article 1377. Application for the grant of a patent for an industrial design
1. An application for the grant of a patent for an industrial design (an application for an industrial design) shall be related to one industrial design or to a group of industrial designs, associated with each other so closely as to form a single creative concept (the requirement of unity of the industrial design).
2. An application for an industrial design shall contain:
1) a request for the grant of a patent, stating the name of the author of the industrial design and the person in whose name the patent is sought and also the place of residence or location of each of them;
2) a set of reproductions of the article that give a complete representation of essential features of the industrial design that determine the aesthetic characteristics of the external appearance of the article;
3) a technical drawing of the general view of the article, assembly chart if they are required for the disclosure of the substance of the industrial design;
4) a description of the industrial design.
3. The filing date of an application for an industrial design shall be the date of receipt by the federal executive authority for intellectual property of the application containing a request for the grant of a patent and a set of reproductions of the article that give a complete representation of essential features of the industrial design that determine the aesthetic characteristics of the external appearance of the article, and in case the mentioned documents were not submitted at the same time - the date of receipt of the latest document.
Article 1378. Making amendments to application documents for an invention, utility model or industrial design
1. The applicant has the right to add the supplements, clarifications and corrections to the application documents for an invention, utility model or industrial design by submitting additional materials at the request

of the federal executive authority for intellectual property before the decision on the application is made on granting the patent, or on refusal to issue a patent, or on the recognition the application withdrawn, if these supplements, clarifications and corrections do not change the application for an invention, utility model or industrial design in substance.
After receiving the report on the information search conducted in accordance with the procedure under clauses 2 to 4 of Article 1386 of the Civil Code of the Russian Federation, the applicant, on his own initiative, has the right to submit once an amended formula of the invention that does not change the application for the invention in substance and to make appropriate changes to the description.
2. Additional materials amend the application for an invention or utility model in substance in one of the following cases, if they contain:
other invention that does not meet the requirement of unity of the invention with respect to the invention or group of inventions accepted for consideration, or other utility model;
features that should be included in the invention formula or utility model and were not disclosed in the application documents specified in sub-clauses 1 to 4 of clause 2 of Article 1375 or sub-clauses 1 to 4 of clause 2 of Article 1376 of the Civil Code of the Russian Federation and submitted on the date of filing the application;
an indication of the technical result, that is provided by the invention or utility model and is not related to the technical result contained in the same documents.
3. Additional materials amend the application for an industrial design in substance if they contain reproductions of the article where:
another industrial design is presented that does not meet the requirement of unity of the industrial design with respect to the industrial design or the group of industrial designs disclosed in the reproductions accepted for consideration;
the essential features of the industrial design are shown that were missing in the reproductions submitted as of the filing date, or there are reproductions of the article with removed essential features of the industrial design that existed in the reproductions, submitted on the filing date.
4. Amendments to the information about the author, about the applicant, including the procedure of transferring the right to grant a patent to another person or as a result of change of the name of the author, the name or the title of the applicant, as well as correction of obvious and technical mistakes, may be included by the applicant in the application documents on his own initiative prior to the registration of an invention, utility model or industrial design.
5. Amendments to the application documents for an invention, made by the applicant, shall be taken into account when publishing information about the application, if such changes are submitted to the federal executive authority for intellectual property within fifteen months from the date of filing the application.
Article 1381. Establishing the priority of an invention, utility model or industrial design
1. The priority of an invention, utility model or industrial design shall be stated by the date of filing of an application for an invention, utility model or industrial design to the federal executive authority for intellectual property.
2. The priority of an invention, utility model or industrial design can be stated by the date of receiving of additional materials, if they are arranged by the applicant as an independent application, which is filed before the expiration of a three-month time limit from the date when the applicant received the notification from the federal executive authority for intellectual property about impossibility to take into consideration the additional materials as they were recognized as changing the substance of the declared solution, and given that on the filing date of such independent application, the application which contains the mentioned additional materials, was not withdrawn and is not considered withdrawn.
3. The priority of an invention, utility model or industrial design may be stated by the filing date of an earlier application disclosing this invention, utility model or industrial design filed by the same applicant to the federal executive authority for intellectual property, given that the earlier application was not withdrawn, is not considered withdrawn and the state registration of the invention, utility model or industrial design was not carried out in the relevant registry on the filing date of the application where the priority is claimed, and at the same time an application for an invention where the priority is claimed is filed within twelve months from the filing date of the earlier application, and the application for a utility model or industrial design - within six months from the filing date of an earlier application.
Upon filing an application where the priority is claimed, the earlier application is considered withdrawn.
The priority cannot be stated by the filing date of an application where the earlier priority has already been sought.

4. The priority of an invention, utility model or industrial design for a divided application shall be stated by the filing date of the initial application filed by the same applicant to the federal executive authority for intellectual property disclosing this invention, utility model or industrial design, and in case there is a right to state an earlier priority of the initial application - by the date of this priority, given that, as of the filing date of the divided application, the initial application for an invention, utility model or industrial design was not withdrawn and is not considered withdrawn and the divided application was filed before the opportunity to file an objection to the decision to refuse to grant a patent on the initial application has been exhausted, or before the date of registration of the invention, utility model or industrial design in case a decision to issue a patent was made on the basis of the initial application.
5. The priority of an invention, utility model or industrial design may be determined on the basis of several previously filed applications or submitted additional materials thereto, subject to the conditions specified in clauses 2, 3 and 4 of this article and Article 1382 of the Civil Code of the Russian Federation, respectively.
Article 1382. Convention priority of an invention, utility model and industrial design
1. The priority of an invention, utility model or industrial design shall be stated by the filing date of the first application for an invention, utility model or industrial design in the member state of the Paris convention for the protection of industrial property (convention priority), subject to filing to the federal executive authority for intellectual property of an application for an invention or utility model within twelve months from the said date, and an application for an industrial design within six months from the said date. If, for reasons beyond the applicant's control, the application where the convention priority is claimed could not be filed within the specified time limit, such period of time may be extended by the federal executive authority for intellectual property, but not more than for two months.
2. An applicant willing to take advantage of the right for convention priority with respect to an application for an industrial design must notify accordingly the federal executive authority for intellectual property within two months from the date of filing of such application and provide a certified copy of the first application specified in clause 1 of this article within three months from the date of filing to the said federal authority of the application whereby the convention priority is sought.
If a certified copy of the first application is not submitted within the specified time limit, the priority right nevertheless may be recognized by the federal executive authority for intellectual property upon the applicant's request submitted to the said federal executive authority before the expiration of the specified time limit. The request shall be accepted given that the copy of the first application is requested by the applicant from patent office where the first application was filed within eight months from the date of filing of the first application to the said office and submitted to the federal executive authority for intellectual property within two months from the date of its receipt by the applicant.
3. An applicant willing to take advantage of the right for convention priority with respect to an application for an invention or utility model must notify the federal executive authority for intellectual property and provide a certified copy of the first application to that federal authority within sixteen months from the date of its filing to the patent office of the member state of the Paris convention for the protection of industrial property.
If no certified copy of the first application is submitted within the specified time limit, the priority right nevertheless may be recognized by the federal executive authority for intellectual property upon the applicant's request submitted to the said federal executive authority before the expiration of the specified time limit, given that the copy of the first application is requested by the applicant from patent office where the first application was filed within fourteen months from the date of filing of the first application to the said office and submitted to the federal executive authority for intellectual property within two months from the date of its receipt by the applicant.
The federal executive authority for intellectual property is entitled to require from the applicant the submitting of a Russian translation of the first application for an invention or utility model only in case the verification of the priority claim validity of an invention or utility model is related with establishing the patentability of the declared invention or utility model.
Article 1384. Formal examination of an application for an invention.
1. The formal examination is carried out with regard to an application for an invention received by the federal executive authority for intellectual property to verify the completeness of the documents specified in clause 2 of Article 1375 of the Civil Code of the Russian Federation, and its compliance with the established requirements.
2. The federal executive authority for intellectual property will immediately notify the applicant on a positive result of the formal examination of his application for an invention following the conclusion of the said examination.

3. If an application for an invention does not comply with the requirements for application documents, the federal executive authority for intellectual property will send a notice to the applicant asking him to submit amended or missing documents within three months from the date of sending of the said notice. If the applicant does not submit the requested documents within the prescribed time limit or does not submit a request for an extension of time, the application is considered withdrawn. This time limit can be extended by the said federal executive authority, but not more than for ten months.
4. If during the formal examination of an application for an invention it is found that the requirement of the unity of invention claimed in the application is violated (clause 1 of Article 1375 of the Civil Code of the Russian Federation), the federal executive authority for intellectual property shall ask the applicant to state, which of the claimed inventions shall be examined and, if needed, to amend the application documents, within three months from the date of sending the corresponding inquiry. The other inventions claimed in that application can be filed as divided applications. If the applicant does not communicate, which of the claimed inventions shall be examined and, if needed, does not submit the relevant documents within the required time limit, the first invention claimed in the application is the one that will be examined.
5. If during the formal examination of an application for an invention it is found that additional materials submitted by the applicant amend the application in substance, the requirements of third sub-paragraph of clause 6 of Article 1386 of the Civil Code of the Russian Federation shall apply.
Article 1387. Decision on the grant of a patent for an invention, on refusal of grant of a patent or on recognition an application as withdrawn.
1. If as a result of substantive examination of an application for an invention it is found that the claimed invention, which is presented in the invention claims proposed by the applicant, does not refer to the objects specified in clause 4 of Article 1349 of the Civil Code of the Russian Federation, meets the patentability criteria provided in Article 1350 of the Civil Code of the Russian Federation and the essence of the claimed invention in the application documents provided in sub-clauses 1-4 of clause 2 of Article 1375 of the Civil Code of the Russian Federation and as submitted to the application filing date, disclosed as complete as to implement the invention, the federal executive authority for intellectual property will decide to grant a patent for the invention. The decision will state the date the application for an invention was filed and the priority date of the invention.
If, during the substantive examination of an application for an invention it is found that the claimed invention, which is expressed in the invention claims proposed by the applicant, does not comply with at least one of the requirements or patentability criteria given in the first paragraph of this clause or the application documents specified in the first paragraph of this clause do not comply with the requirements laid down by this paragraph, the federal executive authority for intellectual property will refuse to grant a patent.
Before making the decision to refuse to grant a patent the federal executive authority for intellectual property sends to the applicant the notice on the results of checks for patentability of the claimed invention with the request for the applicant’s arguments in relation to the reasons given in the notice. The applicant's reply concerning these reasons must be submitted within six months from the date when the notice was sent.
2. An application for an invention is considered withdrawn under the provisions of this Chapter on the basis of a decision of the federal executive authority for intellectual property.
3. The decision of the federal executive authority for intellectual property on the grant of a patent for an invention, on refusal of the grant of a patent for an invention or on recognition the application for an invention as withdrawn may be legally disputed by an applicant by submitting an objection to the said federal executive authority within seven months from the date when the federal executive authority for intellectual property sent to the applicant the relevant decision or requested copies of the materials opposing the application and which are revealed in the decision on refusal of the grant of a patent, provided that the applicant has requested the the mentioned copies within three months from the date of sending the decision adopted on the application for an invention.
Article 1389. The restoration of missed time limits during the examination of an application for an invention
1. If an applicant misses the main time limit or an extended one for the filing of application documents or additional materials specified in the request of the federal executive authority for intellectual property (clause 4 of Article 1384 and clause 6 of Article 1386), the time limit for submitting a request for the substantive examination of the application for an invention (clause 1 of Article 1386) and the time limit for submitting an objection with the said federal executive authority (clause 3 of Article 1387) the mentioned time limits may be restored by the said federal executive authority, provided that the applicant presents the proof of good reasons for missing the time limit.
The time limits under clause 4 of Article 1384 and clause 1 and 6 of Article 1386 of the Civil Code of the

Russian Federation will be restored in accordance with the provisions of this Chapter on the basis of the decision of the federal executive authority for intellectual property to reverse its decision on declaring an application withdrawn and restoring the missed time limit.

2. A request for the restoration of a missed time limit may be submitted by an applicant within twelve months following the expiration of an established time limit. The request shall be submitted to the federal executive authority for intellectual property along with:

documents or additional materials, that support the restoration of the time limit or with a request for extending the time limit for submitting these documents or materials;

or a request for carrying out a substantive examination of the application for an invention;

or an appeal to the federal executive authority for intellectual property.

Article 1391. Examination of an application for an industrial design

1. A formal examination of the application for an industrial design received by the federal executive authority for intellectual property is carried out which includes checks on presence of the documents specified in clause 2 of Article 1377 of the Civil Code of the Russian Federation and its compliance with the established requirements.

If the result of the formal examination is positive, then a substantive examination of an application for an industrial design is carried out, which includes:

information search in relation to the claimed industrial design to determine the publicly available information, which shall be taken into account when examining the design patentability;

examination of the claimed industrial design for the compliance with the requirements under Article 1231.1, clause 4 of Article 1349 of the Civil Code of the Russian Federation, and the patentability criteria under the first paragraph of clause 1, clause 5 of Article 1352 of the Civil Code of the Russian Federation;

examination of the claimed industrial design for the compliance with the patentability criteria under the second paragraph of clause 1 of Article 1352 of the Civil Code of the Russian Federation.

An information search in relation to the objects specified in sub-clause 4 of clause 4 of Article 1349 of the Civil Code of the Russian Federation shall not be carried out, and the federal executive authority on intellectual property notifies the applicant about it.

2. If, as a result of the substantive examination of an application for an industrial design, it is found that the claimed industrial design represented on the reproductions of an external appearance of the article does not relate to the objects specified in Article 1231.1 or clause 4 of Article 1349 of the Civil Code of the Russian Federation and meets the patentability criteria under Article 1352 of the Civil Code of the Russian Federation, the federal executive authority for intellectual property makes a decision to grant a patent for an industrial design. The date of filing of the application for the industrial design and the priority date of the industrial design shall be specified in the decision.

If, during the process of substantive examination of an application for an industrial design, it is found that the claimed object does not meet at least one of the requirements or patentability criteria specified in paragraph one of this clause, the federal executive authority for intellectual property makes a decision to refuse the issuance of a patent.

3. When a formal examination of an application for an industrial design and a substantive examination of an application are carried out, the regulations specified in clauses 2-5 of Article 1384, clause 6 of Article 1386, clauses 2 and 3 of Article 1387, Articles 1388 and 1389 of the Civil Code of the Russian Federation are applied respectively.