



Promoting Intellectual
Property Rights in the
ASEAN Region

Session 1: Definition of Industrial Design

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Examination Center, IP Vietnam
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Elements of the definition

An industrial design can be defined as the appearance of a three dimensional or two dimensional product, or of a part of a product, that results from features of shape, contours, lines, colour, materials or other elements that form the design.

Elements of the definition:

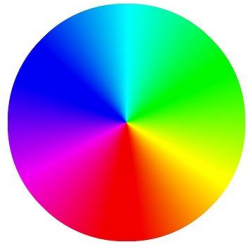
- ☐ Features of Appearance
- ☐ Embodiment in a product
- ☐ Products of industry or handicraft

DEFINITION OF INDUSTRIAL DESIGN

- q **FEATURES OF APPEARANCE**
- q **EMBODIMENT IN A PRODUCT**
- q **PRODUCTS OF INDUSTRY OR HANDICRAFT**

Features of appearance

An industrial design relates to the appearance or visible aspect of a product, or an article, that appeals to, and may be “judged by the eye”.



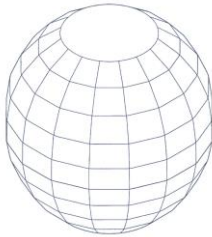
colours



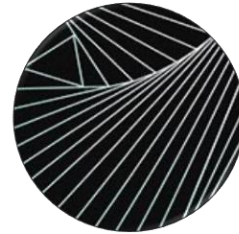
ornamentation



materials



shape



lines

Features of appearance - Words, letters and other characters

Words, letters and digits presented as abstract concepts, independently from an embodiment in a product, will not constitute the appearance of a product.

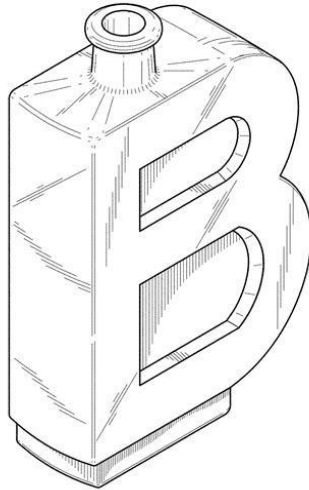
esential

Features of appearance - Words, letters and other characters

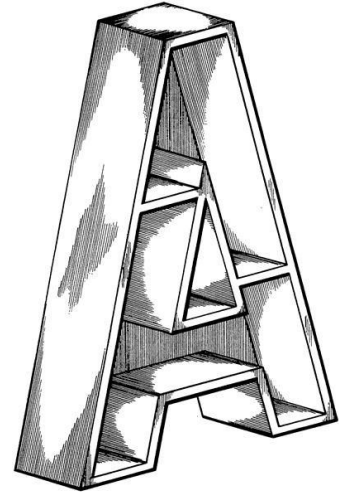
However, products may be shaped as letters or digits.



CN 304445947 - Candle



US D0859995 - Bottle



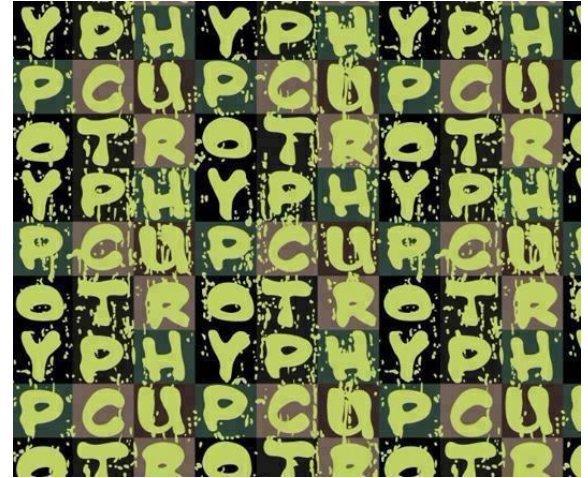
US D0330129 - Shelf

Features of appearance - Words, letters and other characters

The surface appearance of a product may consist of patterns of two-dimensional representations of words, numbers or other characters.



CN 303784047 - Fabric



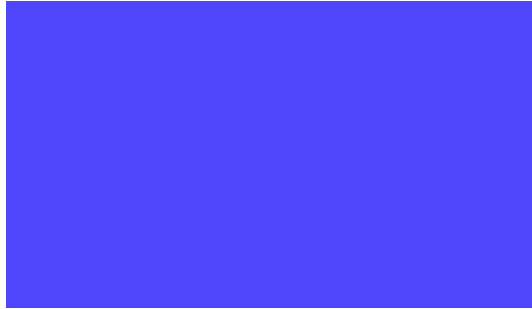
CN 302075523 - Fabric

Features of appearance - Colours

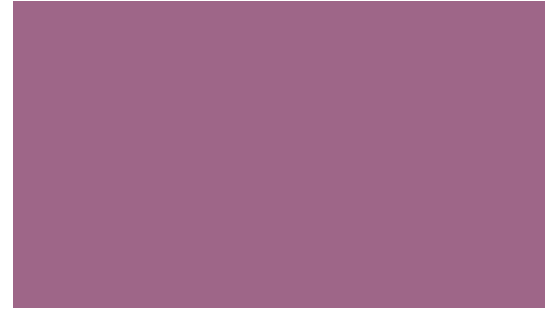
A colour presented or claimed as an abstract notion, independently from an embodiment in any shape or contour, cannot be accepted as the appearance of a product.



RGB: (96, 188, 108)



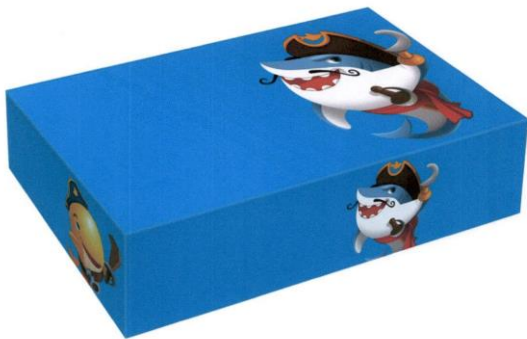
RGB: (79, 69, 250)



RGB: (158, 102, 136)

Features of appearance - Colours

However, industrial designs can and often do contain features of colour that, in combination with other features, compose the appearance of a product.



Features of appearance - Colours

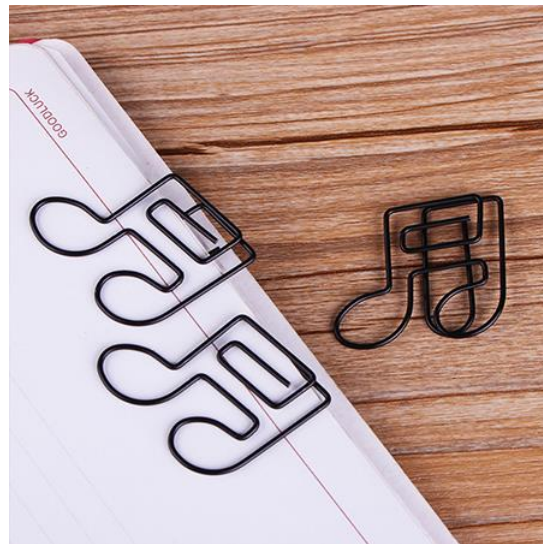


- ❖ A design may be registered with one or several colours that will be regarded as one of the claimed features.
- ❖ This applies to both three-dimensional and two-dimensional designs.
- ❖ However, under the laws of some ASEAN Member States colour cannot be claimed as a feature of industrial designs.

Features of appearance - Music and sounds

Music and sounds are not perceptible by the sense of sight and cannot provide a visible appearance to a physical product.

This does not exclude the possibility of giving products the shape of musical notes.



Features of appearance - Music and sounds

This does not exclude the possibility of claiming a design for surface decoration of products with the appearance of written musical notation.



Features of appearance - Photographs

A photograph may provide a product with a surface appearance that can be regarded as a design for that product.



Features of appearance - Photographs

Moreover, a photograph itself may be considered as the appearance of products such as postcards, papers, printed matters and similar articles (see Locarno Classification class 19-08).



Features of appearance - Architectural plans, blueprints, construction plans

Architectural plans, blueprints and construction plans for buildings, machines or other devices may be regarded as the appearance of a specific products indicated in the application as “printed matter” (see Locarno Classification class 19.08).



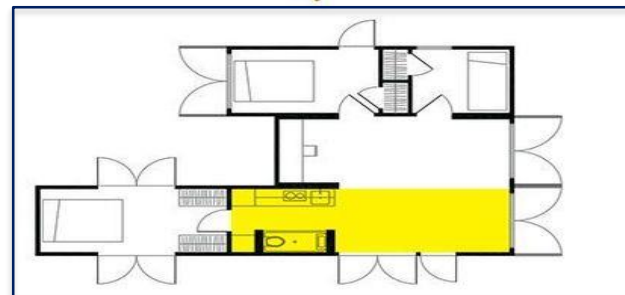
Features of appearance - Architectural plans, blueprints, construction plans

- ❖ Architectural plans, blueprints and construction plans for buildings, machines or other devices cannot be admitted as industrial designs of buildings, machines or other devices.
- ❖ Because the two-dimensional plans or prints do not render the appearance of the corresponding finished product.

Class: 25-03



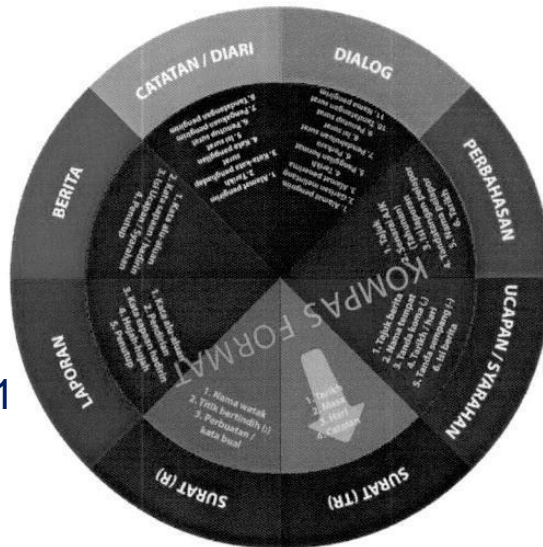
Class: 19-08



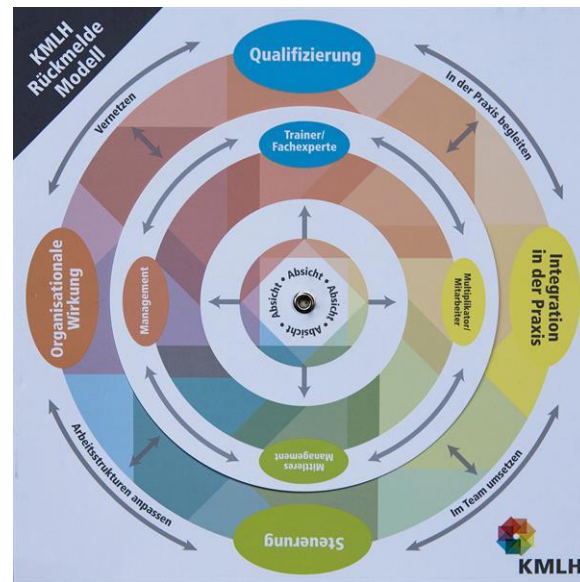
Features of appearance - Graphs, charts, maps and teaching materials

Printed teaching materials such as graphs, charts, tables and maps are products and their appearance can be regarded as those products' industrial design.

MY 12-244-0101-0001
Teaching material kit



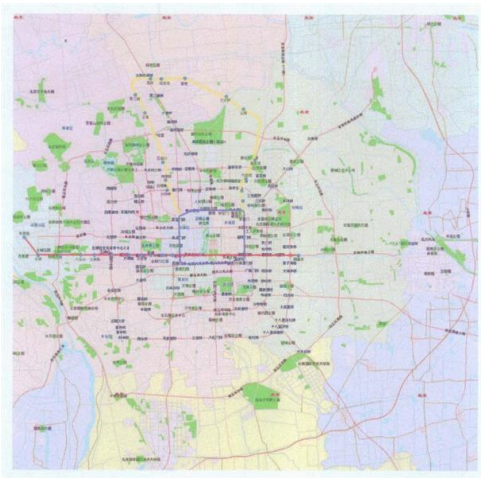
They can be admitted for Registration purposes where the product indication is “teaching materials” (see Locarno class 19-07).



EU 005609633-0001
Teaching materials

Features of appearance - Graphs, charts, maps and teaching materials

Graphs, charts, maps may also be applied to other products as surface patterns or other two-dimensional designs in the form of ornamentation.



CN 300911053
Handkerchief

Features of appearance - Computer screen displays, screen icons

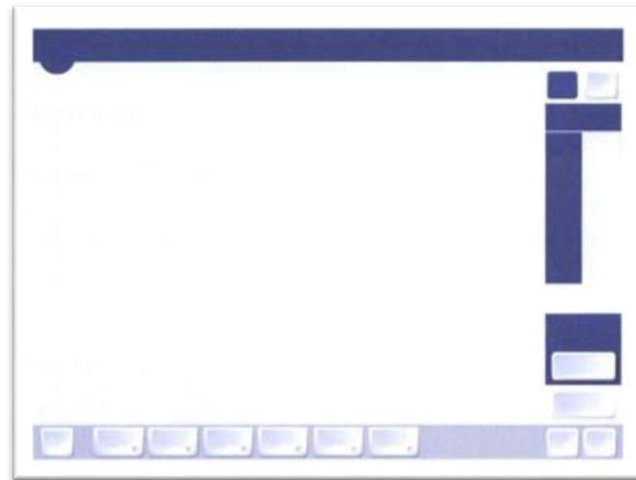
The design of the displays of screens of computers, portable devices and similar products, and designs of graphical user interfaces (GUIs) could be registered as industrial designs.



MY 12-1809-0505-0001



MY 13-677-0101-0001



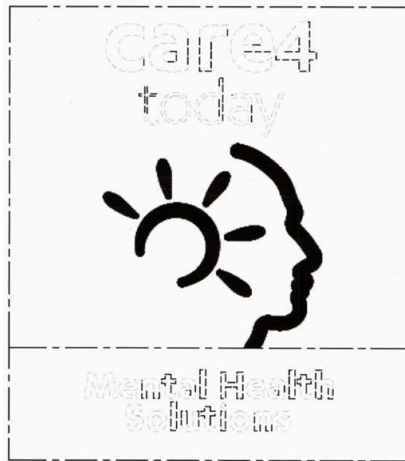
ID D0000033756-0001

Features of appearance - Computer screen displays, screen icons

Likewise, icons, sets of icons and other visually perceptible features of computer programs can be indicated as products that embody designs. (See Locarno class 14- 04).



MY 12-455-0306-0001



ID D0000044240-0001

However, screen displays and icons might not be accepted as industrial designs in certain countries, for example Vietnam.

In Vietnam, an industrial design must be the appearance of a product that can be circulated in the market independently.

DEFINITION OF INDUSTRIAL DESIGN

- q FEATURES OF APPEARANCE
- q **EMBODIMENT IN A PRODUCT**
- q PRODUCTS OF INDUSTRY OR HANDICRAFT

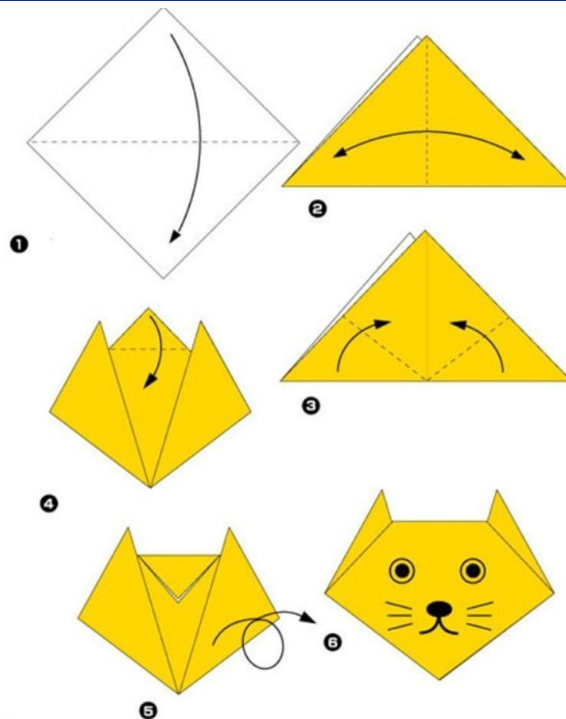
Embodiment in a product

- ❖ An industrial design must be embodied in an industrial product or handicraft article.
- ❖ The essential purpose of an industrial design is to give a unique appearance to a utilitarian or functional object.
- ❖ Matter that cannot be embodied or fixed in an object capable of being produced or manufactured in industry or handicraft cannot be registered as an industrial design.



Embodiment in a product - Concepts, principles

Integration	Function	Integral
	x^n	$\frac{1}{n+1} x^{n+1} + c, \quad n \neq -1$
	$\cos kx$	$\frac{1}{k} \sin kx + c$
	$\sin kx$	$-\frac{1}{k} \cos kx + c$
	e^{kx}	$\frac{1}{k} e^{kx} + c$
	$\frac{1}{x}$	$\ln x + c, \quad x \neq 0$
	$f'(x) + g'(x)$	$f(x) + g(x) + c$
	$f'(g(x)) g'(x)$	$f(g(x)) + c$
Area	area under a curve = $\int_a^b y \, dx, \quad y \geq 0$	
Vectors	$\begin{bmatrix} x \\ y \\ z \end{bmatrix} \cdot \begin{bmatrix} a \\ b \\ c \end{bmatrix} = xa + yb + zc$	



An industrial design may not consist of abstract concepts, mathematical formulae or ideas that cannot *perceptibly* be embodied in a product.

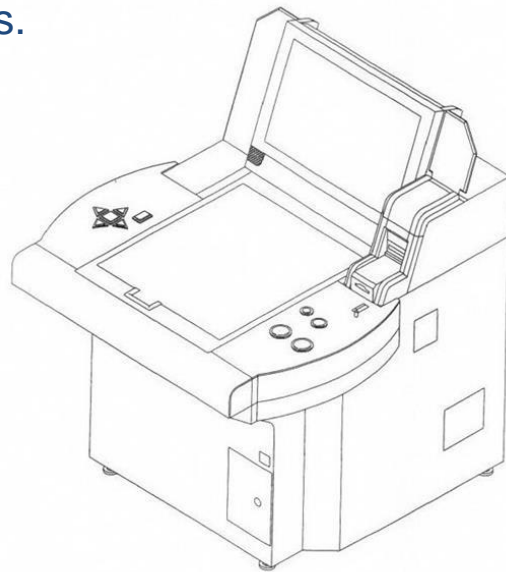
Sets of instructions or games are intangible concepts or ideas that cannot be embodied in a specific article or product.

Embodiment in a product - Concepts, principles

However, the utensils and physical accessories used to play a game or apply the instructions are products that may embody industrial designs.



CN 301247304 – Chess board

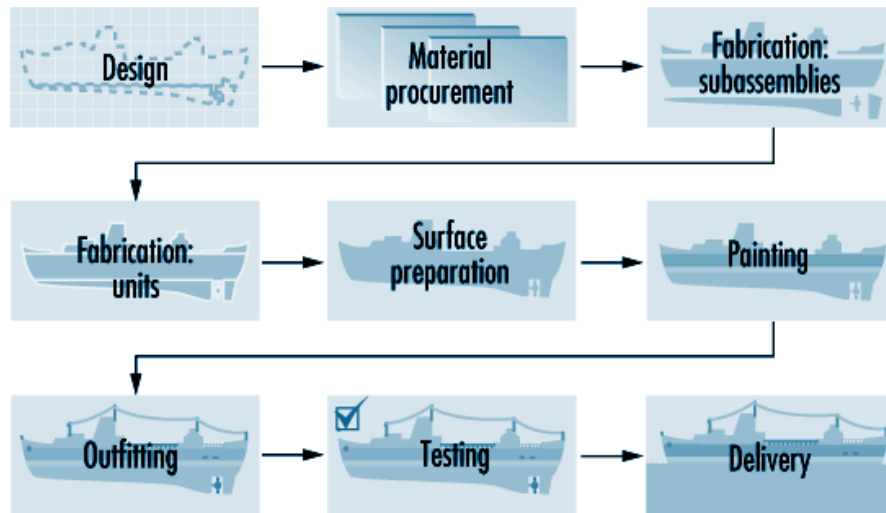


MY 07-1596-0102-0001 – Game device

Embodiment in a product - Methods, processes

Methods of construction and processes to obtain products, economic or technical results are essentially ideas and instructions addressed to human beings. They cannot as such give a visible appearance to a product and may therefore not constitute industrial designs.

HOW DROP SHIPPING WORKS



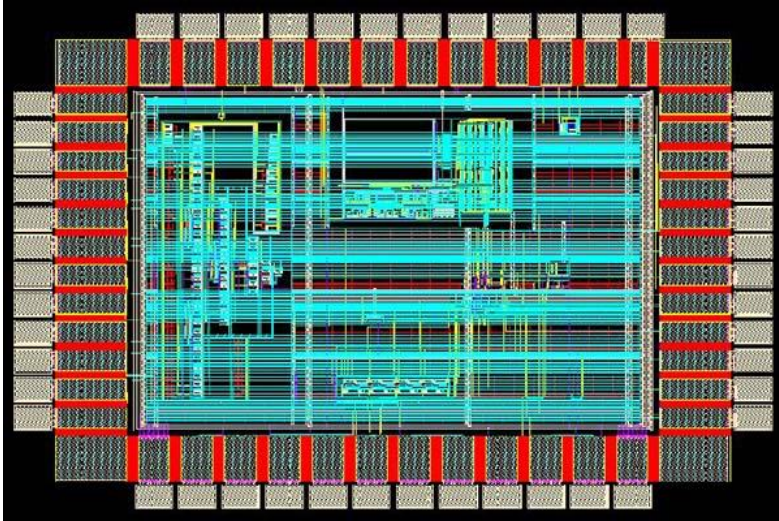
Embodiment in a product - Computer programs

- ❖ Computer programs are creations that cannot, as such, be visibly embodied in a physical article.
- ❖ This is the case despite the fact that they can be operated on physical devices (computers, telephones, etc.) and can be recorded in physical supports (memory chips, CD disks, etc.).
- ❖ As they cannot be visibly embodied as such in an industrial product they cannot constitute an industrial design.



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<link rel="stylesheet" href="http://localhost/..."  
<script type="text/javascript" src="http://localhost/javascript/..."  
<script type="text/javascript">  
  (function(){  
    onLoaded: function(request) {  
      if (request.name == 'log_error') return;  
      log.trace("Ajax.Request: " + (request.name || request.url.substr(0, 30)  
        )) + "...");  
    },  
    onComplete: function(request) {  
      if (request.name == 'log_error') return;  
      if (request.name == 'log_error') return;  
    },  
    onException: function(request, e) {  
      if (request.name == 'log_error') return;  
      log.fatal(request.url + ': ' + e.name + ' | ' + e.message + ' | ' +  
        .stack);  
    }  
  })();  
}
```

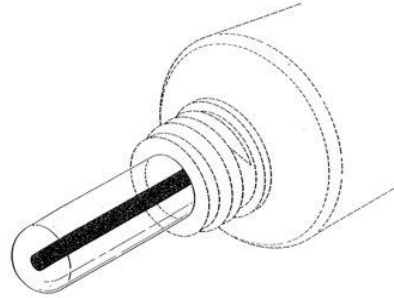
Embodiment in a product - Layout-designs



- ❖ Layout designs of integrated circuits are a sui generis intellectual property object of protection.
- ❖ Layout designs may be embodied in physical products, namely integrated circuits or electronic 'chips'.
- ❖ However, a layout design cannot be perceived by the naked eye during normal use of an electronic circuit and therefore would not meet the visibility requirement.
- ❖ Layout designs of integrated circuits are normally protected under special legal statutes and not under industrial design law.

Embodiment in a product - Powders and fluids

- ❖ Products that consist of substances in the form of powder, fluid, paste or pellets do not have a defined shape or precise contours.
- ❖ The appearance of those products in their usual state for use by final consumers cannot be predetermined.
- ❖ Therefore, their shape cannot be represented in a precise manner.
- ❖ That type of products cannot embody an industrial design.



Embodiment in a product - Parts of products

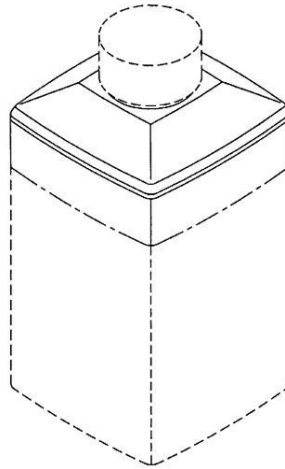
A design may apply to only a part of a product, as opposed to the whole product.



Embodiment in a product - Parts of products

The part that embodies the design may be:

- an integral, inseparable part of a larger article, or
- a separable piece that may be replaced as a spare part or an accessory of a complex product.



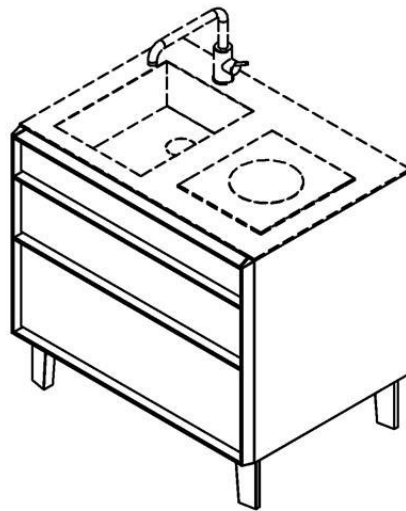
Embodiment in a product - Parts of products

- ❖ The law in some AMSs may confine the protection for designs of a part of an article to cases where the part may be made and sold separately.
- ❖ In these cases, a design would not be recognized if it was embodied in a part or a feature that is inseparable from, or integral with, a larger product.

Embodiment in a product - Partial designs

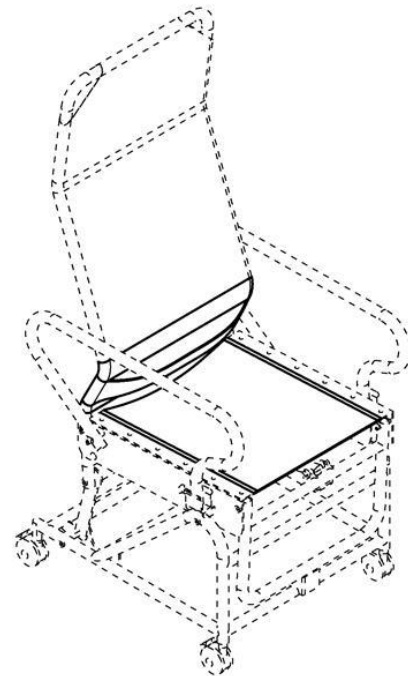
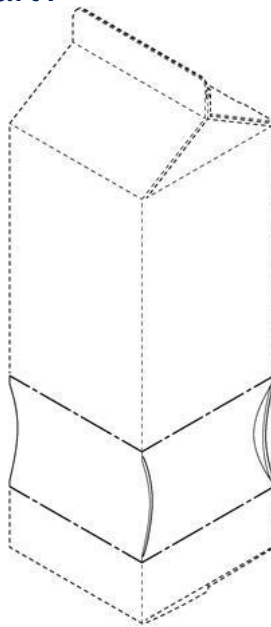
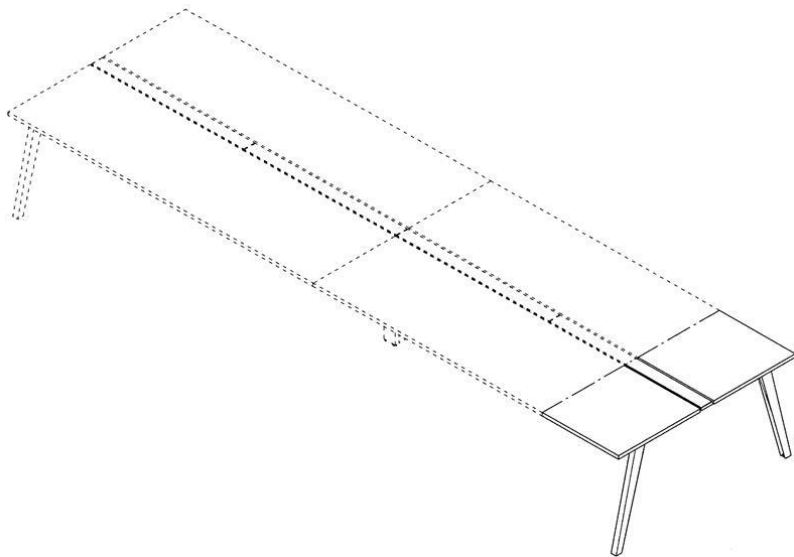
The representation of the design in the application for registration and any description or clarifying notes should make clear:

- what part or feature of the product is being claimed as the design and
- what is the product to which that part belongs.



Embodiment in a product - Partial designs

Partial design - Inseparable or separable part?

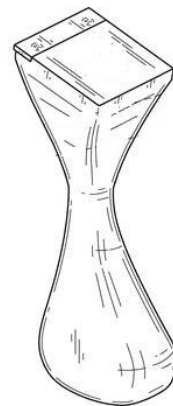
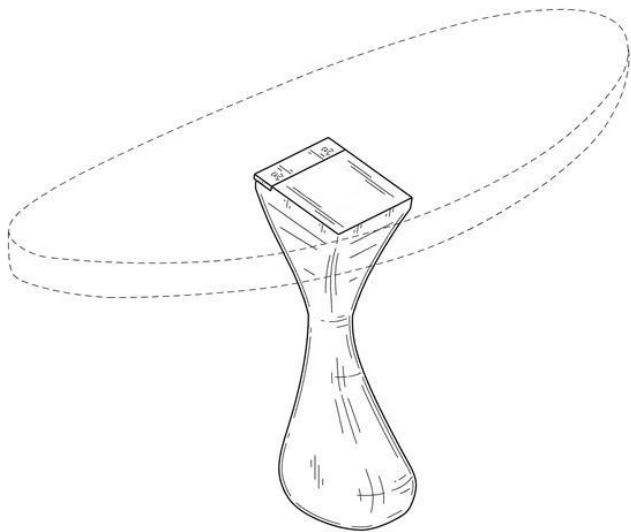


Embodiment in a product - Partial designs

Partial design - Inseparable or separable part?

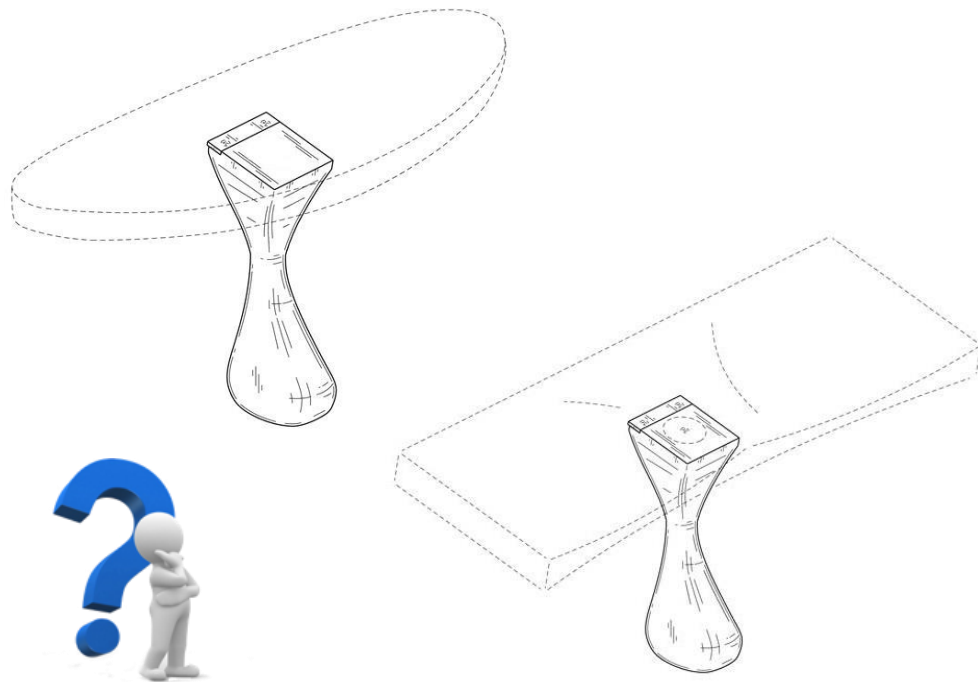


Embodiment in a product - Scope of protection of a part



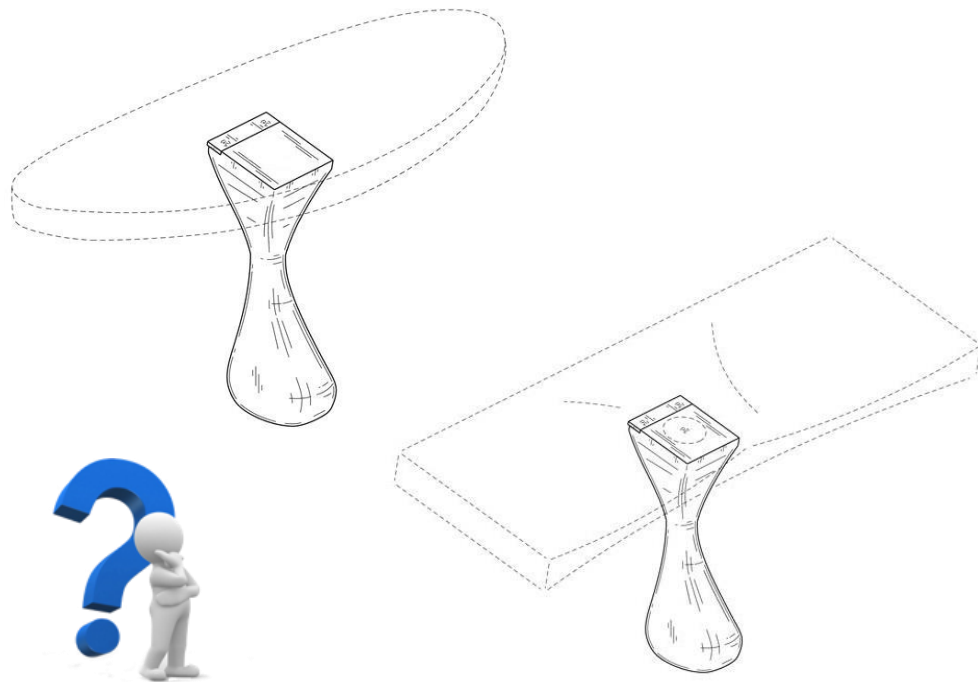
Embodiment in a product - Scope of protection of a part

- ❖ National law may restrict the protection for a part or feature by making such protection dependent on the overall appearance of the larger product.
- ❖ The examining authority (administrative or judicial) may apply a standard of 'overall impression on an informed user' to decide a case of conflict involving features or parts that are inseparable from a larger product, rather than focus on the claimed part or feature.



Embodiment in a product - Scope of protection of a part

- ❖ In this regard, if the products in conflict do not produce the same overall impression on the average informed consumer, the authority may find non-anticipation or noninfringement, notwithstanding the fact that a similar part or feature is included in both products.



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Products of industry or handicraft - Industrial application

The design must be able to serve as a model for the manufacture of an industrial or handicraft product.



This means that the product that embodies the design must be capable of being **reproduced in substantial quantities** in such a way that each of the individual items produced has an **appearance identical to the original model**.

Products of industry or handicraft - Living and natural products

Living products and organisms are not regarded as industrial or handicraft products and their shapes cannot be registered as industrial designs for those products.

Natural and agricultural products produced by man as well as natural products found in nature do not have shapes that may be expected to be consistently identical for each individual product. Their appearance could not remain true to a predetermined design.



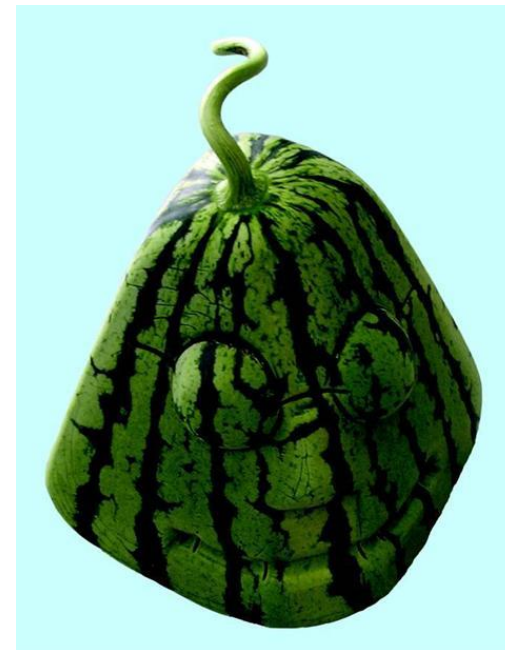
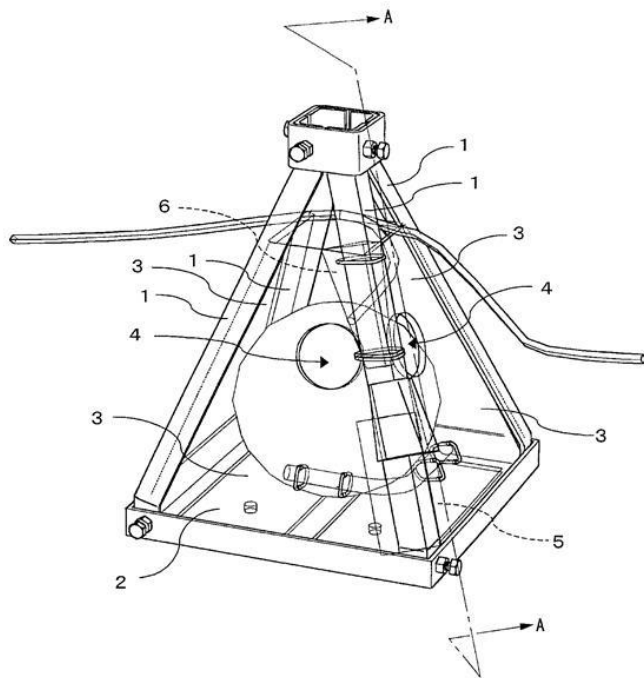


Products of industry or handicraft - Living and natural products





Products of industry or handicraft - Living and natural products





Products of industry or handicraft - Living and natural products





Products of industry or handicraft - Living and natural products

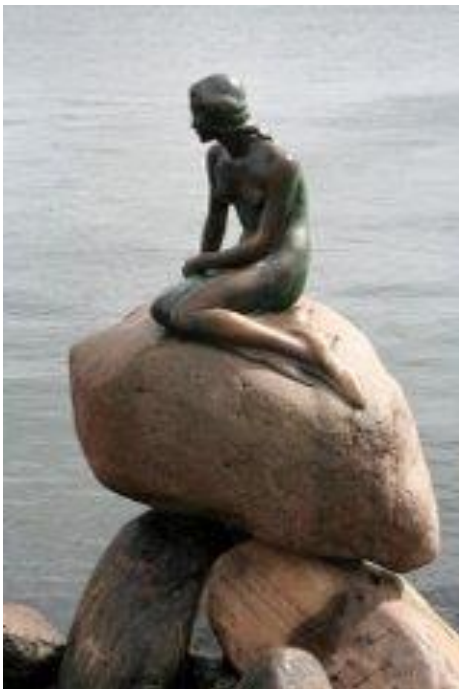
- ❖ The manner of production of natural products is not industrial or handicraft.
- ❖ Although certain natural and agricultural products may be mass-produced by processes akin to industrial operations, their production is not regarded as ‘industrial’ for this purpose.
- ❖ Consequently, natural fruits, flowers or animals cannot be regarded as products of industry to be indicated as products that embody an industrial design.

Products of industry or handicraft - Living and natural products

The appearance and shapes of creatures of nature may validly *inspire* designs for other products, including artificial fruits, items of decoration and surface patterns for textile products, printed products and other two or three-dimensional objects.



Products of industry or handicraft - Works of art



Products that are produced as singular creations or that are cast on substrates such as a canvas, marble, clay or metal, and conceived as individual works of art, will not be regarded as industrial designs. For this purpose, it is irrelevant that the work may be reproduced in multiple copies by lithography, printing or reduced models.



Products of industry or handicraft - Works of art

However, a work of art can be, and often is, the basis for an industrial design.



Goods may have as their design a work of art that is printed on the product.



A design may be shaped, moulded on a work of art.





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Q & A



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