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Newsletter

NOVEMBER 2023
JAPAN

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TOPIC

Revision of Design Examination Guidelines for Relaxation of Application of Exceptions to Lack of Novelty: Designs Published after Publication date

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Intellectual Property Strategy Headquarters of Cabinet Office Holds "Study Group on Intellectual Property Rights in the Era of AI"

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Revision of Trademark Examination Guidelines in Accordance with Relaxed Requirements for Registration of Trademarks Containing the Names of Other Persons

他人の氏名を含む商標の登録要件緩和に伴う商標審査基準の改訂について

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公開日以降に公開された意匠について

In last month's newsletter, we briefly explained about a relaxation of the application procedures for the exception to lack of novelty of designs, which is under consideration by the JPO. In particular, we looked at the recognition of a published design described in a "proving document" (hereinafter referred to as a "proving document design").

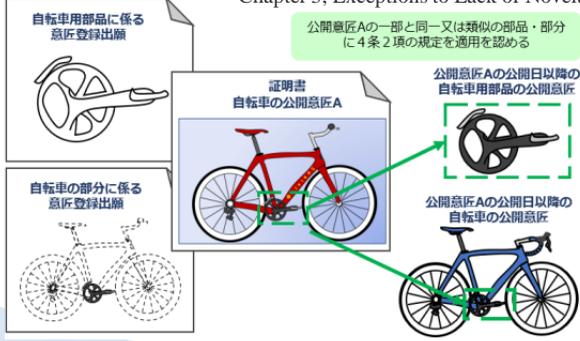
In this issue, we will in particular provide a brief explanation of the determination of the application of this provision to designs published after the publication date of the "proving document design", which is one of the matters under consideration that is described in the JPO handouts.

According to the revision, 'if there are two or more acts of making the same or similar design publicly known, it is sufficient to submit the "proving document" for whichever of the two or more acts took place on the earliest date.' However, it should be noted that in a case where a "proving document" is not submitted for a separate published design B after the submission of the "proving document" of a published design A, and said design B is then determined to be dissimilar to design A, design B will not be eligible for the exception to lack of novelty.

Examples of cases where this provision is applicable

【事例 1】

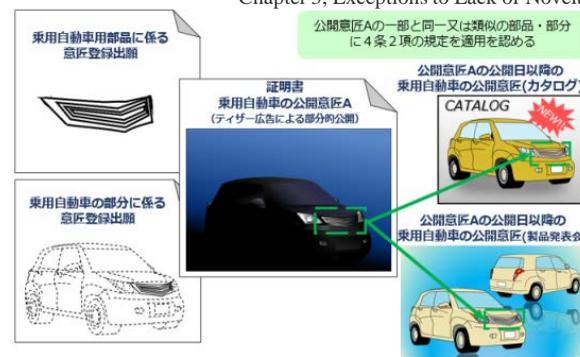
From the JPO "Revised Standards of Examination for Designs (Draft) - Part III, Chapter 3, Exceptions to Lack of Novelty



Since the parts/components are similar for the proving document design A for the entire bicycle (center) and for the design B of the parts/components of the bicycle (green box on the right), this provision applies and the design application for the parts/components (green box on the left) can be registered.

【事例 2】

From the JPO "Revised Standards of Examination for Designs (Draft) - Part III, Chapter 3, Exceptions to Lack of Novelty

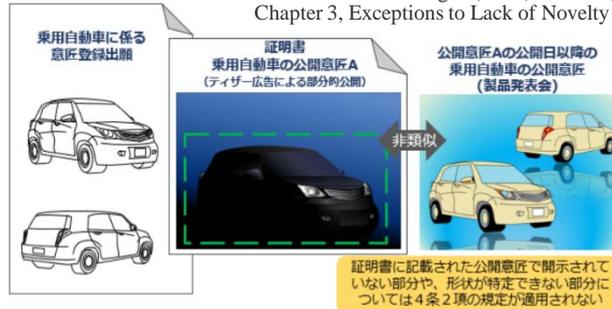


Since the parts are similar for the proving document design A for the parts of the automobile (center) and for the design B of the automobile (green box on the right), this provision applies and the design application for the parts/components (green box on the left) can be registered.

Examples where this provision is not applicable

【事例 3】

From the JPO "Revised Standards of Examination for Designs (Draft) - Part III, Chapter 3, Exceptions to Lack of Novelty



Since the overall shape of the automobile is not identifiable in the proving document design A of the automobile (center), the design B of the automobile as a whole (box on the right) is considered dissimilar to the design A, and thus this provision does not apply. The design application for the automobile as a whole (box on the left) is rejected based on Design B.

先月号のニュースレターでは、特許庁にて検討されている、意匠の新規性喪失の例外規定の適用手続の緩和について、特に、「『証明する書面』に記載された公開意匠（以降『証明書面意匠』という）の認定」について簡単に説明した。

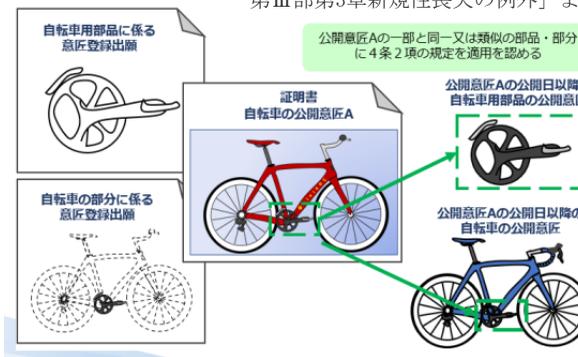
本号では、同じく特許庁配布資料に記載されている検討内容の中で、特に、「『証明書面意匠』の公開日以降に公開された意匠についての本規定の適用の判断」について、簡単に説明する。

今回の改正により、「同一又は類似の意匠について、二以上の公知行為があったときは、その「証明する書面」の提出は、当該二以上の行為のうち、最先の日に行われたものの一の行為についてすれば足りる」とされる。ところが、公開意匠Aについて「証明する書面」の提出後に、公開した別の公開意匠Bについて「証明する書面」を提出しなかった場合において、意匠Bが意匠Aと類似しないと判断された場合、意匠Bは新規性喪失の例外規定の適用を受けることができなくなるので注意が必要だ。

本規定の適用が認められる例

【事例 1】

特許庁「改訂意匠審査基準（案）
第三部第3章新規性喪失の例外」より



自転車全体の証明書面意匠A(中央)と、自転車の部分/部品の意匠B(右側緑枠内)は当該部分/部品が類似するため、本規定が適用され、部分/部品の意匠出願(左側枠内)は登録される。

【事例2】

特許庁「改訂意匠審査基準（案）
第Ⅲ部第3章新規性喪失の例外」より



自動車の部分の証明書面意匠A(中央)と、自動車の意匠Bの部分(右側緑枠内)は、当該部分が類似するため、本規定が適用され、部分/部品の意匠出願(左側枠内)は登録され得る。

本規定の適用が認められない例

【事例3】

特許庁「改訂意匠審査基準（案）
第Ⅲ部第3章新規性喪失の例外」より



自動車の証明書面意匠A(中央)は、自動車の全体形状が特定できないため、自動車の全体意匠B(右側枠内)は、意匠Aと非類似と判断され、本規定が適用されない。自動車の全体の意匠出願(左側枠内)は、意匠Bにより拒絶される。

Intellectual Property Strategy Headquarters of Cabinet Office Holds "Study Group on Intellectual Property Rights in the Era of AI"

内閣府 知的財産戦略推進事務局「AI時代の知的財産権検討会」開催

On October 4, 2023, the Intellectual Property Strategy Headquarters of the Cabinet Office held the first meeting of the Study Group on Intellectual Property Rights in the Era of AI. The main purpose of this study group is to explore responses to new issues related to the relationship between rapidly advancing generative AI technology and intellectual property rights.

In recent years, with the development of AI technology, creative activities using generative AI have been increasing. As a result, the environment surrounding the relationship between AI and intellectual property rights has begun to change, requiring new legal responses and rule-making. In particular, wide-ranging issues including how to return profits to creators, technological measures, and how to protect inventions made by AI have been highlighted.

Focusing on the above-mentioned issues, the study group plans to examine specific measures to address them, while incorporating the opinions of relevant ministries and agencies as well as business operators. It is also expected that discussions will take into account the latest technological trends and the international situation, while referring to the report of the Committee to Review Intellectual Property Regarding New Data-related Assets in March 2017.

As for the specific schedule for the study, from October to December 2023, hearings with related businesses as well as ministries and agencies are scheduled

and many discussions are to be held. The study group will continue even after January 2024.

Advances in AI technology are having a major impact on various areas of society and industry. How to review the state of intellectual property rights in the midst of such changes is an important issue for the future development of Japan's economy and culture. We hope that the outcome of this study group will make a significant contribution to the formation and direction of new intellectual property rights.

2023年10月4日、内閣府 知的財産戦略推進事務局は「AI時代の知的財産権検討会 第1回」を開催した。この検討会の主目的は、急速に進展している生成AI技術と知的財産権の関係に関する新たな課題の対応を探ることである。

近年、AI技術の発展に伴い、生成AIを用いた創作活動が増えてきている。これにより、AIと知的財産権の関係を取り巻く環境も変わり始めており、新しい法的対応やルール作りが求められている。特に、クリエイターへの収益還元の在り方や、技術的な対応策、そしてAIによる発明の保護方法など、多岐にわたる課題が浮き彫りとなっている。

この検討会では、上記のような課題を中心に、関係省庁や事業者からの意見を取り入れながら、具体的な対応方策を検討する予定である。また、2017年3月の「新たな情報財検討委員会」の報告を参考にしつつ、最新の技術動向や国際的な状況を踏まえた議論が進められることが期待されている。

具体的な検討スケジュールとしては、2023年10月から12月にかけて、関係事業者や関係省庁からのヒアリングを行い、議論を重ねる予定である。そして、2024年1月以降も、検討会は継続される。

AI技術の進展は、社会や産業のさまざまな分野で大きな影響を及ぼしている。このような変化の中で、知的財産権の在り方をどのように見直すかは、今後の日本の経済や文化の発展にとって重要な課題である。この検討会の成果が、新しい知的財産権の形成や方向性の確立に大きく寄与することを期待したい。

Revision of Trademark Examination Guidelines in Accordance with Relaxed Requirements for Registration of Trademarks Containing the Names of Other Persons

他人の氏名を含む商標の登録要件緩和に伴う商標審査基準の改訂について

On October 6, 2023, the Trademark Examination Standards Working Group of the Trademark System Subcommittee of the Intellectual Property Committee of the Industrial Structure Council discussed the revision of trademark examination standards in connection with the relaxation of registration requirements for trademarks that include the name of another person. A draft of the examination criteria was presented regarding the registration requirement which was added as an express provision through the trademark law revision of 2023 (hereinafter "the revision").

** Although the effective date is to be specified by a Cabinet Order by June 14, 2024, said Cabinet Order has not been promulgated at the time of writing this report.*

Until now, a trademark containing the name of another person in its composition could not be registered without the consent of that person from the standpoint of protecting the personal interests of that person (Article 4(1)(viii) of the Trademark Law prior to the revision).

The revision clearly adds the following requirements (1) and (2). In the case of a trademark containing the name of another person that does not meet the requirement of being well-known, the fulfillment of the government ordinance requirement will provide a path to registration without the consent of the said other person.

Requirement (1): Requirement of being well-known

"A name that is widely recognized among consumers in the field of goods or services in which the trademark is used."

Requirement (2): Government ordinance requirement (reasonable circumstances on the part of the applicant)

"The name of the other person and the applicant in the trademark registration must be properly related" and "the applicant in the trademark registration must not be seeking to register the trademark for a wrongful purpose."

- This requirement is intended to reject abusive applications such as those filed in bad faith by persons unrelated to the name contained in the applied-for trademark. Therefore, "must be properly related" means that there is no sufficient relationship if the applicant simply thought of the name of another person, etc. In particular, there must be a certain relationship between the name and the applicant, such as the applicant's own name, the name of the founder or representative, or the name of a store that has been in continuous use since before the application was filed.

** Currently, the draft of the Cabinet Order requirements is open for public comment.*

For information on the examination flow, please refer to the material published by the JPO.

Reference URL:

https://www.jpo.go.jp/resources/shingikai/sangyo-kouzou/shousai/shohyo_wg/document/33-shiryu/03.pdf

[Reference]

https://www.jpo.go.jp/resources/shingikai/sangyo-kouzou/shousai/shohyo_wg/33-gijiyoushi.html

2023年10月6日、産業構造審議会知的財産分科会商標制度小委員会、商標審査基準ワーキンググループにおいて、他人の氏名を含む商標の登録要件緩和に伴う商標審査基準の改訂について検討がなされ、令和5年法改正（以下「本改正」）により明文で追加された登録要件に関して、審査基準案が示された。

*施行日は令和6年6月14日までの政令で定める日とされていますが、本稿執筆時点では当該政令は公布されていません。

これまで、構成中に他人の氏名を含む商標は、他人の人格的利益の保護の観点から、当該他人の承諾がない限り登録は認められなかった（改正前 商標法第4条第1項第8号）。

本改正では新たに下記2つの要件が明文で追加されたが、周知性要件を満たさない他人の氏名を含む商標の場合、政令要件を満たすことで、当該他人の承諾不要で登録に至る道筋が示されることになった。

要件（1）：周知性の要件

「商標の使用をする商品又は役務の分野において需要者の間に広く認識されている氏名」

要件（2）：政令要件（出願人側の正当事情）

「他人の氏名と商標登録出願人との間に相当の関連性があること」及び「商標登録出願人が不正の目的で商標登録を受けようとするものでないこと」

>>>この要件は出願商標に含まれる氏名とは無関係な者による悪意の出願等の濫用的な出願を拒絶する趣旨である。そのため「相当の関連性があること」は、出願人が単に思いついた他人の氏名というほどの関連性では足りず、具体的には、出願人の自己氏名、創業者や代表者の氏名、出願前から継続的に使用

している店名等であるというほどに、当該氏名と出願人の間に一定の関係性が必要と考えられる。

*現在、政令要件案がパブリックコメントに付されている。

審査のフローについては、特許庁にて公表されている資料が参考になる。

参考URL：

https://www.jpo.go.jp/resources/shingikai/sangyo-kouzou/shousai/shohyo_wg/document/33-shiryuu/03.pdf

[参照]

https://www.jpo.go.jp/resources/shingikai/sangyo-kouzou/shousai/shohyo_wg/33-gijiyoushi.html



Please contact us if you have any comments or require any information.

Please acknowledge that the purpose of our column is to provide general information on the field of intellectual property, and that the description here does not represent our legal opinion on a specific theme.

Below are links to further IP information.

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We have an official Facebook page where we post helpful information gathered from our offices in Osaka, Tokyo, Hiroshima, and Nagoya. On this page, we publish a variety of information, such as the latest developments in IP law and practice in various countries around the world, exciting IP-related news, and what's going on with us and around us. Please find us on Facebook!

大阪・東京・広島・名古屋に拠点を持つ国際特許事務所のFacebookページです。知財制度等の最新情勢や、知財ニュース、また、所内の雰囲気や、複数拠点近辺の近況などを発信していきます!ぜひ高覧ください。

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Our X (Twitter) account 弊所公式X(旧Twitter)

To help you become familiar with our activities and projects, we post a variety of information in addition to IP-related news on X (Twitter). If you have an X (Twitter) account, please follow us! Your "likes" and "reposts" are also appreciated!

弊所の活動や取組みをより身近に感じて頂けるよう、知財情報に限らず様々な情報を発信しております。X(旧Twitter)アカウントをお持ちの方は、お気軽にフォローください。いいねやRPも大歓迎です。

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