

NEWSLETTER

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Intellectual Property Group

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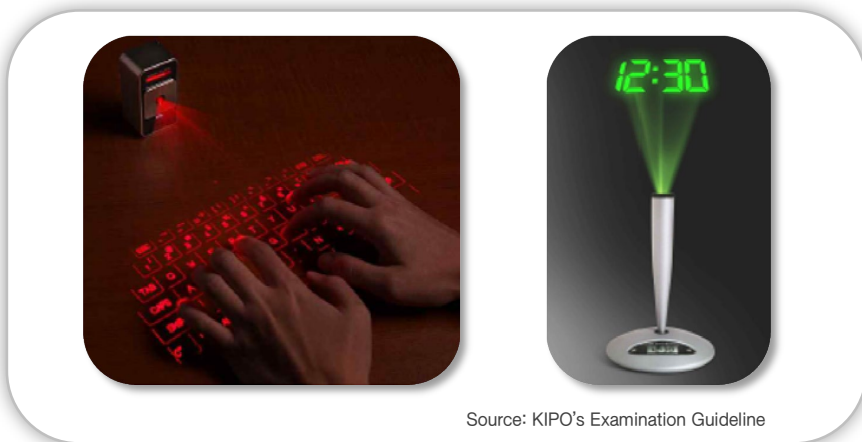
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Amendment to the Design Protection Act seeking to protect GI designs is approved by the National Assembly

On March 24, 2021, amendment to the Design Protection Act seeking to protect graphic image (GI) designs (the **Amendment**) was passed during a plenary session of the National Assembly of Korea, meaning that the Amendment will go into effect six months after promulgation. The Amendment is expected to offer strengthened protection for emerging technologies such as projections, holographs, virtual/augmented reality and graphic user interface, and companies planning to use such technologies would want to check if there are related design registrations or applications.

1. Background of the Amendment

Under the current Design Protection Act, 'design' is defined as "a shape, pattern, or color **of a product (or an article of manufacture)**, or a combination thereof, which creates a sense of aesthetics through visual perception" (Article 2, Paragraph 1). This definition created a requirement that designs protected under the Design Protection Act be tied to an 'article of manufacture.' Designs that are not tied directly to an article of manufacture, such as holograms, therefore could not claim protection under this statute, and the examination guideline of the Korean Intellectual Property Office (KIPO) also limited protection to designs applied on articles of manufacture, not allowing registrations of designs not embodied on articles of manufacture such as the designs shown below.



Source: KIPO's Examination Guideline

This difficulty in securing design rights for emerging technologies, compared to protections offered in other countries such as the United States, Europe and Japan, was considered a weak point in Korean companies' global competitiveness and the growth of relevant industries. With this background, the Amendment was proposed to strengthen protection of emerging technologies in which designs are not necessarily tied to an article of manufacture.

2. Key Changes in the Amendment

Key changes to the Design Protection Act include (i) adding GI to the definition of design; and (ii) defining GI as a figure or symbol expressed through digital technology or an electronic method that is used in, or whose function is displayed through, the operation of a device.

These changes extend protection to various useful technologies such as hologram technologies that previously could not be registered as designs.

Since the Amendment will come into effect six months after its official promulgation and become applicable to design registration applications filed after the Amendment's effective date, companies developing or planning to develop relevant technologies should start preparing for their applications in advance.

It is expected that the KIPO and the Patent Court will actively apply and interpret the Amendment to nurture the purpose behind the Amendment, not only during the application and registration processes but with respect to enforcement after registration, and companies are advised to prepare for these changes by expanding their portfolios of GI design registrations as much as possible.

In this regard, we also note that similarities of GI designs with existing designs in terms of novelty and creativity, and the scope of protection afforded to existing designs embodied on an article of manufacture, will be key issues in seeking registration of GI designs. Since the KIPO has not yet established specific review standards, it would be important to plan ahead, with the help of legal experts in design protection.

Lee & Ko's Intellectual Property Practice Group is composed of experienced experts in design protection and has pioneered in establishing precedents in the field of intellectual property law. If you have any questions about design protection-related issues, please contact our Intellectual Property Practice Group.

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