

# Protecting IPs from 3D Printers



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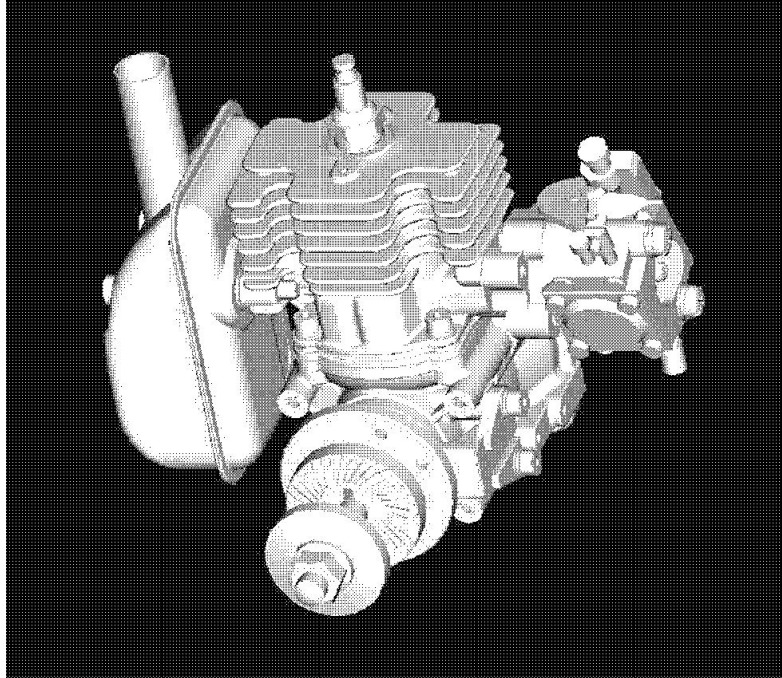
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Legal Problem 1:

Easy to copy 3D products using 3D printers

-- How to exclude the copies? –

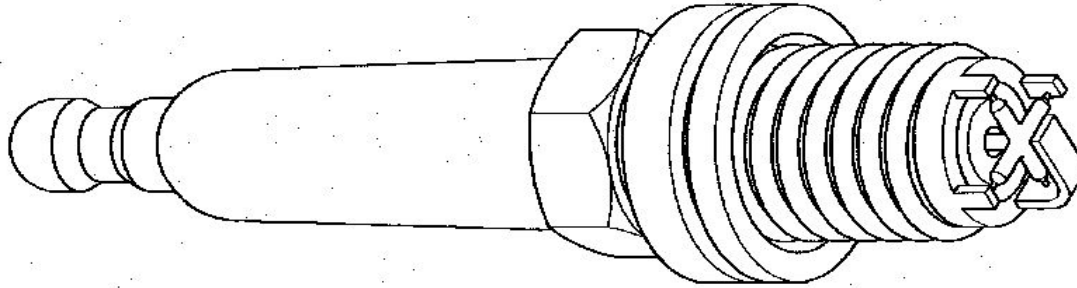
Design Registration excludes 3D Copy of a component that is **invisible** in normal use as well.



Engine , Registration No. 1257361

**What about EP and other countries?**

# There are many design registrations of components that are **invisible** in normal use



Spark Plug, Registration No. 1348,267

*Decision Ne-1119*, "Designs are protected so that **purchasers** ...do not confuse products with others." (The IP High Court, 2003)

**Good** for protecting from 3D printers, because inventive step is not required

# However, drawing requirements are strict in Japan

- **Six views** of the entire product must be included.
  - Even for GUIs, entire product must be drawn by dash-lines.
  - Perspective or sectional view is also required, if it is necessary for understanding **depth of recess**.
  - Transparent portion must be identified (Art 6.7).
- ⇒ Priority from Community Designs is often denied.
- ⇒ We suggest **deferring the registrations** (publications) of Community Designs.

# Publication of design registration may help illegal copies using 3D printers!

We suggest keeping the registered design **unpublished**.

It can be kept unpublished up to 3 years. (Art 14)

- For demanding a seizure and desist, the design registration must be shown. (Art. 37.3)
- Negligence, which is a required element for damages, is not presumed. (Art. 40)  
(If published and infringed, negligence is presumed.)

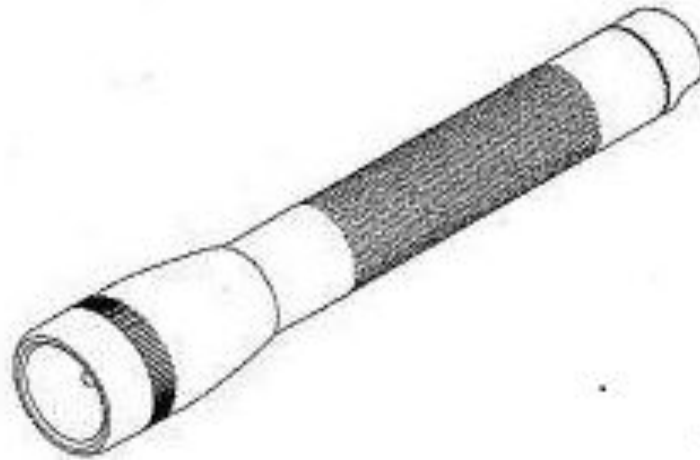
# Design protection extends 20 years from the **registration.**

Protection lasts longer, if the registration is deferred,  
but how to defer it?

- Filing with multiple designs and selecting a single design after receiving an office action?  
(Only a single shape can be protected per application.)
- Other methods? Trademarks?

# Does 3D Trademark registration exclude 3D Copy?

Yes -- 3D shapes could be protected under the TM law as well.



*Mag Instrument Inc.* (IP High Court, 2007)

“It acquired distinctiveness by use” *Mag Instrument*  
Generally, secondary meaning is required for product shapes.



# Does “making” 3D TM infringe TM right?

Yes – Making or importing an article that shows a registered TM for the purpose of using the TM for a designated goods or services is **deemed** to infringe TM right (TM Law, Art. 37.8)

However, secondary meaning is generally required.

# Does copyright exclude 3D Copy?

Subject of copyright in art **had been:**

- Fine Art (Paintings, Sculptures, etc.)  
Protected under Berne Convention
- × Applied Art (Industrial products)  
Protected in IT, DE, and FR  
Not protected in CN

# Applied Art can be the subject now

The IP High Court admitted copyright protection on a chair.

*Tripp Trapp Chair* (IP High Ct., April, 2015)



“Applied art can be protected under the copyright law, if it was created through a personal identity.” *Tripp Trapp Chair*

## Legal Problem 2:

Easy to distribute and modify 3D Data of infringing products

How to deal with this?

# 3D printer suites for personal/experimental use that is beyond IP protection.

⇒ **Must pursue distributors of 3D Data**

Ex.

The design registrant has an exclusive right to practice the registered design and its similar designs **for a business**. (Design Art 23)

A subject of the copyright can be copied for **personal use** or home use. (Copyright Law, Art. 30.1.1) (provided that the subject was property obtained without encumbrance.)

Patent right does **not** extend to the **experiment or research** of the invention. (Pat. Art 69, being incorporated into design law)  
⇒ Can be practiced for designing around the invention/design right.

# Indirect infringements?

Defined in Design, Patent, Utility Model and Trademark Laws in Japan.

	Japan (ex. Design Law)	US (35USC)
Inducement	<b>Not protected</b> under the IP laws.	Protected (271(b))
Contributory infringement	Making, assigning or offering to sell a product that is used exclusively for making an article, the design of which is same or similar with the registered design (is deemed to infringe registered design.) (Art. 38.1)  Where the product is <b>a program</b> , “assigning” includes providing it through an electric telecommunication line. (Art. 38.1)	offers to sell ... imports a <b>component</b> of a patented machine,..., or a <b>material</b> or <b>apparatus</b> for use in practicing a patented process (271(c))

Is 3D Data a program?

It causes a printer to operate.

Small program accompanied by data is a program.

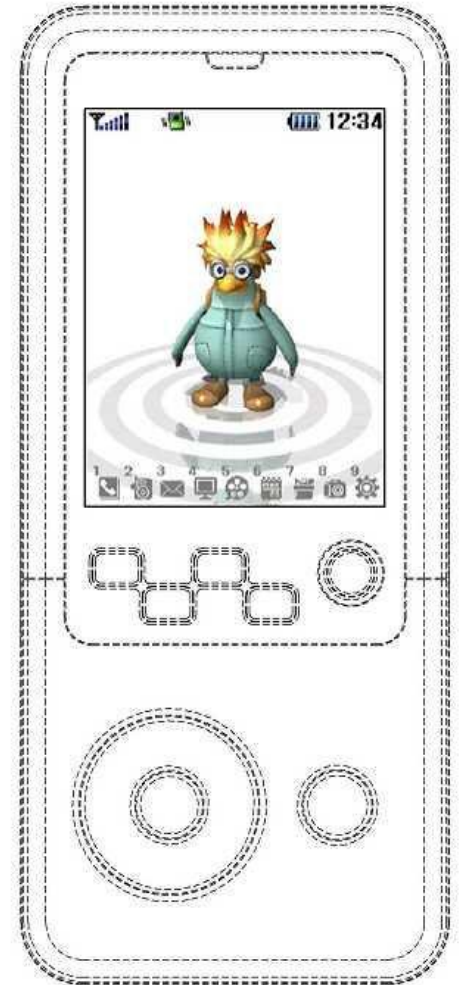
⇒ Can be protected

# Does Design Law protect 3D Data as GUI design ?

3D Data will be shown on a screen as GUI  
for printing.

Design law protects operational screen  
images (GUI) that is **originally equipped  
to the products.** (Design Law Art 2.2)

LG ELECTRONICS  
Registration No.: D1329940



# GUI of application software will also be protected in Japan

The Japan Patent Office plans to revise Art 2.2 for protecting GUI of **application software** this year.

However, it also requires **dissimilarities in non-functional features**.

When only the shape of the printing subject is new, it is questionable.

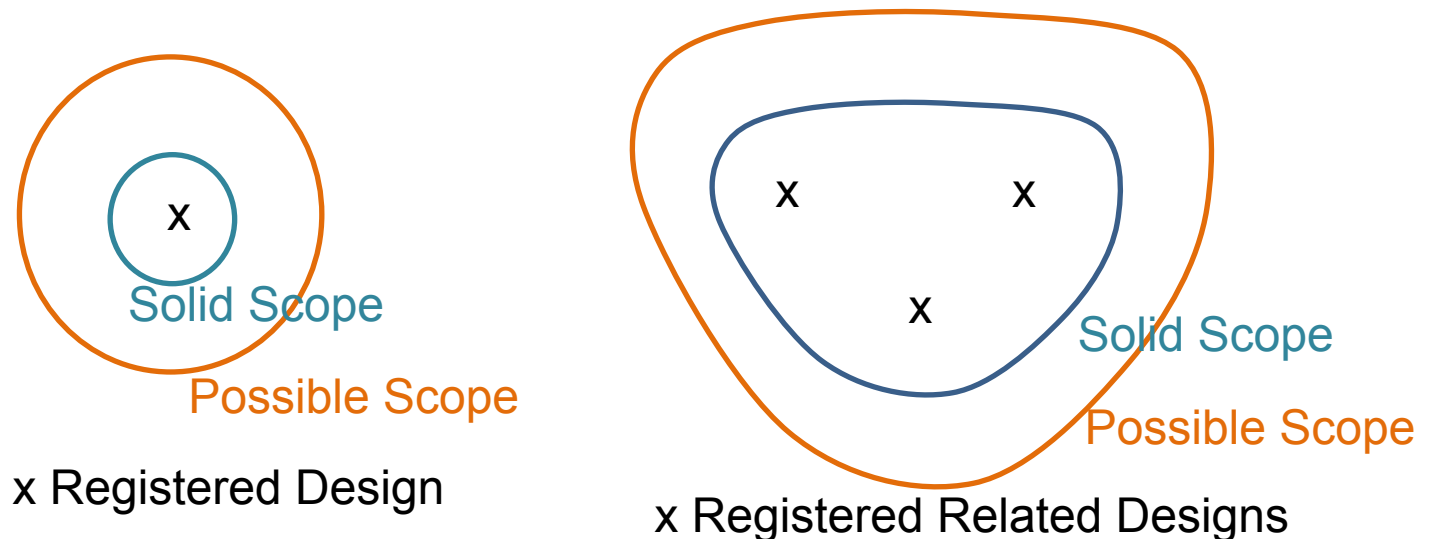


# It is also easy to modify 3D Data for designing around a design right!

We suggest applying for “related designs.”

Similar designs can be field as related designs. (Art 10)

- It proves similarities and solid scope of protection.



# Protecting 3D Data as a direct infringement of a “program” patent?

Program per se is a statutory subject matter of the JP Patent Law.  
⇒ Selling the program over the internet infringes the program claim.

Ex. A program which makes a computer execute procedure A, procedure B, procedure C, ... (Exam. Guideline)

However, even if 3D Data includes some codes, definition of the shape is mere data contents, which are not considered for the inventive step. (Exam. Guideline)

Questionable for the lack of inventive step

# How about copyright?

--- Is 3D Data a “copy” of the product? ---

3D Data has all information of the product shape.  
It is likely considered as a “copy,” if scanned from the product.



**3D Data can be excluded by copyright**, provided that the 3D product is the subject of copyright.