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Procedures for a priority claim under the Paris Convention, etc.

1. A person seeking to claim priority in relation to an application for design registration pursuant to the provisions of Article 4, paragraph D, item (1) of the Paris Convention must submit to the Commissioner of the Japan Patent Office, at the time of filing of the application for design registration, a document with statements of: the fact that the person is seeking the priority claim; the name of a member country of the Paris Convention Union or member state of the World Trade Organization or the name of a specified country with which the person has filed the earliest application or the application deemed to be the earliest application pursuant to the provisions of Article 4, paragraph C, item (4) of the Paris Convention or the application found to be the earliest application pursuant to the provisions of Article 4, paragraph A, item (2) of the Paris Convention (If the earliest application is a regional application or an international application and if there are one or more names of intergovernmental organization offices or agencies or designated countries, it should be sufficient to state one name of the country among the designated countries (Formality Examination Manual 28.01).); and the filing date of the application (Patent Act 43(1), Patent Act 43-2, Patent Act 43-3 [m.m.] Design Act 15(1)). This is called a “declaration of priority” in the Paris Convention. No other procedures may be required for the declaration of priority at the time of filing the application for design registration (Paris Convention 4(D)(4)). Moreover, if the person states this fact and the required information in the application for design registration, the person may omit the submission of the document provided for in Article 43, paragraph (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act (Patent Regulation 27-4(3) [m.m.] Design Regulation 19(3)).
2. A person that has made a priority claim in accordance with Item 1 above must submit to the Commissioner of the Japan Patent Office, within three months from the date of filing of the application for design registration (within three months from the date of international publication regarding an international application for design registration), a document stating the filing date of the application and bearing the certification of a member country of the Paris Convention Union or member state of the World Trade Organization or a specified country with which the person has filed the earliest application or the application deemed to be the earliest application pursuant to the provisions of Article 4, paragraph C, item (4) of the Paris Convention or the application found to be the earliest application pursuant to the provisions of Article 4, paragraph A, item (2) of the Paris Convention, as well as certified copies of the application and drawings, or any bulletin or certificate giving

the same type of details published by the government of the Union, member state or specified country (certified as correct by the authority which received the earliest application, in which the authority includes intergovernmental authorities; submission provided by electronic or magnetic means is included.) or copies thereof (hereinafter referred to as “priority certificate, etc.”). (Patent Act 43(2), Patent Act 43-2(2), Patent Act 43-3(3) [m.m.] Design Act 15(1), Patent Act 43(2) [m.m.] Design Act 60-10(2), Design Regulation 12-2). Submission of a “priority certificate, etc.” should be accompanied by a translation (Paris Convention 4(D)(3), Patent Regulation 2(2) [m.m.] Design Regulation 19(1)). Moreover, the “priority certificate, etc.” are deemed to be submitted in a case where it is permissible for electronic or magnetic means to be used for exchanging the details given in the certificate with the government of a member country of the Paris Convention Union or an international organization involved in industrial property rights (Patent Regulation 27-3-3(2)(i) [m.m.] Design Regulation 19(3)), if the person claiming priority under the provisions of Article 43, paragraph (1) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act submits to the Commissioner of the Japan Patent Office a document stating the filing number of the application for design registration and other matters as necessary for exchanging the matters (Patent Regulation 27-3-3(3) [m.m.] Design Regulation 19(3)), within three months from the filing date of the application for design registration (within three months from the date of international publication regarding an international application for design registration), it would be considered that a “priority certificate, etc.” have been submitted. (Patent Act 43(5) [m.m.] Design Act 15(1)).

3. A person that has made a priority claim in accordance with Item 1 above must submit to the Commissioner of the Japan Patent Office a document stating the number of: the earliest application or the application deemed to be the earliest application pursuant to the provisions of Article 4, paragraph C, item (4) of the Paris Convention or the application found to be the earliest application pursuant to the provisions of Article 4, paragraph A, item (2) of the Paris Convention, together with the “priority certificate, etc.”. However, if it is not possible for the person to learn that filing number prior to the submission of the “priority certificate, etc.”, a document specifying the reason therefor must be submitted in lieu of the document specifying the filing number, and the document specifying the filing number must be submitted without delay once the person comes to know that number (Paris Convention 4(D)(5), Patent Act 43(3) [m.m.] Design Act 15(1), 60-10(2)).
4. If a “priority certificate, etc.” or a document provided for in Article 43, paragraph (5) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act and Article 60-10, paragraph (2) of the Design Act has not been submitted within the period provided for in Item 2 above, the Commissioner of the Japan Patent Office must notify the person that has made the priority claim to that effect (Patent Act 43(6) [m.m.] Design Act 15(1), 60-10(2)). A person that has received such notice may submit a “priority

certificate, etc.” or a document provided for in Article 43, paragraph (5) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act and Article 60-10, paragraph (2) of the Design Act only within two months from the date of the notice (Patent Act 43(7) [m.m.] Design Act 15(1), 60-10(2), Patent Regulation 27-3-3(5) [m.m.] Design Regulation 19(3)).

5. If a person that has received a notice referred to in Article 43, paragraph (6) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act and Article 60-10, paragraph (2) of the Design Act is unable to submit a “priority certificate, etc.” or a document provided for in Article 43, paragraph (5) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act and Article 60-10, paragraph (2) of the Design Act within two months from the date when the person received the notice due to reasons beyond the person’s control, the person may submit the “priority certificate, etc.” or the document provided for in Article 43, paragraph (5) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act and Article 60-10, paragraph (2) of the Design Act within the period below (Patent Act 43(8) [m.m.] Design Act 15(1), 60-10(2)).
 - a. Within one month (in the case of an overseas resident, within two months) from the date on which the person obtained a “priority certificate, etc.” if the person was unable to submit a priority certificate due to an administrative delay in issuance of the document by the government that should issue the document (Patent Regulation 27-3-3(6)(i) [m.m.] Design Regulation 19(3), Formality Examination Manual 28.21).
 - b. In a case other than those mentioned in Item a. above, within 14 days (in the case of an overseas resident, within two months) from the date on which the reason for which the person was unable to submit the “priority certificate, etc.” or the document provided for in Article 43, paragraph (5) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act and Article 60-10, paragraph (2) of the Design Act ceases to exist, but not later than six months after the lapse of the period (Patent Regulation 27-3-3(6)(ii) [m.m.] Design Regulation 19(3)).
6. If a person that has made a priority claim fails to submit a “priority certificate, etc.” or a document provided for in Article 43, paragraph (5) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act and Article 60-10, paragraph (2) of the Design Act within the period provided for in Item 2 above, the priority claim is forfeited (Paris Convention 4(D)(4), Patent Act 43(4) [m.m.] Design Act 15(1), 60-10(2)). However, if the “priority certificate, etc.” or the document provided for in Article 43, paragraph (5) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act and Article 60-10, paragraph (2) of the Design Act is submitted within the period provided for in Items 4 or 5 above, the provisions of Article 43, paragraph (4) of the Patent Act as applied mutatis mutandis pursuant to Article 15,

paragraph (1) of the Design Act and Article 60-10, paragraph (2) of the Design Act do not apply (Patent Act 43(9) [m.m.] Design Act 15(1), 60-10(2)).