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Application of the provisions on exception to lack of novelty to a new application for design registration resulting from conversion of its original application

1. An applicant may enjoy the application of the provisions under Article 4, paragraph (2) of the Design Act (Exception to Lack of Novelty) to a new application for design registration resulting from conversion of its original application in the following cases:

(1) The applicant has: filed, at the time of filing the new application for design registration, a document stating to the effect that the applicant is seeking to apply the provisions on exception to the lack of novelty for the original patent application or the original application for utility model registration; and also filed a certificate within 30 days from the filing date of the original document. (For a remedy applicable after the lapse of a time limit due to reasons beyond the control of an applicant filing the document, see Item 04.04 of the Formality Examination Manual.)

(2) The applicant has: filed only a document stating to the effect that the applicant is seeking to apply the provisions on exception to the lack of novelty for the original patent application or the original application for utility model registration; and also undertaken the conversion of the original application within 30 days from the filing date of the original application.

In this case, concerning the new application for design registration, the applicant must file a certificate within 30 days from the filing date of the original application. (For a remedy applicable after the lapse of a time limit due to reasons beyond the control of an applicant filing the document, see Item 04.04 of the Formality Examination Manual.)

Moreover, even if the applicant does not take the necessary procedures to apply the exception to the lack of novelty to the original application, the applicant should be treated as eligible to apply the provisions referred to in Article 4, paragraph (2) of the Design Act in the same manner as above when the applicant has: converted the application within one year from the publication date of the design; and filed, at the time of filing the new application for design registration, a document stating to the effect that the applicant is seeking to apply the exception to the lack of novelty; and filed a certificate within 30 days from the filing date of the original application.

Furthermore, this approach is also applied to cases of a divisional application.