

42. 47**Case where the application of the provisions of Article 4, paragraph (2) of the Design Act is sought based on a pattern which has been published prior to the filing of an application for design registration**

As it is prescribed in the provisions of Article 4, paragraph (2) of the Design Act, the content which was published must be a design only ^(Note). Therefore, if a creator of a design discloses only a pattern as a part of the design created by the creator, the pattern does not fall under the design which, contrary to the wish of the person with the right to register the design or due to that person's actions, came to fall under the provisions of Article 3, paragraph (1), item (i) or (ii) of the Design Act.

(Note) As the provisions of the exception to lack of novelty of a design aim to provide a remedy to "a person with the right to register the design," the application of the provisions also to the case where only a pattern, i.e., an unregistrable design, of the design in question is published is not allowable in light of the original purpose sought in the Design Act for protecting created designs.