

## Relevant Provisions

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### Design Act

Article 2 (1) The term "design" in this Act means the shape, patterns, or colors, or any combination of them (hereinafter referred to as the "shape or equivalent features"), of an article (including a part of an article; the same applies hereinafter); the shape or equivalent features of a building (including a part of a building; the same applies hereinafter); or a graphic image (limited to one used in the operation of a device or displayed as a result of the device performing its function, and including a part of a graphic image; hereinafter the same applies excluding paragraph (2) of the following Article, Article 37, paragraph (2), Article 38, items (vii) and (viii), Article 44-3, paragraph (2), item (vi) and Article 55, paragraph (2), item (vi)), which is aesthetically pleasing in its visual presentation.

(2) The term "working" as used in this Act with respect to a design means the following acts:

- (i) manufacturing, using, transferring, leasing, exporting, or importing (including an act of a person in a foreign country having another person bring an article embodying the design from the foreign country into Japan; the same applies hereinafter), or offering to transfer or lease (including displaying for the purpose of transferring or leasing; the same applies hereinafter) an article embodying the design;
- (ii) constructing, using, transferring, or leasing, or offering to transfer or lease a building embodying the design;
- (iii) acts falling under any of the following sub-items performed in connection with the graphic image embodying the design (including a computer program or anything equivalent (refers to a computer program or anything equivalent provided in Article 2, paragraph (4) of the Patent Act (Act No.121 of 1959); the same applies hereinafter) that has a function to display the graphic image; hereinafter the same applies in this item):
  - (a) creating or using the graphic image embodying the design, or providing or offering to provide it through a telecommunications line (this includes displaying it in order to provide it; the same applies hereinafter);
  - (b) transferring, leasing, exporting or importing, or offering to transfer or lease a recording medium on which the graphic image embodying the design has been recorded or a device that incorporates the graphic image embodying the design (hereinafter referred to as a "recording medium or device holding a graphic image").

(Paragraph (3) omitted)

Article 3 (1) A creator of a design that is industrially applicable may have a design registration made for the design, except for the following designs:

- (i) designs that were publicly known in Japan or a foreign country, prior to the filing of the application for design registration;
- (ii) designs that were contained in a distributed publication, or designs that were made publicly available through a telecommunications line in Japan or a foreign country, prior to the filing of the application for design registration; or
- (iii) designs similar to those prescribed in the preceding two items.

- (2) If, prior to the filing of the application for design registration, a person ordinarily skilled in the art of the design would have been able to easily create the design based on a shape or equivalent features or graphic images that were publicly known, contained in a distributed publication, or made available to the public through a telecommunications line in Japan or a foreign country, a person may not have a design registration made for that design (except for designs prescribed in any of the items of the preceding paragraph), notwithstanding the preceding paragraph.

Article 3-2 If a design in an application for design registration is identical or similar to part of a design depicted in the application and drawing, photograph, model, or specimen attached to the application of another application for design registration which has been filed prior to the date of filing of the application and published after the filing of the application in the design gazette pursuant to Article 20, paragraph (3) or Article 66, paragraph (3) (hereinafter referred to as the "earlier application for design registration" in this Article), a design registration may not be made for that design, notwithstanding paragraph (1) of the preceding Article; provided, however, that this does not apply if the applicant of the application and the applicant of the earlier application for design registration are the same person and the application was filed before the date when the design gazette in which the earlier application for design registration was published pursuant to Article 20, paragraph (3) (except for the design gazette in which the matters listed in Article 20, paragraph (3), item (iv) were published pursuant to Article 20, paragraph (4)) was issued.

Article 4 (1) In the case of a design which has fallen under item (i) or (ii) of Article 3(1) against the will of the person having the right to obtain a design registration, such a design shall be deemed not to have fallen under item (i) or (ii) of Article 3(1) for the purposes of Article 3(1) and (2) for any design in an application for design registration which has been filed by the said person within one year from the date on which the design first fell under either of those items.

(2) In the case of a design which has fallen under item (i) or (ii) of Article 3(1) as a result of an act of the person having the right to obtain a design registration (excluding those which have fallen under item (i) or (ii) of Article 3(1) by being published in a gazette relating to an invention, utility model, design or trademark), the preceding paragraph shall also apply for the purposes of Article 3(1) and (2) to any design in an application for design registration which has been filed by the said person within one year from the date on which the design first fell under either of those items.

(3) Any person seeking the application of the preceding paragraph shall submit to the Commissioner of the Patent Office, at the time of filing of the application for design registration, a document stating thereof and, within thirty days from the date of filing of the application for design registration, a document proving the fact that the design which has otherwise fallen under item (i) or (ii) of Article 3(1) is a design to which the preceding paragraph (hereinafter referred to as a "certificate" in this Article and Article 60-7) may be applicable; provided, however, that if two or more actions in regard to any identical or similar designs performed by a person with the right to register the design who caused such designs to fall under the provisions of Article 3, paragraph (1), item (i) or (ii), it would be sufficient to submit a certificate

proving the action which had been performed at the earliest time among those two or more actions.

- (4) Notwithstanding the preceding paragraph, where, due to reasons beyond the control of a person who submits a certificate, the person is unable to submit the certificate within the time limit as provided in the said paragraph, the person may submit to the Commissioner of the Patent Office the certificate within 14 days (where overseas resident, within two months) from the date on which the reasons ceased to be applicable, but not later than six months following the expiration of the said time limit.

Article 5 Notwithstanding the provisions of Article 3, the following designs may not have a design registration made:

- (i) a design that may damage public order or morals;
- (ii) a design that risks giving rise to confusion with an article, building, or graphic image connected with another person's business; or
- (iii) a design consisting solely of shapes that are essential to ensure the functioning of an article or consisting solely of shapes that are essential to the usage of a building, or a design consisting solely of indications that are essential to the usage of the graphic image.

Article 9 (1) If two or more applications for design registration have been filed for identical or similar designs on different dates, only the applicant who filed the application for design registration on the earliest date may have a design registration made for the design.

- (2) If two or more applications for design registration have been filed for identical or similar designs on the same day, only one applicant designated through consultation among the applicants who filed the applications may have a design registration made for the design. If the consultation produces no result or cannot be held, none of the applicants may have a design registration made for the design.
- (3) If an application for design registration has been abandoned, withdrawn, or dismissed, or if the examiner's decision or the trial or appeal decision rejecting an application for design registration has become final and binding, the application for design registration, for the purpose of applying the preceding two paragraphs, is deemed not to have been filed from the beginning; provided, however, that this does not apply to the case if the examiner's decision or the trial or appeal decision to reject the application for design registration has become final and binding on the basis that the second sentence of the preceding paragraph is applicable to that application for design registration.
- (4) In the case referred to in paragraph (2), the Commissioner of the Japan Patent Office must order the applicants to have consultation referred to in paragraph (2) and to notify its results, by specifying a reasonable period of time.
- (5) If no notification under the preceding paragraph is made within the period specified pursuant to that paragraph, the Commissioner of the Japan Patent Office may deem that no agreement under paragraph (2) has been reached.

Ordinance for Enforcement of the Design Act

Form No. 2 [Notes]

- (39) Where it is unclear that the purpose of use and the state of the article, building or graphic image, only from the description of the column of the "article to the

design”, an explanation which can help in understanding the article, building, or graphic image, such as the purpose of use or the state of use of the article, building, or graphic image, shall be stated in the column of “[Description of Article to the Design]”.

Form No. 6 [Notes]

- (7) A figure (excluding a figure in the reference view) must not contain a centerline, baseline, horizontal line, fine line or shading to express shadows, indication line, code or character to explain the contents, nor any other line, code or character which does not constitute the design; provided, however, that it may contain a line, dot or any other mark for specifying the shape of the design for which the design registration is requested. In this case, a statement to that effect and a statement as to which mark specifies the shape shall be included in the column of “[Description of the Design]” of the application.
- (8) A drawing showing a three-dimensional shape is to be indicated by a sufficient number of views for clearly showing the design for which the design registration is requested. If a view is identical to or is a mirror image of another view contained in the drawing, the latter view may be indicated in lieu of the former view by including a statement specifying the latter view which is identical to or is a mirror image of the former view in the column of “[Description of the Design]” of the application.
- (9) Views prepared by the isometric projection method or views prepared by the oblique projection method (limited to cabinet drawings (at a width-height-depth ratio of 1:1:1/2) or cavalier drawings (at a width-height-depth ratio of 1:1:1)) which are set forth in the left-hand column of the following table may be indicated in lieu of all or part of the views set forth in the right-hand column. In this case, if the views are prepared by the oblique projection method, the distinction of cabinet drawings or cavalier drawings and the inclination angle are to be stated in the column of “[Description of the Design]” of the application for each view.

Views showing the front, top and right side	Front view, top view or right side view
Views showing the rear, bottom and left side	Rear view, bottom view or left side view
Views showing the front, left side and top	Front view, left side view or top view
Views showing the rear, right side and bottom	Rear view, right side view or bottom view
Views showing the front, right side and bottom	Front view, right side view or bottom view
Views showing the rear, left side and top	Rear view, left side view or top view
Views showing the front, bottom and left side	Front view, bottom view or left side view
Views showing the rear, top and right side	Rear view, top view or right side view

- (10) A drawing representing a flat and thin article is to be indicated by a sufficient number of views for clearly showing the design for which the design registration is requested from among the surface view and the back side view prepared at the same scale; provided, however, that if the surface view and the back side view are identical or mirror images or if the back side is without any pattern, the surface

- view may be indicated in lieu of the back side view by including a statement to that effect in the column of “[Description of the Design]” of the application.
- (11) A graphic image prescribed in Article 2, paragraph (1) of the Design Act is to be represented in the graphic image view (meaning the view representing the graphic image for which design registration is requested; the same applies hereinafter). In cases where the graphic image is three dimensional, ○○ graphic image views, such as front graphic image view and right-side graphic image view, are to be used.
- (12) If requesting a design registration for a part of an article, building, or graphic image, and the view prescribed in (8) through (11) includes both the part for which the design registration is requested and any other parts, the part for which the design registration is requested is to be specified, such as by drawing the part for which the design registration is requested with solid lines and any other parts with broken lines, etc. If the part for which the design registration is requested cannot be specified by statements in the drawings alone, the way of specifying that part is to be stated in the column of “[Description of the Design]” of the application. The same shall apply where the design registration is requested for a part of a design for a set of articles prescribed in Article 8 of the Design Act or an interior design prescribed in Article 8-2 of the Design Act.
- (13) Drawings of a rod, a wire rod, a plate, a pipe or the like with a continuous shape or of a textile in which a pattern repeats continuously may be prepared only for the part that clearly shows the state of continuing or repeating continuously, and for a textile in which a pattern repeats continuously in a single direction, a statement to that effect shall be included in the column of “[Description of the Design]” of the application.
- (14) As in the case of a middle part of a cord of a radio receiver, if the design can be clearly shown even by omitting depiction of a part of the article, building, or graphic image, and it is unavoidable in constructing drawings, depiction of that part may be omitted. In this case, the omitted part will be clarified by, for example, indicating that part as if cut by two parallel dash-dotted lines, and if the design cannot be clearly shown merely by indicating the drawing, a statement to the effect that depiction of a part of the article has been omitted or a statement of the dimensions of the omitted part in the drawing is to be included in the column of “[Description of the Design]” of the application.
- (15) Where the drawings in (8) through (10) alone cannot sufficiently represent the design, a development view, sectional view, end elevational view of the cut part, enlarged view, perspective view, graphic image view, or any other necessary views will be added, and where it is necessary to help in understanding the design, a view showing the state of use or any other reference views will be added.
- (16) In the cross section of a sectional view or an end elevational view of the cut part, oblique parallel lines will be drawn, and the cut part will be indicated by a chain line in another view. The chain line must not be drawn within a figure. At both ends of the chain line, codes will be attached and the direction of depicting the cross section will be indicated by arrows.
- (17) Where drawing an enlarged view of a part, the enlarged part will be indicated by a chain line in the original view of said enlarged view of a part. The chain line must not be drawn within a figure. At both ends of the chain line, codes will be attached and the direction of depicting the enlarged view of a part will be indicated by arrows.

- (19) When the article is separable, such as a cover and a main body or a plate and a bowl, and the state of these constituent parts combined cannot sufficiently represent the design, the drawings from (8) through (10) and the views in (15) for each constituent part of the article will be added, besides the views representing the state of the constituent parts combined.
- (20) Where drawings of each constituent piece of the article cannot sufficiently represent the state of use, such as in the case of building blocks, a perspective view representing the state of use or being stored will be added, and where the article is to be assembled and disassembled, such as in the case of a wooden toy, and drawings of the assembled state cannot sufficiently represent the disassembled state, a perspective view of each constituent piece of the article will be added.
- (21) Where drawings of individual buildings cannot sufficiently represent their positional relationship, such as in the case of a group of several buildings, a view representing the layout of each building will be added.
- (22) Where the article is transformable or openable, etc., and the drawings representing the state before and after the change of the design, such as the transforming or opening, are required in order to sufficiently represent the design, drawings that show the state before and after the change of the design, such the transforming or opening, will be prepared.
- (23) If a design relates to clothes or personal ornaments, etc. and the design must be depicted in the state where it is put on an object other than the design for which the design registration is requested in order to sufficiently represent the design, and if the design for which the design registration is requested can be specified by at least either of the following methods, the object other than the design for which the design registration is requested may be depicted.
  - (a) Stating the way of specifying the design for which the design registration is requested in the column of “[Description of the Design]” of the application.
  - (b) Drawing the design for which the design registration is requested with solid lines and any other parts with broken lines, etc. in the drawings attached to the application.
- (27) Drawings of a design for which the whole or part of the article, building, or graphic image is transparent will be prepared according to the following.
  - (a) Where the outside is colorless and without any patterns, the see-through part will be depicted as it is.
  - (b) Where any one of the outer surface, inner surface or thickness of the outside has a pattern or color, the pattern or color on the rear surface and the bottom surface will not be depicted, and only the pattern or color on the front surface or the top surface will be depicted.
  - (c) Where any two or more of the outer surface, inner surface or thickness of the outside or the inner part surrounded by the outside have a shape, pattern or color, the shape, pattern or color of each such part will be depicted.

Form No. 7 [Notes]

- (4) For other matters, the practice equivalent to the Notes (2), (3), (6), (8) through (13), (15) and (19) through (26) of the Form No. 6 shall apply.

Form No. 8 [Notes]

- (3) Where requesting a design registration for a part of an article, building, or graphic image, the part of the article, building, or graphic image to the design for which the

design registration is requested shall be specified by painting over in black the parts other than the part for which the design registration is requested, etc., and the way of specifying the part for which the design registration is requested shall be stated in the column of “[Description of the Design]” of the application. The same shall apply where the design registration is requested for a part of a design for a set of articles prescribed in Article 8 of the Design Act or an interior design prescribed in Article 8-2 of the Design Act.