

## Chapter I Design Including a Graphic Image

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### 1. Outline

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Previously, only articles were protected under the Design Act. In corresponding to the 2019 revision of the Design Act, graphic images became newly found as designs, and actual graphic images separated from articles also became protected under the Design Act.

Before the enforcement of this revision of the Design Act, under the 2006 revision of the Design Act, graphic images were conventionally protected as a design including a graphic image as a part of an article, such as making graphic images provided for use in the operation of an article subject to protection as a design for a part of an article.

Accordingly, since the 2019 revision of the Design Act, there are mainly two ways, as follows, for an applicant for design registration to obtain design registration for a design including a graphic image.

- (1) Method for obtaining protection as a graphic image design (graphic image itself separated from an article)

(Hereinafter such a design is referred to as a “**graphic image design**.”)

- (2) Method for obtaining protection as a design including a graphic image as a part of an article or building

(Hereinafter such a design is referred to as a “design including a graphic image on a part of an article etc.”)

(Hereinafter (1) and (2) above are collectively referred to as a “design including a graphic image.” Furthermore, since this Chapter contains statements about both (1) and (2) above, for the sake of readability, etc., they are indicated using shading and borders, respectively.)

(1) above is unconcerned with what the graphic image is displayed on, and (2) above protects a graphic image created in an integrated manner with an article or building.

In addition to general examination standards, for graphic images in (1) and (2) above, this Chapter summarizes the points to bear in mind when examining a design including a graphic image.

### 2. Basic concept in examining a design including a graphic image

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When examining a design including a graphic image, basically, the examiner should conduct the examination in accordance with the examination standards for each of the requirements for registration as described in Parts II and III.

On the other hand, when examining a design including a graphic image, there are also many separate points that must be kept in mind with respect to **graphic image designs** and designs including a graphic image on a part of an article etc.

For this reason, in addition to the basic matters on examining a design including a graphic image, this Chapter focuses on matters that are applicable only when examining a design including a graphic image.

For other matters not described in this Chapter, see the relevant parts of the examination standards describing general designs.

In examining a design including a graphic image, the examiner should first identify whether the design for which the design registration is requested is a **graphic image design** or a design including a graphic image on a part of an article etc.

This is because, depending on which of these it is, the requirements etc. for categorization as a design under the Design Act are different.

### 3. Graphic images subject to protection under the Design Act

#### 3.1 **Graphic image designs**

A **graphic image design** refers to a design in which the graphic image itself is the object of protection under the Design Act, without specifying the article or building on which the graphic image is displayed.

Since the Design Act uses the granting of a powerful exclusive right, that is, a design right, as incentive to encourage development investment, it would be inappropriate to treat all kinds of graphic images as designs under the Design Act. For this reason, the definition in Article 2 of the Design Act limits graphic images subject to protection under the Design Act to those provided for use in the operation of the device or displayed as a result of the device performing its function.

Therefore, in accordance with the purpose of these provisions, the examiner should determine that a graphic image is a design under the Design Act only where it falls under (1) and/or (2) below.

- (1) A graphic image provided for use in the operation of the device (hereinafter referred to as a “graphic image for operation”)
- (2) A graphic image displayed as a result of the device performing its function (hereinafter referred to as a “graphic image for display”)

However, virtual objects, such as 3D objects of electrical appliances, shall not fall under the “device” mentioned here.

<Examples of graphic images falling under a graphic image for operation>



Graphic image for purchasing products  
(Graphic image of a web)



Graphic image for an icon  
(Clicking operation button launches software)

<Examples of graphic images falling under a graphic image for display>



Graphic image displaying medical measurement results



Graphic image displaying time (graphic image projected onto a wall)

Regarding graphic images that fall under neither (1) nor (2) above, for example, the content of a movie or game, the examiner should not determine that such a graphic image is a design under the Design Act.

Furthermore, for the subject matter of an application for **graphic image design** to constitute a **graphic image design** under the Design Act, it must be creatively cohesive as a single design, and it must fall under either a “graphic image for operation” or a “graphic image for display.”

Therefore, as in the example below for instance, where a filed design does not fall under either a “graphic image for operation” or a “graphic image for display”—like in cases where the application for design registration is only for part of an icon (excluding cases where the application is filed as an icon design, and design registration is requested for a part of it)—the examiner should determine that it does not fall under a design under the Design Act.

<Example of a design not constituting a graphic image design under the Design Act>



[Article to the Design] Graphic image used in the corner of an icon

[Description of Article to the Design] The design is of a graphic image in the top right corner of an icon and is modelled on Mt Fuji.

\* Complies with this requirement if the application is filed as an “icon graphic image” design in which design registration is requested for the corner part



### 3.2 Designs including a graphic image on a part of an article etc.

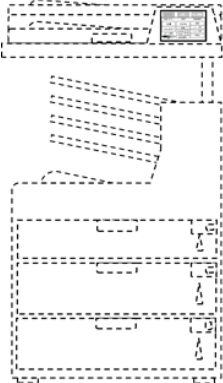
#### 3.2.1 Designs including a graphic image as a part of an article

Graphic images that constitute a **design including a graphic image as a part of an article** are those that are recorded on the article and shown on the display part of the article, and which fall under (1) and/or (2) below.

- (1) A graphic image that is provided for use in the operation of the article in order to enable the article that displays the graphic image to perform its function (hereinafter referred to as a “graphic image for operation for performing the functions of an article”)
- (2) A graphic image for making necessary indications for performing the functions of the article that displays the graphic image (hereinafter referred to as a “graphic image for display necessary for the functions of an article”)

<Examples categorized as a graphic image for operation for performing the functions of an article>

[Front view]

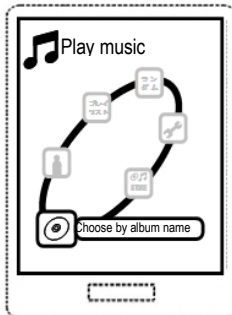


[Partial enlarged view of the display part]

Basic settings	Useful functions	Number of copies
Monochrome/Color	Magnification	Paper selection
Monochrome	100%	Automatic
Full color	Automatic	Tray 1 A4
Copy density	41% A4→A3 70% B5→B4	Tray 2 A3
	A3→A4 B4→B5	Manual feed
	Other magnification	

[Article to the Design] Copying machine  
[Description of Article to the Design] The graphic images represented in the front view and the partial enlarged view of the display part are for carrying out various settings for the copying.  
[Description of the Design] The part represented by the solid line is the part for which the design registration is requested.

[Front view]

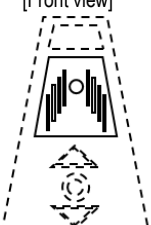


[Article to the Design] Computer with a music playback function  
[Description of Article to the Design] The graphic image represented in the front view is for choosing the music selection method.  
[Description of the Design] The part represented by the solid line is the part for which the design registration is requested.

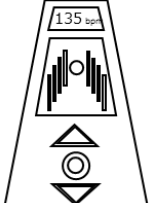
\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

<Examples of graphic images for display necessary for the functions of an article>

[Front view]

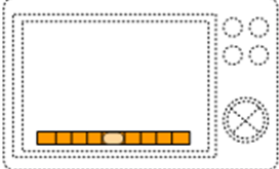


[Reference front view indicating the state of use]



[Article to the Design] Electronic metronome  
[Description of Article to the Design] This is an electronic metronome that performs the function of a metronome using a graphic image shown on the display part at the top of the front view. The set tempo is displayed in the upper display window. The tempo and display can be changed using the lower buttons.  
[Description of the Design] The part represented by the solid line is the part for which the design registration is requested

[Front view]



[Article to the Design] Digital camera  
[Description of Article to the Design] This article is a digital camera with a level function that senses the tilt of the camera. The figure displayed on the display part in the front view is the level indication for confirming that the level is horizontal when taking pictures or videos.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

Regarding graphic images that fall under neither (1) nor (2) above, for example, the content of a movie or game, the examiner should not determine that such a graphic image constitutes a design including a graphic image as a part of an article.

### 3.2.2 Designs including a graphic image as a part of a building

Prior to the 2019 revision of the Design Act, buildings were not subject to protection under the Design Act. Consequently, designs including a graphic image as a part of a building were not protected under the Design Act. Under the Design

Act, considering there is no difference in the handling of the shape, etc. of a building and the shape, etc. of an article, designs including a graphic image as a part of a building have also become subject to protection under the Design Act. Graphic images that constitute such a design are those that are recorded on the building and shown on the display part of the building, and which fall under (1) and/or (2) below.

- (1) A graphic image that is provided for use in the operation of the building in order to enable the building that displays the graphic image to perform its function (hereinafter referred to as a “graphic image for operation for performing the functions of a building”)
- (2) A graphic image for making necessary indications for performing the functions of the building that displays the graphic image (hereinafter referred to as a “graphic image for display necessary for the functions of a building”)

Regarding graphic images that fall under neither (1) nor (2) above, for example, the content of a movie or game, the examiner should not determine that such a graphic image constitutes a design including a graphic image as a part of a building.

#### 4. Matters to be stated in the application and drawings, etc. of an application for design registration for a design including a graphic image

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Some of the matters that must be stated in the application and drawings, etc. of an application for design registration for a design including a graphic image on a part of an article etc. differ to those for a **graphic image design**. Following are points that applicants should keep in mind when making statement in the application and drawings, etc. for each.

During examination of a design including a graphic image, the examiner should make their finding on the filed design, taking into account that the statement in the application and drawings, etc. attached to the application have been made in accordance with these points.

If the examiner is unable to identify the design for which the design registration is requested even after making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, the examiner should notify reasons for refusal based on the design being unspecific.

##### 4.1 Application and drawings, etc. for a **graphic image design**

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###### 4.1.1 Statements in the column of “Article to the Design”

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When filing an application for design registration for a **graphic image design**, the specific usage of the graphic image should be clearly described in the column of “Article to the Design.”

<Examples of statement>

Graphic image for displaying information, graphic image for content viewing operations, graphic image for trading, graphic image for learning, graphic image for setting sound volume, graphic image for inputting numerical values, etc.

<Examples of statement in the case of parts, etc. for a graphic image>

Graphic image for an indicator, graphic image for a toggle button, graphic image for a scroll bar, graphic image for a check box, graphic image for a tool bar, graphic image for a drop-down list, graphic image for a text box, graphic image for a progress bar, graphic image for an icon, graphic image for a tab, etc.

Furthermore, if any of the “graphic image for...” statements above are replaced with “GUI for...,” the examiner should still treat such statements as reasonable.

In addition, even if the statement reads “graphic image for operation,” “graphic image for display,” or “GUI,” on making a comprehensive determination based on statements under “Description of Article to the Design” in the application and in drawings, etc. attached to the application, in the case of a “graphic image for operation,” if it is clear what kind of operation the graphic image is for and how it is operated, or in the case of a “graphic image for display,” if it is clear what function of the device is performed for the graphic image to be displayed as a result, the examiner should treat the statement as reasonable.

<Examples of inappropriate statements>

Graphic image design, graphic image, etc.

#### 4.1.2 Statements in the column of “Description of Article to the Design”

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Regarding **graphic image designs**, if the usage of the graphic image cannot be clarified by statements in the column of “Article to the Design” alone, an explanation which can help in understanding the usage of the graphic image should be stated in the column of “Description of Article to the Design”.

Where protection is being sought for a graphic image for operation, and it is unclear from statements in the column of “Article to the Design” and from drawings what kind of operation the graphic image is for or how the graphic image is operated, an explanation clarifying these points should be included.

Where protection is being sought for a graphic image for display, and it is unclear from drawings alone what function of the device is performed for the graphic image to be displayed as a result, an explanation clarifying this point should be included.

#### 4.1.3 Statements in the column of “Description of the Design”

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For an explanation of how to make statements in the column of “Description of the Design,” since it is the same as filing an application for design registration for an article design, see 3. “The subject matter is a specific design” in Part III, Chapter I “Industrially Applicable Design.”

Furthermore, regarding **designs for graphic images** that change, if the changing order or the changing mode is unclear from statements in the drawings, etc. alone, an explanation of these should be stated in the column of “Description of the Design”.

#### 4.1.4 Statements in the drawings, etc.

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Where protection is being sought for a **graphic image design**, and the graphic image is flat and thin, the graphic image for which design registration is requested should be represented using a [graphic image view]. Where the graphic image is



three dimensional, the graphic image for which design registration is requested should be represented using [○○ graphic image views], such as [front graphic image view], [top graphic image view], and [left side graphic image view]. Furthermore, rather than an entire graphic image design, where design registration is being requested for part of a graphic image, it should be represented so that the shape, etc. of the “part for which the design registration is requested,” the position, size, and scope of the “part for which the design registration is requested” in the entire graphic image, and the boundary between the “part for which the design registration is requested” and “any other parts” are clear.

In addition, where the part for which the design registration is requested needs to be specified, an explanation should be added in the column of “Description of the Design” to specify the part for which the design registration is requested.

<Example of an application for a flat and thin graphic image>

[Graphic image view]

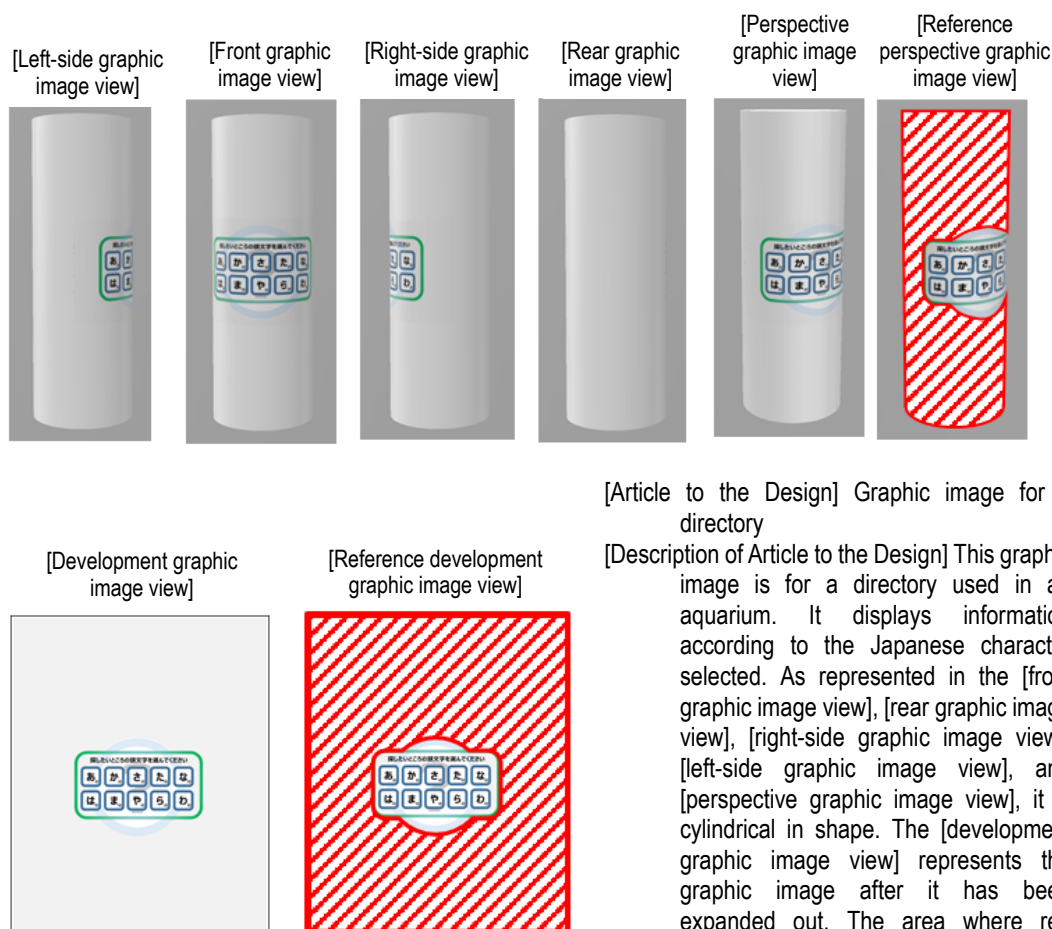


[Article to the Design] Graphic image displaying medical measurement results

[Description of Article to the Design] This graphic image is for displaying data from a medical measuring instrument attached to a subject person. It displays an electrocardiogram, heart rate, blood pressure and other data. By changing the color of the border around each measurement value according to set conditions, the user can intuitively ascertain the measurement situation even from a distance.

\* For the convenience of explanation, other matters to be stated in the application are omitted.

<Example of an application for a three-dimensional graphic image>



[Article to the Design] Graphic image for a directory

[Description of Article to the Design] This graphic image is for a directory used in an aquarium. It displays information according to the Japanese character selected. As represented in the [front graphic image view], [rear graphic image view], [right-side graphic image view], [left-side graphic image view], and [perspective graphic image view], it is cylindrical in shape. The [development graphic image view] represents the graphic image after it has been expanded out. The area where red hatching has been applied in the [reference perspective graphic image view] and [reference development graphic image view] is transparent.

\* For the convenience of explanation, other matters to be stated in the application are omitted.

## 4.2 Application and drawings, etc. for a design including a graphic image on a part of an article etc.

### 4.2.1 Statements in the column of “Article to the Design”

When filing an application for design registration for a design including a graphic image on a part of an article etc., the name of the article or the usage of the building on which the graphic image is displayed should be stated in the column of “Article to the Design” in the application.

For a specific explanation of how to make statements, since it is the same as filing an application for design registration for an article design or a building design, for articles, see 3 “Classification of articles as provided by an Ordinance of the Ministry of Economy, Trade and Industry” in Part II, Chapter II “Filing Applications for Each Design,” and for buildings, see 5.1 “Statements in the column of ‘Article to the Design’” in Part IV, Chapter II “Building Design.”

Furthermore, in the case of a computer with additional function, “Computer with ○○ function” (Note) should be stated.

(Note) In this case, “○○” function is the function pertaining to the graphic image, and coinciding with the article that is achieved by its addition to the computer. For



example, like “computer with camera function,” the single function equivalent to that of the single article with a clear usage and function should be stated.

#### 4.2.2 Statements in the column of “Description of Article to the Design”

Regarding designs including a graphic image on a part of an article etc., if the purpose of use, state of use, etc. of the article or building cannot be understood from the statements in the column of “Article to the Design” alone, an explanation which can help in understanding these should be included in the column of “Description of Article to the Design” in the application.

Where protection is being sought for a graphic image for operation for performing the functions of an article or a graphic image for operation for performing the functions of a building (hereinafter referred to as “graphic image for operation for performing the functions of an article, etc.”), and it is unclear from statements in the column of “Article to the Design” and from drawings what function of the article or building is being enabled to be performed by using the graphic image for operation of the article or building or how the graphic image is operated, an explanation clarifying these points should be included.

Where protection is being sought for a graphic image for display necessary for the functions of an article or a graphic image for display necessary for the functions of a building (hereinafter referred to as “graphic image for making necessary indications for performing the functions of an article, etc.”), and it is unclear from the drawings, etc. alone what the usage and function of the article or building the graphic image makes necessary indications for, or the usage and function of the graphic image are unclear, an explanation clarifying these points should be included.

#### 4.2.3 Statements in the column of “Description of the Design”

For an explanation of how to make statements in the column of “Description of the Design,” since it is the same as filing an application for design registration for an article design, see 3. “The subject matter is a specific design” in Part III, Chapter I “Industrially Applicable Design.”

Furthermore, for designs including a graphic image on a part of an article etc. whose shape, etc. changes, if the changing order or the changing mode is unclear from statements in the drawings, etc. alone, an explanation of these should be stated in the column of “Description of the Design”.

#### 4.2.4 Statements in the drawings, etc.

Where protection is being sought for a design including a graphic image on a part of an article etc., the article or building should be represented using the [front view], [top view], [left side view] and other views in the drawings, and in cases of a design for which the design registration is requested for a part of an article, etc., it should be represented so that at least the shape, etc. of the “part for which the design registration is requested,” the position, size, and scope of the “part for which the design registration is requested” in the entire article or building, and the boundary between the “part for which the design registration is requested” and “any other parts” are clear. In addition, where the part for which the design registration is requested needs to be specified, an explanation should be added in the column of “Description of the Design” to specify the part for which the design registration is requested.

Where an article, including the display part, is flat and thin like a woven cloth fabric, [surface view] and [back side view] may be used for the article.

Furthermore, since [graphic image view] or [○○ graphic image view] such as [front graphic image view] can be used as a view representing an actual graphic image separated from the article, these views cannot be used for the purpose of representing the design including a graphic image on a part of an article etc.

## 5. Concept of the “one application per design” requirement

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Article 7 of the Design Act provides that an application for design registration must be filed for each design. This requirement must also be complied with for designs including a graphic image. For general determination standards, see Part II, Chapter II “Filing Applications for Each Design.”

Upon making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, if the application for design registration falls under either of the following, for example, the examiner should determine that the application contains two or more designs and does not fall under the application for design registration that are filed for each design:

- (1) If two or more usages of the graphic image, usages of the building, or articles are stated together in the column of “Article to the Design” in the application
- (2) If two or more graphic images are represented in the drawings, etc.

This excludes cases where the application for design registration is filed for the design of a set of articles, and cases where a graphic image, etc. that changes is found to be one design.

However, when determining the “one application per design” requirement for a design including a graphic image, based on the nature of the graphic image, the examiner should take each of the following points into consideration.

### 5.1 Concept of one design in statements in the column of “Article to the Design”

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#### 5.1.1 **Graphic image designs**

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In an application for design registration for a **graphic image design**, if, for example, two or more different usages of a graphic image are stated together in the column of “Article to the Design,” the examiner should determine that it constitutes an application for design registration containing two or more designs.

However, where the subject matter relates to a single graphic image for which the two or more usages are displayed or used simultaneously, the examiner should find that the graphic image is one with multiple usages, and should treat it as an application filed for each design.

#### 5.1.2 Designs including a graphic image on a part of an article etc.

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In a design including a graphic image on a part of an article etc., if two or more different usages etc. of the article or building are stated together in the column of “Article to the Design,” the examiner should determine that it constitutes an application for design registration containing two or more designs.

Furthermore, in an application for design registration for a design including a graphic image of a computer with additional functions, where two or more different

additional functions are stated together in the column of “Article to the Design” in the application, the examiner should not find it to be an application for design registration filed for each design. However, this does not apply if the subject matter relates to a single graphic image for which the two or more additional functions are displayed or used simultaneously.

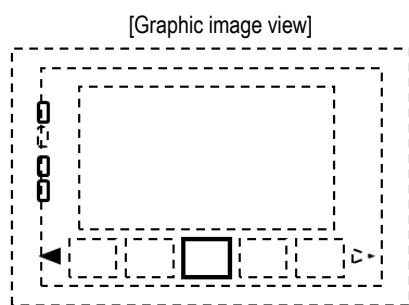
## 5.2 Concept of one design in contents of drawings, etc.

### 5.2.1 Examples of applications that are not filed for each design

If the application for design registration falls under either of the following, for example, the examiner should determine that the application contains two or more designs and does not fall under an application for design registration filed for each design:

- (1) Cases where a design including two or more different graphic images is represented in the drawings, etc. of a single application for design registration
- (2) Cases where two or more physically separate “parts for which the design registration is requested” are included in the design for which the design registration is requested for a part of an article or building

<Example of a graphic image design in which two or more “parts for which the design registration is requested” are included>



Since neither unity in shape, etc. nor unity in function is found in two or more separate parts, the application is not found to be filed for each design

[Article to the Design] Graphic image for controlling monitoring equipment  
[Description of Article to the Design] The vertically oriented rectangular part on the left of the graphic image shows the operating status of the smoke sensors and flame sensors, etc. The five horizontally oriented rectangular parts in a row at the bottom right play real-time video from the surveillance cameras, and selecting a graphic image displays it larger in the information on the right.

[Description of the Design] The parts depicted by solid lines are the parts for which the design registration is requested.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

### 5.2.2 Concept in determining one design in cases where a design including two or more different graphic images is represented in drawings, etc.

Determination of one design in cases where a design including two or more different graphic images is represented in drawings, etc. is made according to (1) “Concept in determining whether constituent objects are categorized as two or more articles, etc.” (i) and (ii) in 2.1 “Determination as to whether two or more articles are indicated” of Part II, Chapter II “Filing Applications for Each Design,” which describes the general method of determination.

### 5.2.3 Two or more separate “parts for which the design registration is requested” which are treated as one design

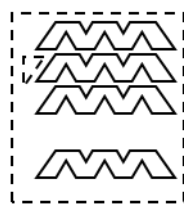
If it falls under any of the following, the examiner should treat subject matter as one design even if it includes two or more physically separate “parts for which the design registration is requested.”

#### (1) Where unity in shape, etc. is found

Unity in shape, etc. is even found for two or more separate “parts for which the design registration is requested” if they have been created with relevance to each other, such as where they consist of figures that are a mirror image of each other, or where they consist of figures that constitute a set.

#### <Example of subject matter where unity in shape, etc. is found>

[Graphic image view]



[Article to the Design] Graphic image for controlling function

[Description of Article to the Design] The buttons arranged vertically in four rows as the part for which design registration is requested are for calling different functions.

[Description of the Design] The part depicted by solid lines is the part for which design registration is requested.

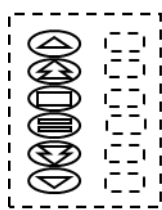
\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

#### (2) Where unity in function is found

Unity in function is found even for two or more physically separate “parts for which the design registration is requested” if there is a relationship created in an integrated manner to perform one function as a whole.

#### <Example of subject matter where unity in function is found>

[Graphic image view]



[Article to the Design] Graphic image for controlling video

[Description of the Design] The part depicted by solid lines is the part for which design registration is requested.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

### 5.2.4 Graphic images that change

Even if plural graphic images are represented in a single application, where it can be found from the content of the statement in the application and drawings, etc. attached to the application, such as the “Description of Article to the Design,” that the subject matter complies with all of the following requirements, the examiner should treat the subject matter as one single design with these plural graphic images included.

- (1) The graphic images are for the same function (→ see 5.2.4.1)
- (2) The graphic images have relevance in shape, etc. (→ see 5.2.4.2)

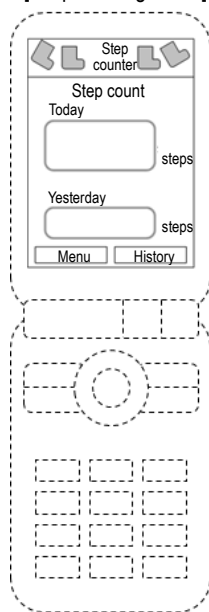
For example, in cases where a situation is represented in which graphic images are continuously changed using multiple views (including cases where it is found the intent is to show the so-called animation effect), the examiner should treat those plural graphic images which fall under both of the above as a single design, as a view showing before and after the changes.

#### 5.2.4.1 Graphic images are for the same function

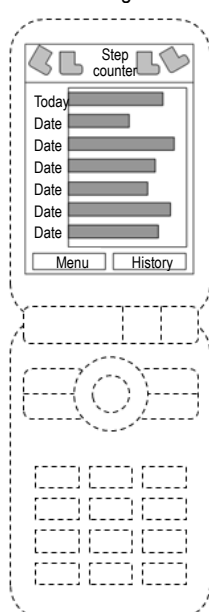
In order for the subject matter to be found to be one design with plural graphic images included, it must be found from the content of the statement in the application and drawings, etc. attached to the application, such as the “Description of Article to the Design,” that the plural graphic images are graphic images for the same function.

<Example 1 where plural graphic images are determined to constitute one design>

[Graphic image view]



[Front view showing the changed state]



Both are graphic images for the step count indication function.

[Article to the Design] Mobile phone

[Description of Article to the Design] (Omitted) This article is a mobile phone having step count measurement and indication functions. By selecting the history button in the front view, past step count records can be displayed in a graph. The graphic images represented in the front view and the front view showing the changed state are graphic images for the step count indication function.

(Note) In this case example, relevance in shape, etc. can be found in the figures, etc. represented at the top part and the bottom part.


\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

In cases where continuity of operation is found, such as where it is necessary to give a series of multiple input instructions (selection instructions) for a certain function, the examiner should determine that the series of graphic images that successively change in response to these input instructions (selection instructions) are graphic images for the same function.

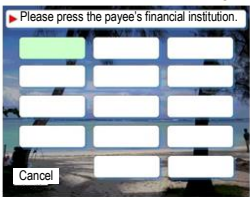
For example, like with the money transfer function of a bank ATM, the graphic images—ranging from the corresponding icon on the initial menu screen, to those for selecting the bank, entering the transfer destination, entering the transfer amount, and making the transfer—are found to be graphic images for the same function, either as individual graphic images or as a transition screen for all money transfer functions which includes all of these graphic images.

<Example 2 where plural graphic images are determined to constitute one design>


[Graphic image view]



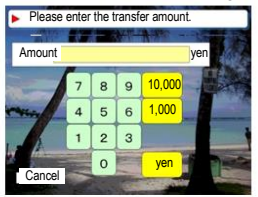
[Graphic image view #2 showing the state after the change]



[Graphic image view #1 showing the state after the change]



[Graphic image view #3 showing the state after the change]



[Article to the Design] Graphic images for bank transactions

[Description of Article to the Design] The graphic image view and graphic image views #1–3 showing the state after the change are used for setting the payee and for inputting the transfer amount.

(Note) In this case example, relevance in shape, etc. can be found in the background, etc.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

#### 5.2.4.2 Graphic images have relevance in shape, etc.

In order for the subject matter to be found to be one design with plural graphic images included, relevance in shape, etc. based on commonality in figures, etc. must be found in the graphic images before and after the change.

In the case of designs including three or more graphic images, determination of whether there is relevance in shape, etc. is made for each graphic image immediately before and immediately after the change.

Regarding applications requesting design registration for part of a graphic image, relevance in shape, etc. based on commonality in figures, etc. must be found in the graphic images before and after the change in relation to the part for which the design registration is requested.

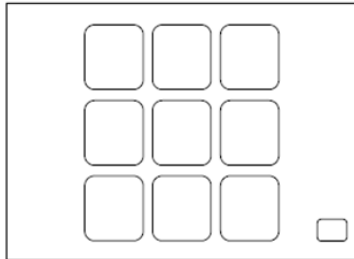
##### (1) Movement, etc. of figures, etc.

Where a figure, etc. continuously moves, expands, shrinks, rotates, or changes color within the graphic image, while hardly changing its own shape

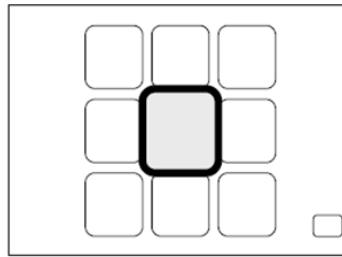


<Example 3 where plural graphic images are determined to constitute one design>

[Graphic image view]



[Graphic image view showing the changed state]



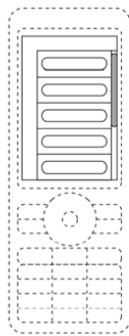
[Article to the Design] Graphic image for access control

[Description of the Design] (Omitted) The graphic image view showing the changed state shows the state where the shape of the designated icon has changed.

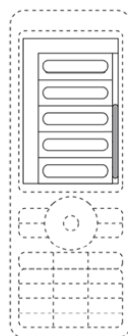
\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

<Example 4 where plural graphic images are determined to constitute one design>

[Front view]



[Front view showing the changed state]

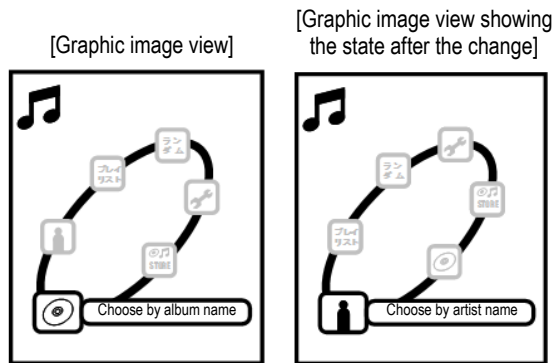


[Article to the Design] Mobile phone

[Description of Article to the Design] (Omitted) The graphic images represented in the front view and the front view showing the changed state are graphic images for the operation of selecting the call destination from the address book in order to enable the mobile phone to perform its function of making phone calls. The scroll bar part at the right end of the graphic image part moves up and down.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

<Example 5 where plural graphic images are determined to constitute one design>



[Article to the Design] Graphic image for controlling music player

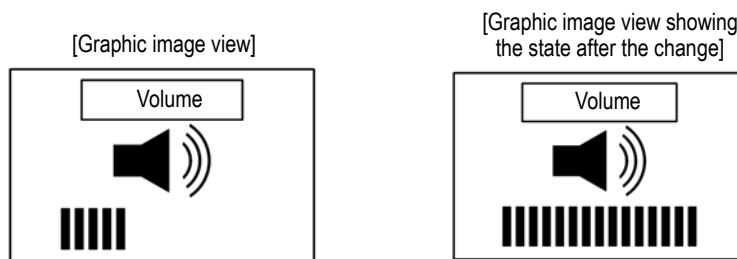
[Description of Article to the Design] The graphic images represented in the graphic image view and the graphic image view showing the state after the change are used for selecting the music playback function on a mobile phone. As each figure, etc. for operation is selected, the explanation for the said figure, etc. for operation also changes in conjunction with the select operation.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(2) Increase or decrease of the same figure, etc.

Where the same figure, etc. increases or decreases (appears, disappears) continuously within the graphic image

<Example 6 where plural graphic images are determined to constitute one design>



[Article to the Design] Graphic image for controlling sound volume

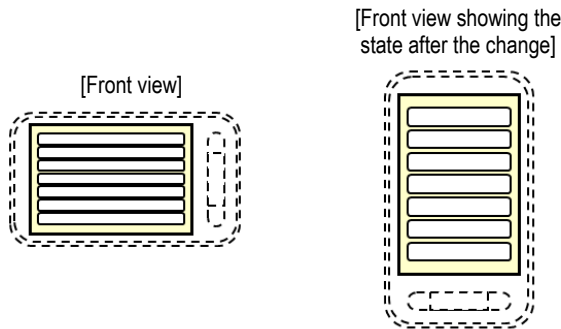
[Description of Article to the Design] (Omitted) The graphic images represented in the graphic image view and the graphic image view showing the state after the change are used for controlling the sound volume. The level gauge changes in conjunction with the operation of the volume control dial, and the current sound volume level is indicated.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(3) Change of layout within the graphic image

Where the direction or the aspect ratio of the arrangement of figures, etc. changes according to the state of use of the device; where the figures, etc. change their arrangement within the graphic image, while hardly changing their own shapes

<Example 7 where plural graphic images are determined to constitute one design>



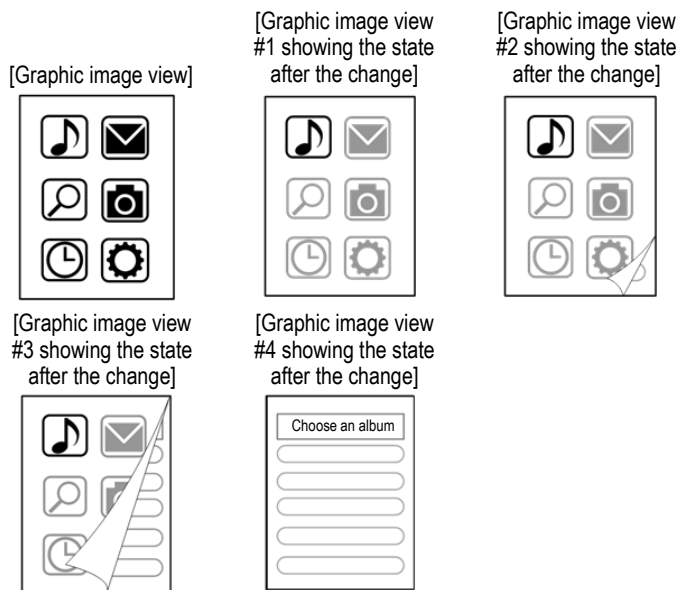
[Article to the Design] Portable information terminal  
[Description of Article to the Design] (Omitted) The graphic image represented in the front view is the menu screen for selecting a specific function from among the multiple functions of the article. When the article is rotated 90 degrees, the display changes direction according to the orientation of the article, as shown in the graphic image represented in the front view showing the state after the change.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(4) Gradual change of the figure, etc. itself

Where a new graphic image gradually appears while part of the graphic image prior to the transition still remains, and eventually transitions to the new graphic image; where the shape, etc. of the figure, etc. differs at the beginning and the end of the change, by disclosing the graphic image in the midst of the change, the figure, etc. is found to change gradually

<Example 8 where plural graphic images are determined to constitute one design>



[Article to the Design] Graphic image for selecting functions

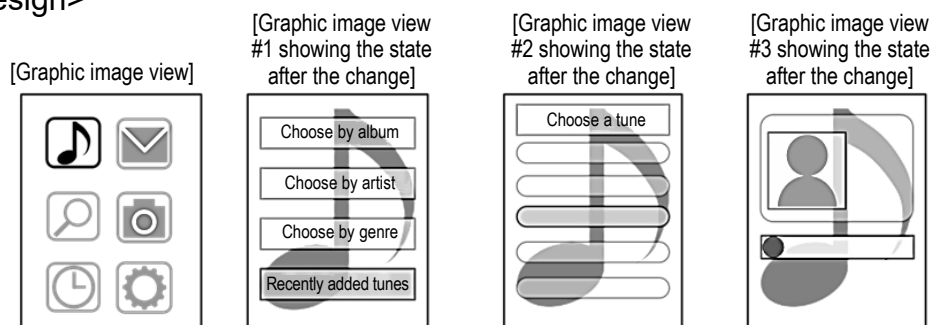
[Description of Article to the Design] (Omitted) The graphic image displayed on the display part is the menu screen for selecting a specific function from among the multiple functions of the article. The graphic image represented in graphic image view #4 showing the state after the change is a graphic image for the music playback function used in the operation of selecting the album to be played. Graphic image views #2–#4 showing the state after the change represent the changes in the graphic images when having selected the icon for playing music from the menu screen represented in the graphic image; the album selection screen appears as if turning a page from the bottom right of the menu screen.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(5) Continuous use of a common motif

Where a common motif comprised of the identical figure, etc. is continuously used in the header part or the background of the graphic image

<Example 9 where plural graphic images are determined to constitute one design>



[Article to the Design] Graphic image for selecting functions

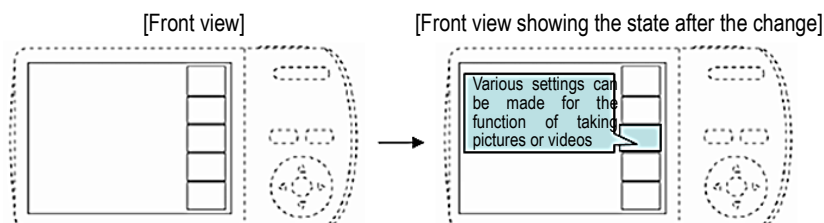
[Description of Article to the Design] (Omitted) The graphic image represented in the graphic image view is the menu screen for selecting a specific function from among the multiple functions of the article. By selecting an icon within the graphic image, the graphic image transitions to a one for the music playback function, and the operation of selecting the music to be played is carried out in order. Graphic image view #3 showing the state after the change is a graphic image representing the progress of the selected music being played.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(6) Development of an additional figure, etc.

Where a new figure, etc. appears within or disappears from the graphic image in conjunction with the operation (for example, development of a pull-down menu, sub-menu or sub-window, or appearance or disappearance of a pop-up indication in relation to an icon, etc.)

<Example 10 where plural graphic images are determined to constitute one design>



[Article to the Design] Portable information terminal

[Description of Article to the Design] (Omitted) The graphic image represented in the front view is used in the operation to start up or set up the camera for the function of taking pictures or videos. As shown in the front view showing the state after the change, after a certain period of time has passed with any of the figures, etc. for operation selected, an explanation in a speech balloon is displayed with regard to content which can be set according to the figure, etc. for operation.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

### 5.2.4.3 Examples of subject matter not treated as one design

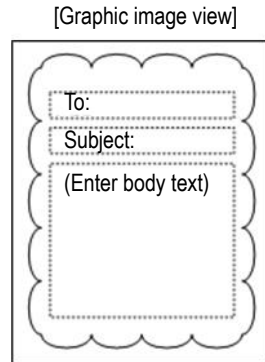
Plural graphic images for different functions and plural graphic images that are not found to have relevance in shape, etc. are not recognized as one design.

A design including plural graphic images which is not recognized as one design is found not to comply with the requirement under Article 7 of the Design Act. Among views representing graphic images that are not found to be one design, those that can be used to help in understanding the design may be used as reference views.

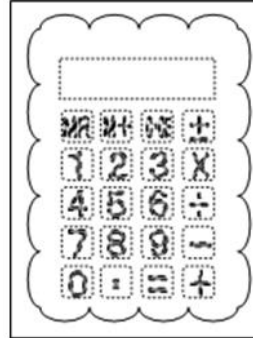
(1) Plural graphic images for different functions

A design including plural graphic images for different functions cannot be found to be one design.

<Example 1 of plural graphic images that are not found to be one design since they are for different functions>



[Graphic image view showing the state after the change]



[Article to the Design] Graphic image for controlling a mobile phone

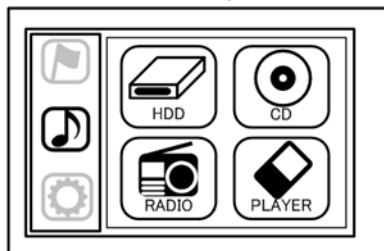
[Description of Article to the Design] (Omitted) This graphic image is used for the input operation for writing emails. The graphic image represented in the graphic image view showing the state after the change is a graphic image used for the calculator function, and calculation is carried out by selecting buttons.

While the graphic image showing the state before the change is a graphic image for the email function, the graphic image showing the state after the change is a graphic image for the calculator function, so cannot be found to be graphic images for the same function.

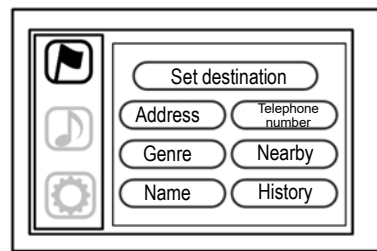
\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

<Example 2 of plural graphic images that are not found to be one design since they are for different functions>

[Graphic image view]



[Graphic image view showing the state after the change]



[Article to the Design] Graphic image for a route guidance indicator

[Description of Article to the Design] (Omitted) The graphic image represented in the graphic image view is for the operation of selecting the source of music to be played. By selecting the flag icon in the menu on the left, the graphic image changes to one for setting the destination for route guidance, like in the graphic image represented in the graphic image view showing the state after the change.

While the graphic image showing the state before the change is a graphic image for the music playback function, the graphic image showing the state after the change is a graphic image for the route guidance function, so cannot be found to be graphic images for the same function.

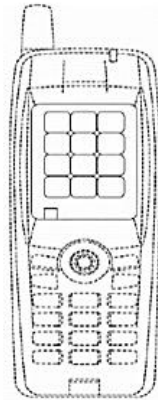
\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(2) Plural graphic images that have no relevance in shape, etc.

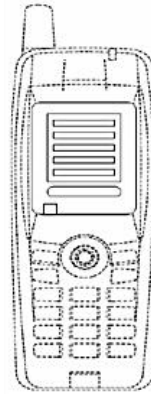
Where there is no cohesiveness in shape, etc. before and after the change, such as where the figures, etc. in the graphic images before and after the change have no commonality (or have very minor commonality), the graphic images cannot be found to be one design since relevance in shape, etc. is not found.

<Example 1 of plural graphic images that are not found to be one design since there is no relevance in shape, etc.>

[Front view]



[Front view showing the state after the change]



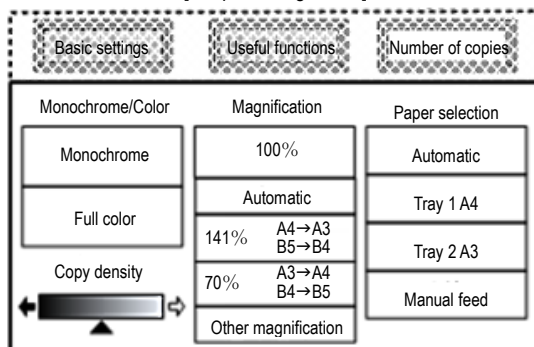
[Article to the Design] Mobile phone

[Description of Article to the Design] (Omitted) The graphic images represented in the front view and the front view showing the state after the change are used in the operation for choosing the method for selecting who to call. By pressing the bottom right button in the front view, the graphic image changes into a list display, like in the front view showing the state after the change.

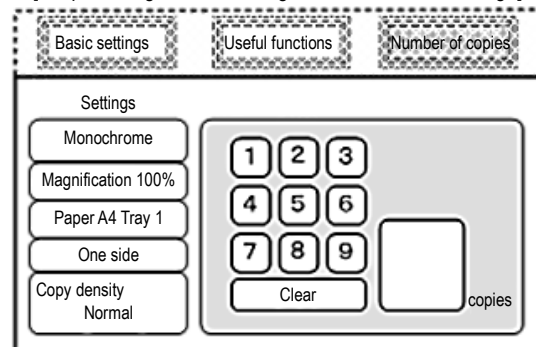
\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

<Example 2 of plural graphic images that are not found to be one design since there is no relevance in shape, etc.>

[Graphic image view]



[Graphic image view showing the state after the change]



[Article to the Design] Graphic image for controlling a copying machine

[Description of Article to the Design] (Omitted) The graphic images represented in the graphic image view and the graphic image view showing the state after the change are for carrying out various settings for copying.

Regarding the part for which the design registration is requested, the graphic images before and after the change have no common elements and lack coordination, so cannot be found to have relevance in shape, etc.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.



### 5.3 Exceptions to the “one application per design” in designs including a graphic image

Although filing an application for each design is the general rule under the Design Act, even in cases where it is not found that an application has been filed for each design after making a determination based on sections 5.1 or 5.2, if it complies with the requirements for (1) a design for a set of articles (see Part IV, Chapter III “Design for a Set of Articles”) or (2) an interior design (see Part IV, Chapter IV “Interior Design”), it can be found to be a single design as a design for a set of articles or an interior design.

## 6. Registration requirements for a design including a graphic image

In order for the subject matter of an application for design registration to be registered as a design including a graphic image, it must comply with all of the requirements for registration prescribed in the Design Act. Basically, it is carried out the same way as a general examination of registration requirements (see Parts II and III). Following are points that require particular attention regarding the key registration requirements under the Design Act with respect to an application filed for a design including a graphic image.

- (1) The subject matter is an industrially applicable design
- (2) The subject matter is novel
- (3) The subject matter involves creative difficulty (is not something that could have been easily created)
- (4) The subject matter is not a design in a later application that is identical or similar to part of a design in a prior application

### 6.1 The subject matter is an industrially applicable design

When determining whether the subject matter of an application for design registration filed as a design including a graphic image is an industrially applicable design, the examiner should pay attention to the following points concerning a **graphic image design** and points concerning a **design including a graphic image on a part of an article etc.**

#### 6.1.1 The subject matter is an industrially applicable **graphic image design**

In order for a **graphic image design** to be found to be industrially applicable, the subject matter must comply with the following.

- (1) The subject matter is found to be a **graphic image design** under the Design Act (→ see 6.1.1.1)
- (2) The subject matter is a specific design (→ see 6.1.1.2)
- (3) The subject matter is industrially applicable (→ see 6.1.1.3)

##### 6.1.1.1 The subject matter is found to be a **graphic image design** under the Design Act

Under the Design act, a **graphic image design** is protected as a graphic image itself, separated from the article or building. In other words, when making a comprehensive determination based on statement in the application and drawings,

etc. attached to the application, subject matter found to be an article or building, or a part thereof, cannot be found to be a **graphic image design**.

While a graphic image may include three-dimensional images, it does not have physical shape separate from the article or building. Therefore, in cases where a subject matter is submitted as a specimen or model premised on physical shape, etc., or where a description about physical materials is included, the subject matter cannot be found to be an industrially applicable **graphic image design**. In this case, the examiner should determine whether the subject matter is industrially applicable as a design including a graphic image on a part of an article etc. according to its content.

Furthermore, since a **graphic image design** is separated from the article or building, there is no need to specify how it will be displayed in the application for design registration. The drawings attached to the application should instead show the graphic image creating an aesthetic impression through the eye. If the graphic image is shown together with the display equipment, the examiner should proceed with examination as a design including a graphic image as a part of an article (see 3.2.1).

Under the Design Act, not all kinds of graphic images are protected. Only “graphic images for operation” or “graphic images for display” are subject to protection.

**Graphic image designs** must fall under at least one of these. Graphic images that fall under both “graphic image for operation” and “graphic image for display” are also determined to comply with this requirement. Graphic images that fall under neither do not fall under a design in the Design Act.

A “graphic image for operation” is a graphic image that gives an instruction in order to enable the target device to work according to its function. It refers to a graphic image, which, unless there are special circumstances, contains a figure, etc. used in some operation of the device which is displayed within the graphic image in a way that it can be selected or specified. Since a **graphic image design** is separated from the article, there is no need to specify the equipment mentioned here. If the usage or function intended for the operation (for example, a graphic image for taking photographs) is specified, it would still be found to comply with this requirement.

A “graphic image for display” is a graphic image that is displayed in connection with some function of the device. It refers to a graphic image that includes a display in the image that is related to some function of the device. However, a graphic image that is displayed only by a function for merely displaying images shall not be included in a “graphic image for display.”

#### 6.1.1.2 The subject matter is a specific design

Since the subject matter to be protected as a design is an aesthetic creation, which is an intangible property that can be identified through the statement in the application and drawings, etc. attached to the application, it is sufficient as long as the contents of the filed design can be specifically derived from the statement in the application and drawings, etc. attached to the application; thus, the drawings, etc. attached to the application need only contain elements that are required to specify the contents of the creation of the design.

For a filed **graphic image design** to be recognized as a specific design, based on the ordinary skill in the art of **graphic image design**, the following must be directly derived from the statement in the application and drawings, etc. attached to the

application as originally filed: (i) the usage and function of the **graphic image design**, (ii) if requesting design registration for part of a graphic image, the position, size, and scope of the part for which the design registration is requested (relative to the entire graphic image design) and boundaries with any other parts, and (iii) specific contents of the shape, etc.

Where an application or drawings, etc. attached to the application includes an improper description such as the following, and where contents of a specific single design cannot be directly derived upon making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, the design is not found to be a specific design.

- (i) Where the entire **graphic image design** is not represented
- (ii) Where the graphic image contains parts that are unclear
- (iii) Where there are discrepancies between the statement in the application and the drawings attached to the application (such as where an area shown in yellow in the application is blue in the drawings)
- (iv) Where the **graphic image design** contains parts for which the design registration is requested and other parts, and where the shape, etc., position, size, and scope of the part for which the design registration is requested are not specified
- (v) Where plural views are included in the application for a **graphic image design**, and where the graphic images in those views are different, and even as a graphic image that changes, the changing order and the changing mode are unclear

Article 6 of the Design Act provides that a person requesting a design registration must state the usage of the graphic image in the application. The usage of the graphic image is also stated in the column of “Article to the Design” in the application (→ see 4.1.1).

The applicant does not necessarily have to state the usage of the graphic image in minute detail. It would suffice if the statement is provided to the extent that the specific usage can be understood from its content, as in cases where the function of the graphic image, such as a “graphic image for inputting numerical values” or a “graphic image for displaying the time” is described.

When determining whether a design is an industrially applicable design, the examiner should determine whether or not the usage of the graphic image is included by making a comprehensive determination, not only of the statement in the column of “Article to the Design” in the application, but also of other statements in the application and of drawings attached to the application. For this reason, for example, even if “GUI” is stated in the column of “Article to the Design,” the examiner should determine the design to be an industrially applicable design when the usage of the graphic image can be understood from the content, etc. of statements in the column of “Description of Article to the Design” in the application and drawings attached to the application.

#### 6.1.1.3 The subject matter is industrially applicable

The **graphic image design** must be industrially applicable. (See 4. “The subject matter is industrially applicable” in Part III, Chapter I “Industrially Applicable Design”)

### 6.1.2 The subject matter is an industrially applicable design including a graphic image on a part of an article etc.

In order for a design including a graphic image on a part of an article etc. to be found to be industrially applicable, the subject matter must comply with all of the following requirements.

- (1) The subject matter constitutes a design (→ see 6.1.2.1)
- (2) The subject matter is a specific design (→ see 6.1.2.2)
- (3) The subject matter is industrially applicable (→ see 6.1.2.3)

#### 6.1.2.1 The subject matter constitutes a design

In order to be found to be a design including a graphic image on a part of an article etc., the article or building itself (displaying the graphic image) must constitute a design.

Regarding the requirements for constituting a design, see Part III, Chapter I “Industrially Applicable Design.”

In order to be found to be a graphic image constituting a part of an article or building design, the graphic image must comprise that article or building. Therefore, unlike the case of a “graphic image design,” in order to be found to be a graphic image constituting a part of an article or building design, it needs to comply with the following requirements: (i) it is a graphic image recorded on the article or building, and (ii) it is displayed on the display part of the article or building.

Accordingly, subject matter displaying a graphic image via signals sent from outside of the article or building—such as a graphic image of a television program, a graphic image from the Internet, or a graphic image via signals sent from another article or building—and subject matter displaying a graphic image recorded on a separate article or building connected to the article or building for which design registration is requested are not found to be a graphic image constituting a part of that article or building.

In order for a graphic image displayed on a display part to be found to be a graphic image constituting a part of an article or building design, it is required that the graphic image be a “graphic image for operation for performing the functions of an article, etc.” or a “graphic image for making necessary indications for performing the functions of an article, etc.” which means it must fall under at least one of these. Graphic images that fall under both a “graphic image for operation for performing the functions of an article, etc.” and a “graphic image for making necessary indications for performing the functions of an article, etc.” should also be determined to comply with this requirement.

In order for a graphic image displayed on the display part of an article or building to be found to be a “graphic image for operation for performing the functions of an article, etc.,” first, it is required to be a “graphic image for operation,” that is, a graphic image that gives an instruction in order to enable the target device to work according to its function, and which, unless there are special circumstances, contains a figure, etc. used in some operation of the device which is displayed within the graphic image in a way that it can be selected or specified. Furthermore, that operation must be able to be used in a state “for performing the functions of an article, etc.,” that is, in a state where the function of the article or building is ready to be executed (for example, in the case of a ticket issuing machine, a state where

tickets are ready to be issued; in the case of the “video playing function” of an optical disc recording and playing machine, a state where the viewing of contents is ready to be started; and in the case of the “money transfer function” of an automatic teller machine, a state where the processing of money transfers are ready to be started, etc.).

Regarding the context in which the term “operation” is used here, it would be sufficient if the examiner is able to make a finding about the entire graphic image, and it is not necessary to make detailed findings for each figure used in the operation included in the graphic image.

In addition, graphic images that are displayed in a state where the article or building is working according to its function (for example, a mobile phone in the middle of a call or sending an email; and a magnetic disk recorder in the middle of playback or recording, etc.) cannot be found to be a “graphic image for operation for performing the functions of an article, etc.”

Regarding graphic images for enabling the article or building to perform its functions through multiple steps, since every step is found to be for enabling the article or building to perform its functions, the graphic images could be “graphic images for operation for performing the functions of an article, etc.” if they are provided for use in the operation.

Furthermore, regarding an article or building that has multiple functions, even if a graphic image for operation is used while the article or building is performing one of such functions, if the graphic image includes a figure, etc. for an operation in order to enable the performance of another function, it could be found to be another “graphic image for operation for performing the functions of an article, etc.”

In order for a graphic image displayed on a display part to be found to be a “graphic image for making necessary indications for performing the functions of an article, etc.” the graphic image must be one that makes necessary indications for performing the functions of that article, etc.

A “function” of an article or building means a function that can be generally expected from the article or building. For example, in the case of a “table clock,” the function of indicating the time is the “function” of the article, and the graphic image displaying the time, which is a necessary display for fulfilling this function, can be found to be a “graphic image for making necessary indications for performing the functions of an article, etc.” Where an article or building itself is equipped with multiple functions, each function can be regarded as a “function” of the article or building. For example, in the case of a house equipped with a security function and power generation function, the security control function and the power generation function are “functions” of the building, and the “graphic image displaying the operational status of the security function,” for example, can be found to be a “graphic image for making necessary indications for performing the functions of the building.”

Where the article or building to the design for which design registration is requested has a function that cannot be generally expected, by indicating what kind of function it has in statements in the column of “Description of Article to the Design” in the application, protection can also be obtained for a graphic image for display necessary for performing that function.

#### 6.1.2.2 The subject matter is a specific design

Since the subject matter to be protected as a design is an aesthetic creation, which is an intangible property that can be identified through the statement in the application and drawings, etc. attached to the application, it is sufficient as long as the contents of the filed design can be specifically derived from the statement in the application and drawings, etc. attached to the application; thus, the drawings, etc. attached to the application need only contain elements that are required to specify the contents of the creation of the design.

For a graphic image design in an application for design registration to be recognized as a specific design, based on the ordinary skill in the art of the filed article or building, the following must be directly derived from the statement in the application and drawings, etc. attached to the application as originally filed: (i) the usage and function of the article or building to the design of a design including a graphic image, (ii) the usage and function of the graphic image, (iii) if requesting design registration for a part of an article or building, the position, size, and scope of the part for which the design registration is requested (relative to the entire graphic image design) and boundaries with any other parts, and (iv) specific contents of the shape, etc.

Where an application or drawings, etc. attached to the application includes an improper description such as the following, and where contents of a specific single design cannot be directly derived upon making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, the design cannot be found to be a specific design.

- (a) Where the specific usage and function of the article or graphic image to the design are unclear
- (b) Where the entire graphic image is not represented
- (c) Where the shape, etc. of the entire article to the design is not represented
- (d) Where the drawings contain unclear parts, and the shape, etc. of the article is not clearly represented
- (e) Where there are discrepancies between the statement in the application and the drawings attached to the application (where the drawings are not consistent with the article stated in the application, etc.)
- (f) Where the display part in the article for the graphic image is unclear, or where graphic images are represented other than for the article for which design registration is requested
- (g) Where the “graphic image” changes, but where the changing order and the changing mode are unclear

#### 6.1.2.3 The subject matter is industrially applicable

An article or building to the design in a design including a graphic image on a part of an article etc. must be industrially applicable. (See 4. “The subject matter is industrially applicable” in Part III, Chapter I “Industrially Applicable Design”)

#### 6.1.3 Graphic images not found to be a “graphic image” constituting a design

A graphic image or video, which is independent of the equipment, and which is created with the actual content of the graphic image or video as the focus of expression—such as the graphic image of a television program or movie, or the



graphic image of a game which is displayed by operating the game software—cannot be found to be either a graphic image for operation or a graphic image displayed as a result of the article or building performing its function, so does not constitute a design.

Furthermore, regarding graphic images provided for use in the operation of the article, after the 2006 revision of the Design Act, not only the graphic images that are displayed on the display part of the article itself, but also “graphic images that are displayed on an article that is used with the article in an integrated manner” were also found to be part of that article. For example, the graphic image for operation of a magnetic disk recorder displayed on a TV monitor is regarded as being in this category.

For the 2019 revision of the Act the provision which found “graphic images that are displayed on an article that is used with the article in an integrated manner” to be part of the article was deleted. As a consequence, a “graphic image that is displayed on an article that is used with the article in an integrated manner” could no longer be found to be a graphic image as a part of an article, and cases where such applications are filed are treated as applications filed for an article design and a graphic image design. It should be noted that the graphic image for operation may still be protected as a graphic image design, and where there is relevance in shape, etc. between both the main body and the graphic image and the part for which the design registration is requested is included in both, it may be protected as a design for a set of articles consisting of an article and a graphic image.

#### 6.1.4 Treatment of graphic images that contain a content display part

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A graphic image or video (Note), which is independent of the equipment, and which is created with the actual content of the graphic image or video as the focus of expression—such as the graphic image of a television program or movie, the graphic image of a game which is displayed by operating the game software, or a scenic photograph—cannot be found to be either a graphic image for operation or a graphic image for display, so does not constitute a design. As a consequence, a graphic image that consists only of these graphic images cannot be found to be an industrially applicable design as a graphic image design, and neither can it be found to be a graphic image constituting a part of an article or building design.

On the other hand, there are also graphic images that contain a content display part as part of the graphic image, and in these cases, if the graphic image as a whole complies with the requirements for being found to be a design including a graphic image, the entire graphic image would be subject to protection under the Design Act.

Regarding such graphic images, it may happen that a design is disclosed with the content in a displayed state in the drawings. In such cases, (i) if the application includes an explanation about the content display part, (ii) if the content display part is represented in the reference view, etc., or (iii) if a figure is shown in the part where the video of “the graphic image for video playback” is displayed, upon making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, if there is a part that is clearly identifiable as the content display part, and the displayed content does not fall under subject matter that injures public order or morality or creates confusion with another person’s business (Article 5 of the Design Act), its removal should not be required, and it should be determined to be an industrially applicable design even with the said content remaining on display. However, the content displayed on the content display

part will be treated as not constituting the design, and will not be considered in the determination of similarity or the determination of creative difficulty.

On the other hand, where it is unclear whether the part is a content display part, in principle, it will be treated as a pattern constituting the design, and if the examiner is unable to make a specific finding on the design, the examiner should determine that the design is not specific.

(Note) Objects, etc. captured using the camera function, etc. on a smartphone are also treated as being equivalent to this.

## 6.2 The subject matter is novel

The provisions of the items in Article 3, paragraph (1) of the Design Act, which provide for the novelty requirement, should be applied by determining whether or not the filed design including a graphic image is identical to any publicly known design, or whether or not it is categorized as a design similar to a publicly known design (hereinafter this determination is referred to as “determination of similarity”).

For general determination standards concerning the novelty requirement, see Part III, Chapter II, Section 1 “Novelty.” Further points that require particular attention by an examiner when determining similarity of a design including a graphic image are described below.

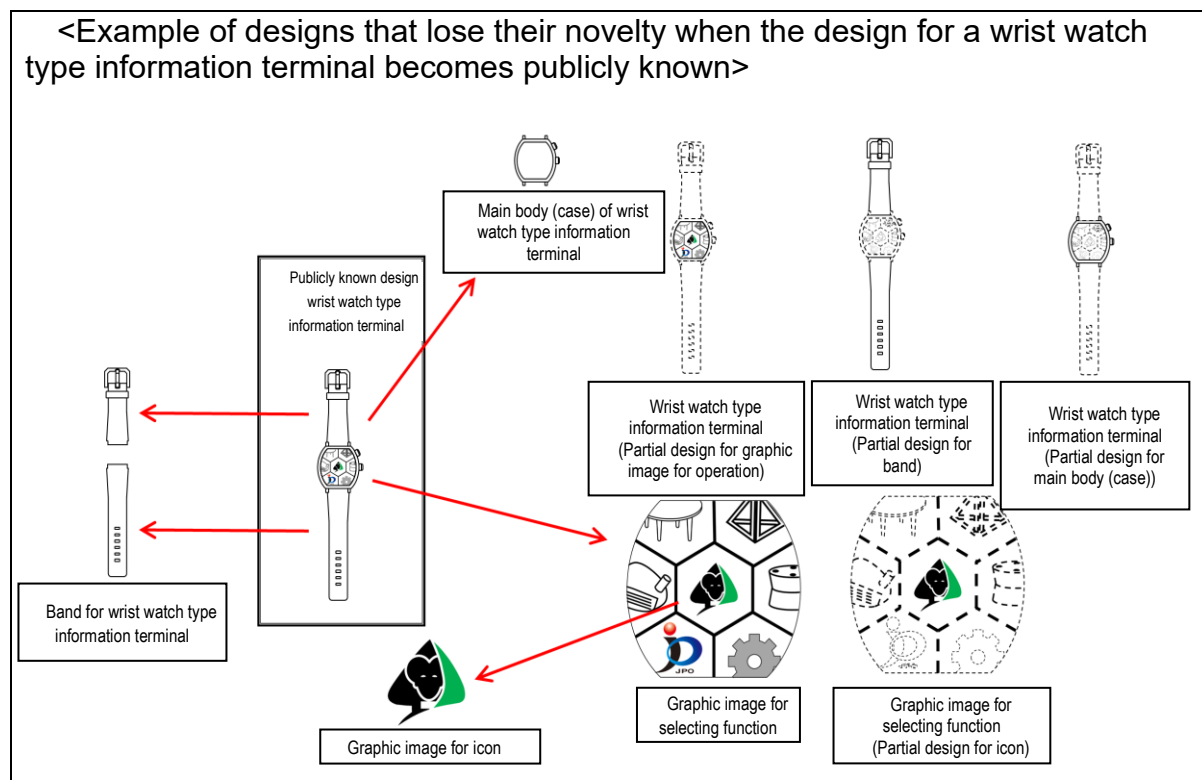
### 6.2.1 Treatment of cases where a graphic image is displayed on the display part, etc. of an article or building that is published in a publicly known source

Designs that serve as the basis for determining novelty and creative difficulty comprise designs that were publicly known, designs that were described in a distributed publication, and designs that were made publicly available through an electric telecommunication line, as provided in items (i) and (ii) of Article 3, paragraph (1) of the Design Act. In cases where a graphic image is represented in these designs in the display part, etc. of the article or building, in addition to treating the graphic image as information that serves as the basis for determination of novelty and creative difficulty for a design including a graphic image on a part of an article etc., the graphic image displayed on that display part should be treated as information that serves as the basis for determination of novelty and creative difficulty for a **graphic image design**.

In addition, when determining novelty, if the article, etc. contains separately identifiable parts, etc., those parts should also be treated as being a publicly known design (if some parts are hidden inside the article or building, only the parts that appear externally should be treated as a publicly known design), and regarding the parts, each of the designs for which design registration is requested for a part of the article, etc. whose position, size, and scope have been indicated within the article, etc. should also be treated as being a publicly known design.

For example, like in the case below where the publicly known design that has actually been disclosed is a wrist watch type information terminal displaying a graphic image for operation, designs which become publicly known designs and lose their novelty include not only the design of the wrist watch type information terminal, but also the designs of recognizable parts such as the wrist watch type information terminal band and the wrist watch type information terminal main body, the design of the graphic image for operation, the graphic image design for the recognizable icon within the graphic image for operation, and the designs for which design registration

is requested for parts of the wrist watch type information terminal and graphic image for operation.



## 6.2.2 Method of determining similarity between designs including a graphic image

When determining similarity between designs including a graphic image, whether it is a graphic image design or a design including a graphic image on a part of an article etc., if the two designs being compared fall under all of the requirements in (1) to (3) below, the examiner should determine that the two designs are similar.

- (1) The overall usage and functions of the two designs are identical or similar
- (2) The usage and functions of the graphic image in the two designs are identical or similar
- (3) The shapes, etc. of the two designs are identical or similar

### 6.2.2.1 The overall usage and functions of the two designs are identical or similar

When determining similarity between designs including a graphic image, the examiner should find the usage and function of the articles, etc. to the design of the two designs based on the purpose of use, state of use, etc. of the article, building, or graphic image, after first taking into account the usage of the article, graphic image or building stated in the column of “Article to the Design.” In the case of designs including a graphic image on a part of an article etc., in addition to similarity of usage and function between the articles or buildings to the design, the examiner should also make a finding regarding the usage and function of the graphic images.

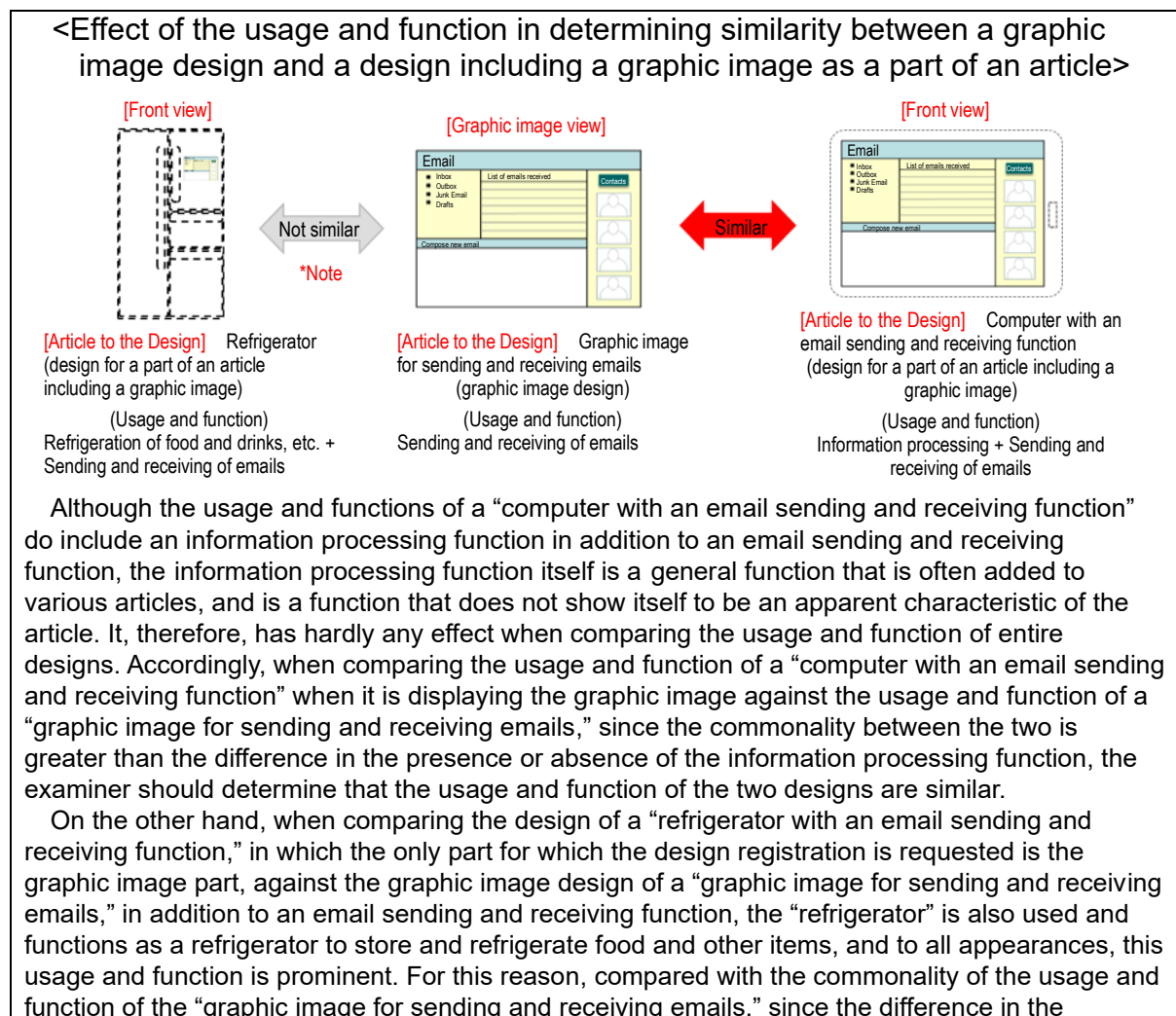
The examiner should determine the similarity of the usage and function of the two designs based on the above finding. When doing so, while similarity between designs assumes that the usage and function of the articles, etc. to the designs being compared are identical or similar, since there is no need to make a judgment of similarity based on a comparison of their detailed usage and function, the

examiner should determine that there is similarity in the usage and function of the articles, etc. to the design of the two designs if they have commonality in their usage (purpose of use, state of use, etc.) and function within the extent of assessing the value of the shape, etc. represented in the specific articles, etc.

In general, even if the usage and functions of the articles, etc. to the designs are different, where the difference cannot be taken into consideration when making a comprehensive determination of the usage and functions of the articles, etc. to the designs, such as if the difference does not appear as a feature of the shape, etc. of the article, etc., the examiner should determine that the articles, etc. to the designs are similar.

When determining similarity of usage and function between **graphic image designs**, like in the case of **designs including a graphic image on a part of an article etc.**, consideration does not need to be given to the usage and functions of the articles, etc. on which they are displayed.

On the other hand, even if the graphic images have a common usage and function, upon making a comprehensive determination of the usage and functions of the articles, etc. to the designs being compared, where there are usage and functions which ought to be taken into consideration apart from the usage and functions of the graphic images, such as where an obviously different purpose of use is included, the examiner should determine that the articles, etc. to the designs are not similar.



presence or absence of the usage and function as a refrigerator is greater, the examiner should treat the two designs as dissimilar.

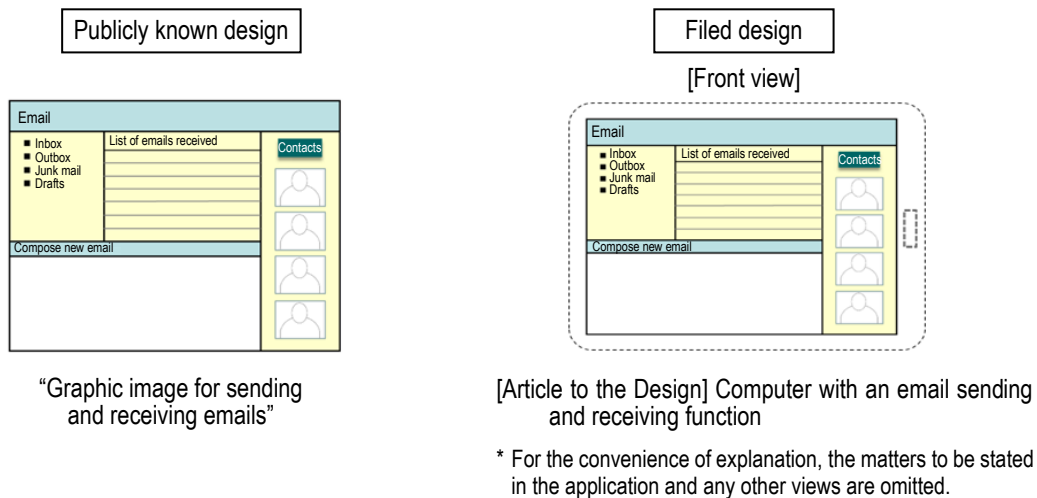
(Note) In cases where the design of the “refrigerator” was publicly known prior to the filing of the design for the “graphic image for sending and receiving emails,” since the graphic image displayed on the display part of the “refrigerator” is treated as information that serves as the basis for determination of novelty (and creative difficulty) as a graphic image design, the subsequently filed design of the “graphic image for sending and receiving emails” could be subject to refusal based on the requirement for novelty (or creative difficulty).

Where the application for design of the “refrigerator” is a prior application filed before the application for design of the “graphic image for sending and receiving emails,” the design of the “graphic image for sending and receiving emails” could be subject to application of the provisions of Article 3-2 of the Design Act (exclusion from protection of a design in a later application that is identical or similar to part of a design in a prior application).

Where the application for design of the “computer with an email sending and receiving function” is a prior application filed before the application for design of the “graphic image for sending and receiving emails,” the design of the “graphic image for sending and receiving emails” could be subject to application of the provisions of Article 3-2 of the Design Act (exclusion from protection of a design in a later application that is identical or similar to part of a design in a prior application) and Article 9 of the Design Act (prior application).

Where the application for design of the “graphic image for sending and receiving emails” is a prior application filed before the application for design of the “computer with an email sending and receiving function,” the design of the “computer with an email sending and receiving function” could be subject to application of the provisions of Article 9 of the Design Act (prior application).

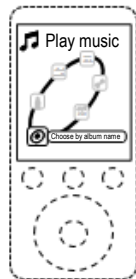
#### <Example of similar usage and function 1>



Although the usage and functions of a “computer with an email sending and receiving function” do include an information processing function in addition to an email sending and receiving function, the information processing function itself is a general function that is often added to various articles, and is a function that does not show itself to be an apparent characteristic of the article. It, therefore, has hardly any effect when comparing the usage and function of entire designs. Accordingly, when comparing the usage and function of a “computer with an email sending and receiving function” when it is displaying the graphic image against the usage and function of a “graphic image for sending and receiving emails,” since the commonality between the two is greater than the difference in the presence or absence of the information processing function, the examiner should determine that the usage and function of the two designs are similar.

<Example of similar usage and function 2>

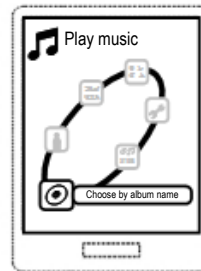
Publicly known design



“Music player”

Filed design

[Front view]



[Article to the Design] Portable information terminal

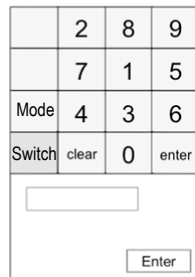
\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

Whereas the usage and function of a “music player” is to play music, a “portable information terminal” has complex usage and functions, such as schedule management and contacts management, as well as playing music. When the “portable information terminal” is displaying the graphic image for music playback, though, usage and functions other than playing music do not show themselves to be an apparent characteristic of the article. They, therefore, have hardly any effect when comparing the overall usage and function of the two designs. Accordingly, when comparing the usage and function of a “portable information terminal” when it is displaying the graphic image for music playback against the usage and function of a “music player,” since the commonality between the two is greater than the difference in the presence or absence of the portable information terminal’s other functions, the examiner should determine that the usage and function of the two designs are similar.



<Example of similar usage and function 3>

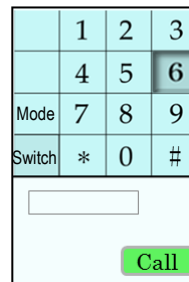
Publicly known design



“Graphic image for entering passwords for access control”

Filed design

[Graphic image view]



[Article to the Design] Graphic image for inputting telephone numbers

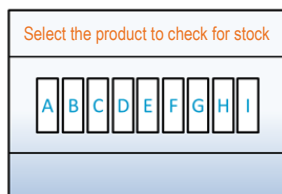
[Description of Article to the Design] (Omitted) The graphic image represented in the graphic image view is for inputting telephone numbers when making a phone call.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

Although a “graphic image for entering passwords for access control” and a “graphic image for inputting telephone numbers” differ in terms of whether it is a password or telephone number being entered, both graphic images share a commonality in that they are for inputting numerical values. For this reason, the examiner should determine that the usage and function of the two designs are similar.

<Example of similar usage and function 4>

Publicly known design

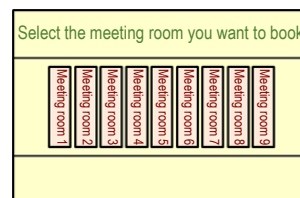


“Graphic image for checking stock”  
(Explanation)

The multiple rectangular shapes are **product selection buttons** that indicate types of products. Pushing a button displays a screen indicating the quantity of that product in stock.

Filed design

[Graphic image view]



[Article to the Design] Graphic image for booking meeting rooms

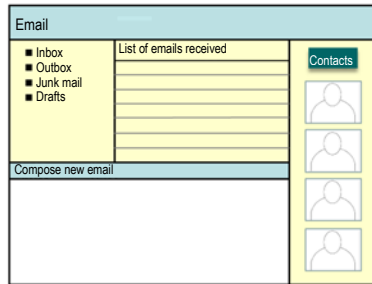
[Description of Article to the Design] (Omitted) The multiple rectangular shapes are **figures** that indicate each of the meeting rooms and are **for selecting meeting rooms**. Clicking on a figure displays a screen indicating the booking status of that meeting room.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

Although a “graphic image for checking stock” and a “graphic image for booking meeting rooms” differ in terms of whether it is a product or meeting room being selected, they share a commonality in that they select a single item from several options and then give an instruction to display that information. For this reason, the examiner should determine that the usage and function of the two designs are similar.

<Example of dissimilar usage and function 1>

Publicly known design



“Graphic image for sending and receiving emails”

Filed design

[Front view]

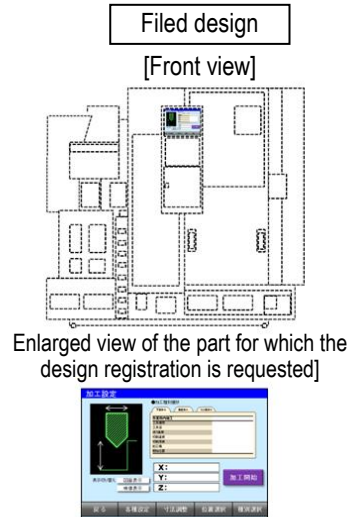
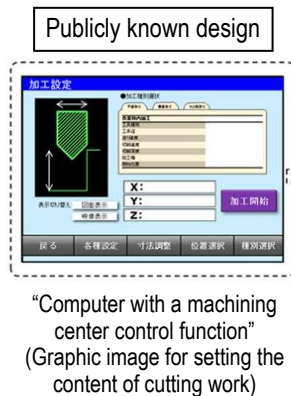


[Article to the Design] Refrigerator

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

What a “refrigerator with an email send and receive function” and a “graphic image for sending and receiving emails” have in common is that they both have a usage and function of sending and receiving emails. However, where they differ greatly is that, whereas a “graphic image for sending and receiving emails” only has a usage and function of sending and receiving emails, a “refrigerator with an email send and receive function,” in addition to the usage and function of sending and receiving emails, also has a usage and function based on hardware specific to refrigerators, namely storing and refrigerating food and other items. Accordingly, the examiner should determine that the usage and function of the two designs are not similar.

<Example of dissimilar usage and function 2>

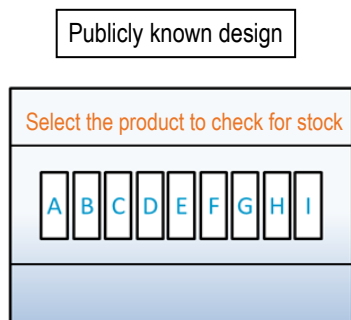


[Article to the Design] Machining center  
[Description of Article to the Design] (Omitted) The graphic image for which design registration is requested is a graphic image for setting the content of cutting work.

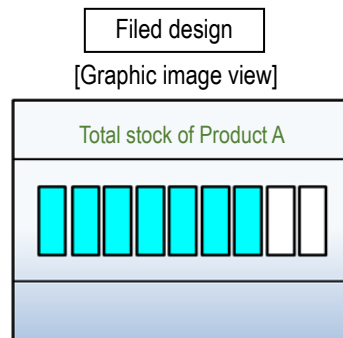
\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

What a “computer with a machining center control function” and a “machining center” have in common is that they both have a usage and function of setting the content of cutting work. However, where they differ greatly is that, whereas a “computer with a machining center control function” only has a usage and function of controlling a machining center and processing information, a “machining center,” in addition to controlling a machining center, also has a usage and function based on hardware specific to machining centers, which computers generally do not have, namely carrying out cutting work. Accordingly, the examiner should determine that the usage and function of the two designs are not similar.

<Example of dissimilar usage and function 3>



“Graphic image for checking stock”  
(Explanation)  
The multiple rectangular shapes are **product selection buttons** that indicate types of products. Pushing a button displays a screen indicating the quantity of that product in stock.



[Article to the Design] Graphic image for checking stock of a product  
[Description of Article to the Design] (Omitted) The multiple rectangular shapes are **an indicator** for the quantity of a specific product in stock.

\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

What the designs have in common is that they both relate to checking products for stock. The usage and functions of the two graphic images, however, differ greatly. The publicly known design is for selecting a single product from several options and then giving an instruction to display that information, whereas the filed design displays that information. Accordingly, the examiner should determine that the usage and function of the two designs are not similar.

#### 6.2.2.2 The usage and functions of the parts for which design registration is requested in two designs are identical or similar

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When determining similarity of designs in an application for design registration, not only should usage and function be compared between entire articles, entire graphic images or entire buildings, where the usage and function of the parts for which design registration is requested in the filed designs are not identical or similar, the examiner should treat the two designs as not similar.

For example, consider a design for which design registration is requested for only the graphic image part of a “refrigerator with an email sending and receiving function” and a whole design for which design registration is requested for the entire article. Whereas the usage and function of the former part for which the design registration is requested is an email sending and receiving function, the latter part for which the design registration is requested (that is, the entire article) includes an email sending and receiving function as well as the usage and function as a refrigerator storing food and other items. For this reason, in this case, since the usage and function of the former part for which the design registration is requested and the usage and function of the whole design are not similar, the two designs are not similar.

#### 6.2.2.3 The shapes, etc. of a graphic image and a part of an article, etc. for which design registration is requested in two designs are identical or similar

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Although a graphic image is separated from the article, it is in fact given tangible form by being displayed on the display part of the article, etc. or projected on a wall or the ground, etc. Determination of similarity is therefore made in the same way as determining similarity in the shape, etc. of an article, etc.

For graphic images represented in a single “graphic image view,” similarity is determined as a flat graphic image. For three-dimensional graphic images, similarity is determined by using “○○ graphic image views.”

### 6.3 The subject matter involves creative difficulty (the subject matter is not something that could have been easily created)

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#### 6.3.1 Determining entity for creative difficulty in designs including a graphic image

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Regarding designs including a graphic image, a person ordinarily skilled in the art of the design refers to a person who, as of the time of the filing of the application for design registration, had ordinary skills concerning designs including a graphic image.

In the case of a design including a graphic image as a part of an article, in addition to the above skills, the applicable person should also be ordinarily skilled with respect to designs in the industry in which the article to the design is manufactured and sold.

Furthermore, in the case of a design including a graphic image as a part of a building, in addition to the above skills, the applicable person should also be ordinarily skilled with respect to designs in the industry in which the building is constructed and sold.

### 6.3.2 Basic concept in determining the creative difficulty of designs including a graphic image

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For the basic concept in determining creative difficulty, see 3. “Basic concept in determining creative difficulty” in Part III, Chapter II, Section 2 “Creative difficulty.”

#### 6.3.2.1 Examples of ordinary techniques in the art of designs including a graphic image

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If it is determined that the filed design was created based on constituent elements and specific modes that were publicly known prior to filing, the examiner should examine whether it was created by an “ordinary technique” in the art of the design.

Although examples of the main “ordinary techniques” common to many designs including a graphic image are as shown below, the examiner should examine the filed design in light of the actual conditions of creation in the art of the design.

(a) Replacement

Refers to replacing some constituent elements of the design with those of other designs, etc.

(b) Aggregation

Refers to constituting a single design by combining multiple existing designs, etc.

(c) Change of layout

Refers to merely changing the layout of the constituent elements of a design.

(d) Change of component ratio

Refers to changing the aspect ratio or other proportion, such as by increasing or decreasing the size, while maintaining the features of the design.

(e) Change in number of units of a continuous constituent element

Refers to increasing or decreasing the number of an individual unit of creation of a design which is represented repeatedly.

(f) Use or diversion of a constituent element beyond the framework of the article, etc.

Refers to adopting a variety of existing elements as a motif, and using in or diverting to a graphic image without hardly changing their shape, etc.

(g) Change of the mode of frame division

Refers to changing the division mode within an ordinary range and ratio when a graphic image is divided into several frames.

(h) Deletion of organized compartment elements

Refers to deleting units of organized compartment elements when a graphic image is divided into several organized compartment elements.

(i) Addition of existing mode of change

(j) Mere combination of ordinary techniques mentioned from (a) to (i)

#### 6.3.2.2 Examples of minor modification in the art of designs including a graphic image

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With respect to the determination under 6.3.2.1 above, rather than constituent elements and specific modes that were publicly known prior to filing being represented by ordinary techniques, etc. without change, if the filed design is represented with modifications having been added to those constituent elements and specific modes, the examiner should examine whether those modifications are nothing more than “minor modifications” in the art of the design.

Although examples of “minor modification” in the case of designs including a graphic image are as shown below, the examiner should examine the filed design in light of the actual conditions of creation in the art of the design.

- (a) Changes made to detailed designs, such as rounding of a rectangle corner part, addition of shades to make three-dimensional shape, placement of gaps between constituent elements, changes in the width between gaps, and introduction of the pull-down function
- (b) Simple addition of colors, such as simple coloring in each compartment and standard coloring based on required functions
- (c) A mere combination of minor modifications in (a) and (b) above

#### 6.3.2.3 Novelty and originality of design ideas from the viewpoint of a person skilled in the art

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Regarding novelty or original design ideas from the viewpoint of a person skilled in the art, see 4.3 “Novelty and originality of design ideas from the viewpoint of a person skilled in the art” in Part III, Chapter II, Section 2 “Creative Difficulty.”

#### 6.3.2.4 Examples of easily created designs

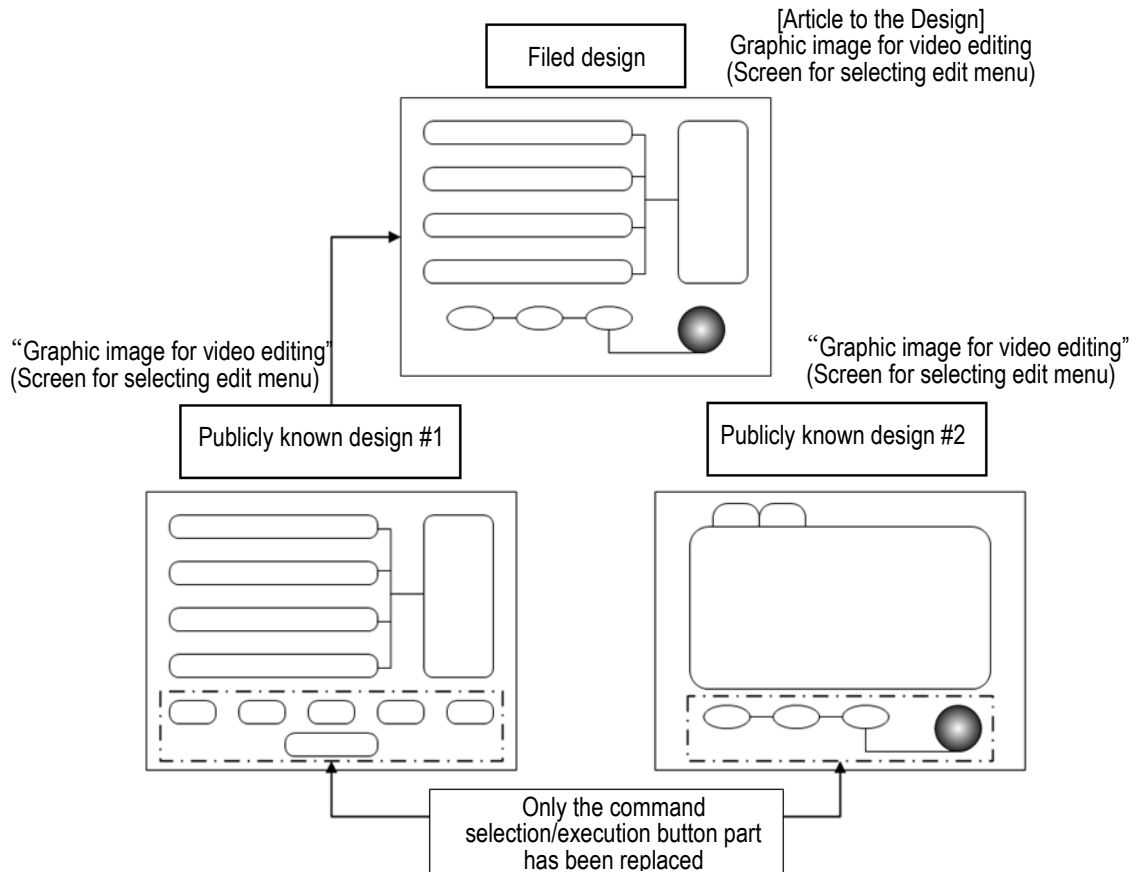
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All of the examples shown below are typical representations of the method for determining creative difficulty in cases where the filed design is assumed to be novel.



(1) Examples of designs that could have been easily created through replacement

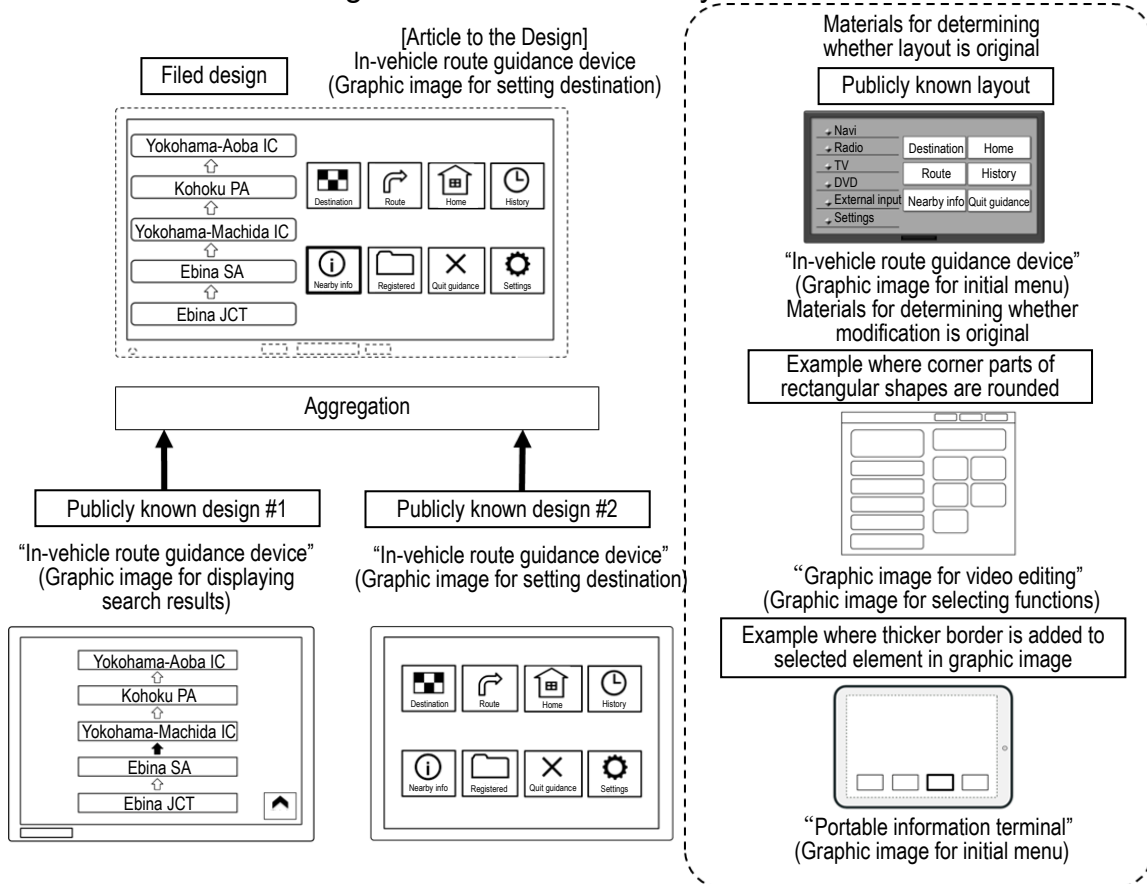
Where a design merely constitutes a single graphic image in which a part of a publicly known graphic image has been directly replaced with a part from another graphic image, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the replaced graphic image (and with respect to any added modifications), it can be found that the design could have been easily created.



\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(2) Examples of designs that could have been easily created through aggregation

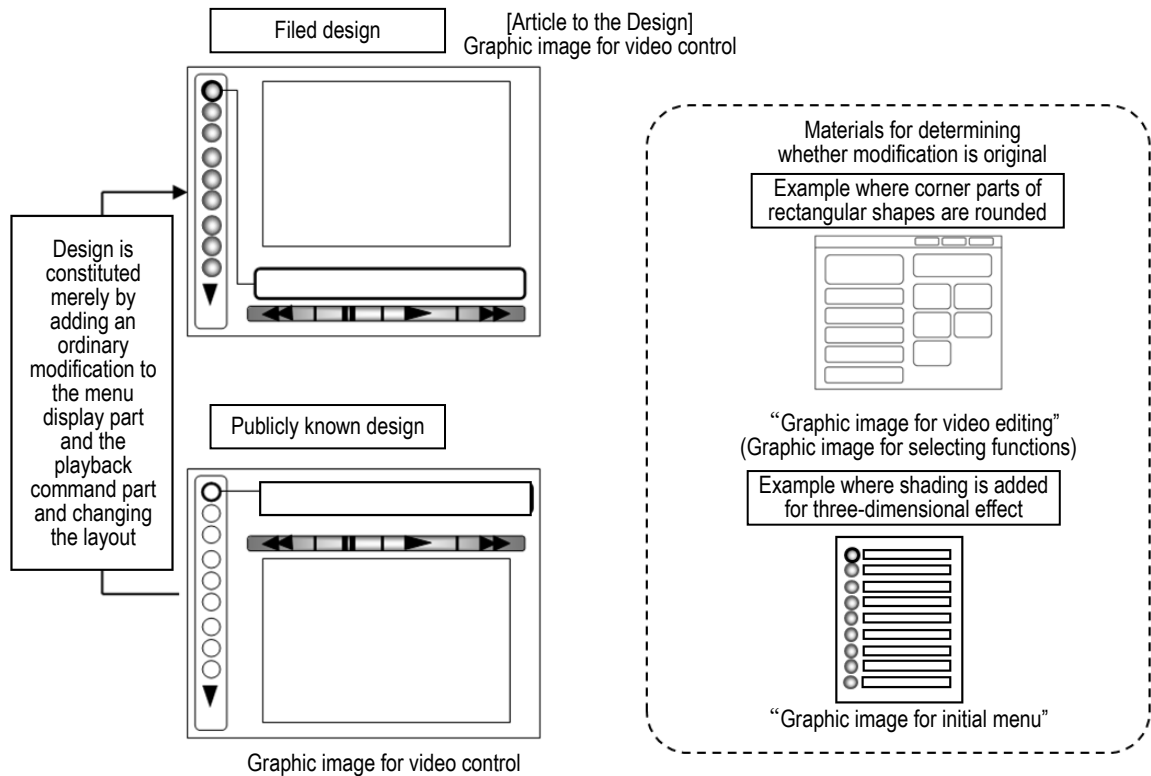
Where a graphic image merely constitutes a single graphic image in which plural publicly known graphic images have been aggregated, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the aggregated graphic image (and with respect to any added modifications), it can be found that the design could have been easily created.



\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(3) Examples of designs that could have been easily created through change of layout

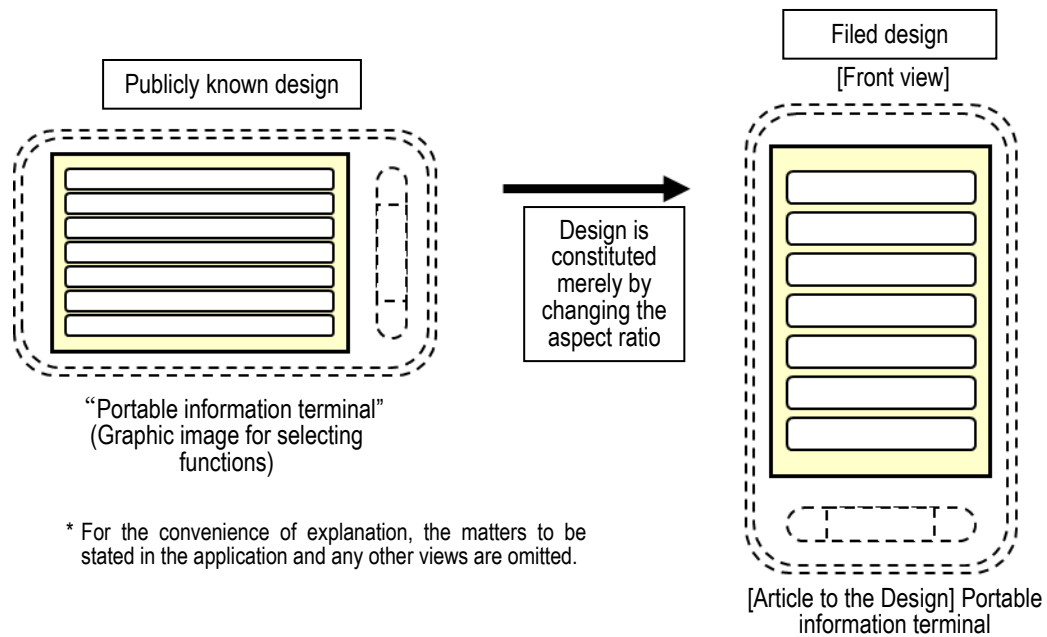
Where a graphic image is merely the rearrangement of a publicly known graphic image, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the layout (and with respect to any added modifications), it can be found that the design could have been easily created.



\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

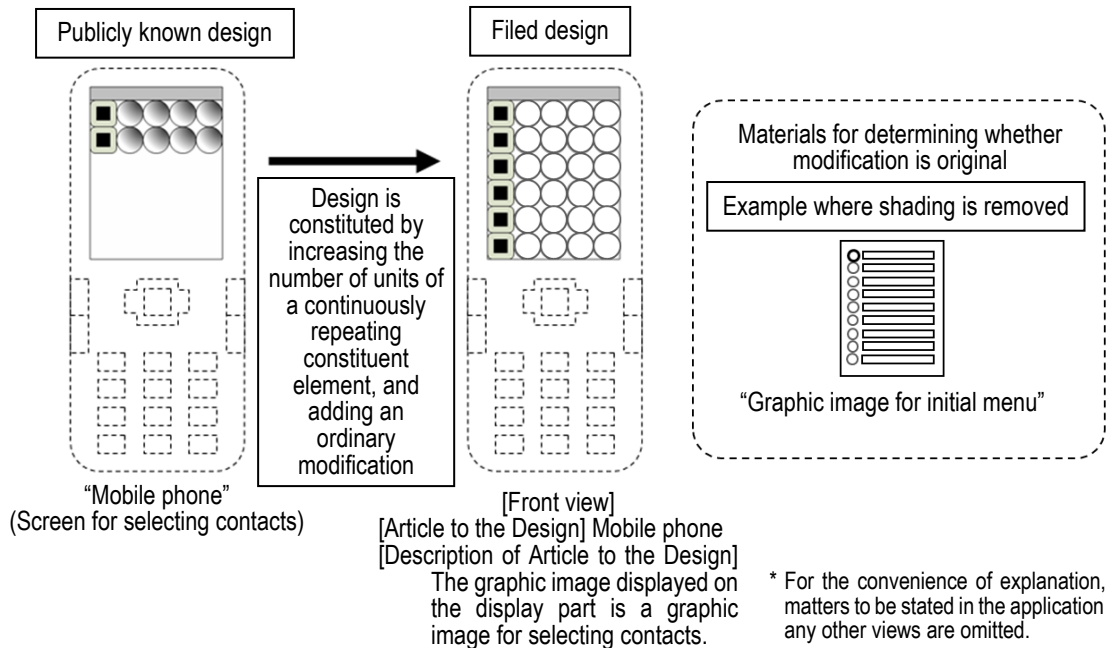
(4) Examples of designs that could have been easily created through change of component ratio

Where a graphic image merely constitutes a single graphic image in which the component ratios of plural publicly known graphic images have been changed, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the component ratio (and with respect to any added modifications), it can be found that the design could have been easily created.



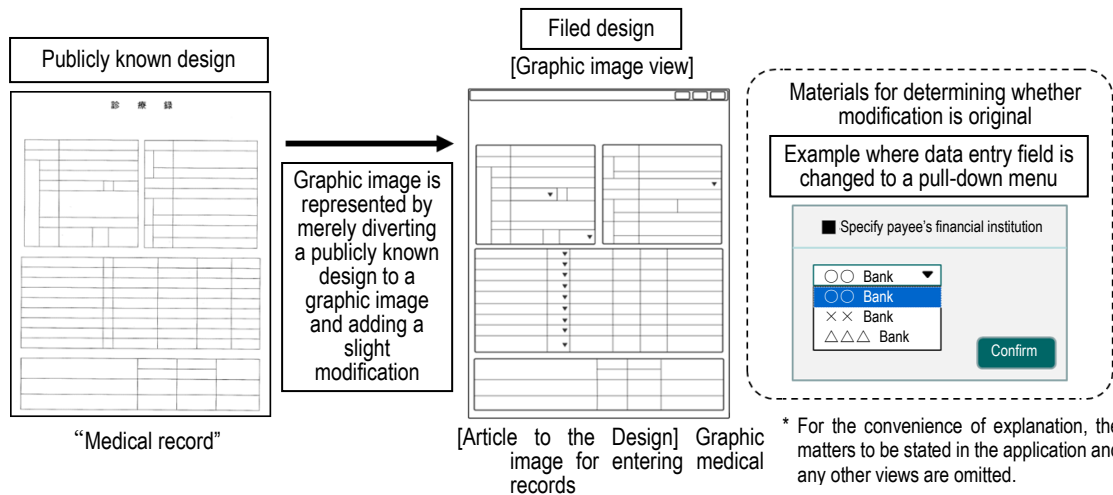
(5) Examples of designs that could have been easily created through change in number of units of a continuous constituent element

Where a design increases or decreases the number of a continuously repeating graphic image that is publicly known, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the number of repeats (and with respect to any added modifications), it can be found that the design could have been easily created.



(6) Examples of designs that could have been easily created through use or diversion of a constituent element beyond the framework of the article, etc.

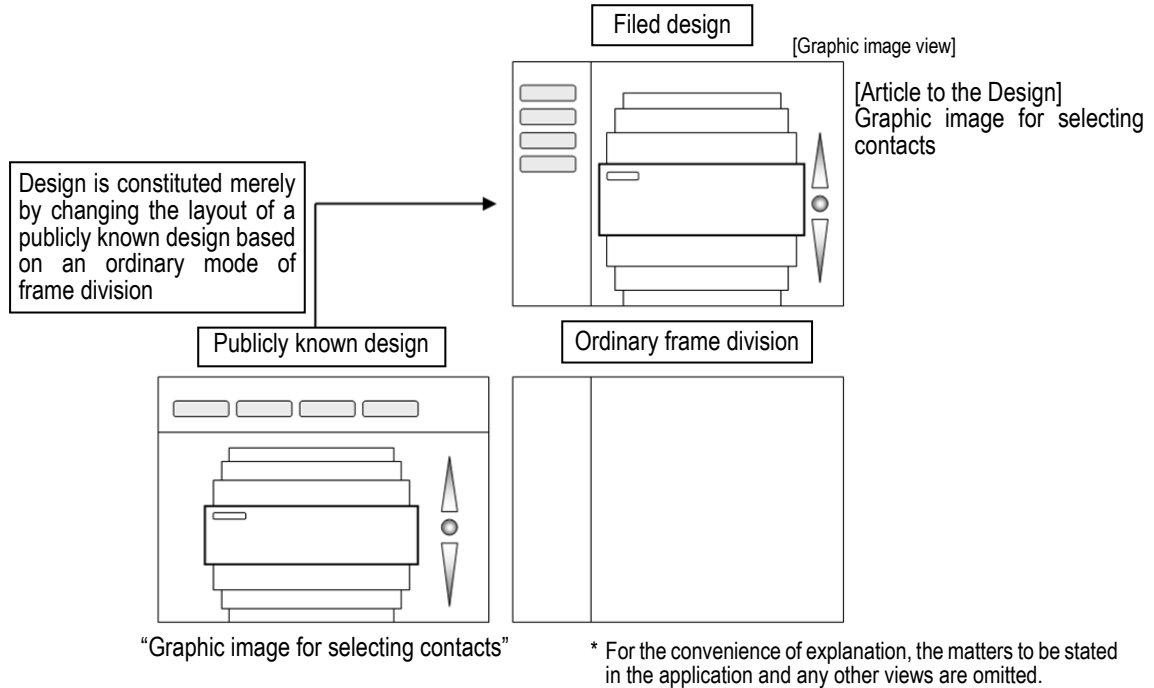
Where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to a design in which a publicly known article has merely been directly diverted to a graphic image (and with respect to any added modifications), it can be found that the design could have been easily created.



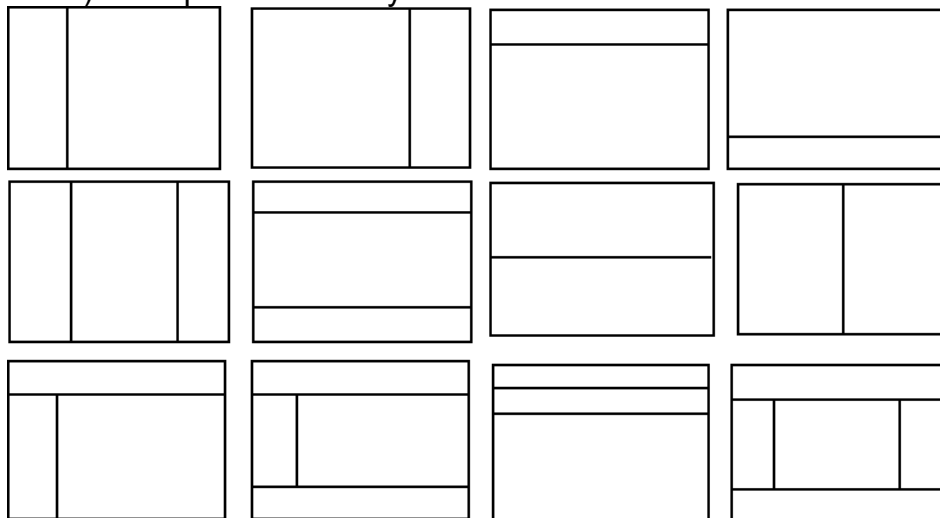


(7) Examples of designs that could have been easily created through change of the mode of frame division

Where the frame division mode of a publicly known graphic image has merely been changed in a layout based on another ordinary frame division mode, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the changed graphic image (and with respect to any added modifications), it can be found that the design could have been easily created.

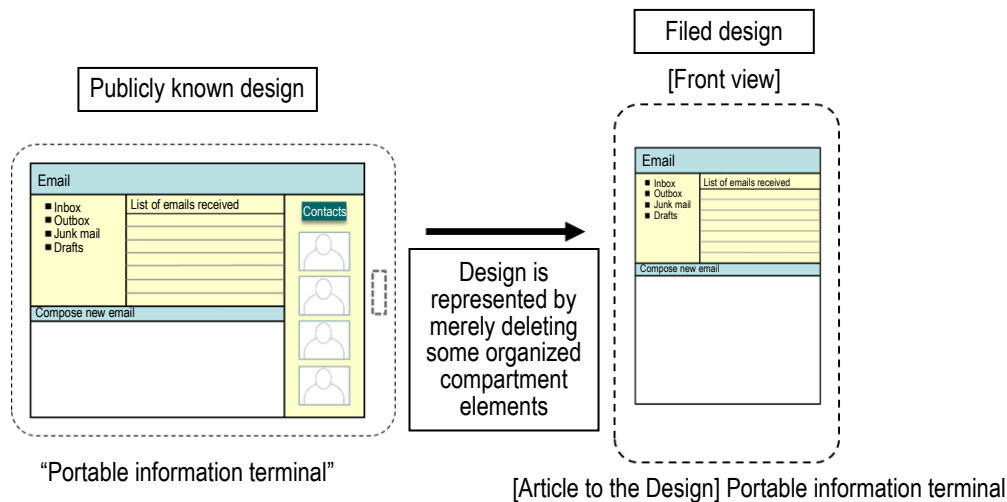


<(Reference) Examples of ordinary modes of frame division>



(8) Examples of designs that could have been easily created through deletion of organized compartment elements

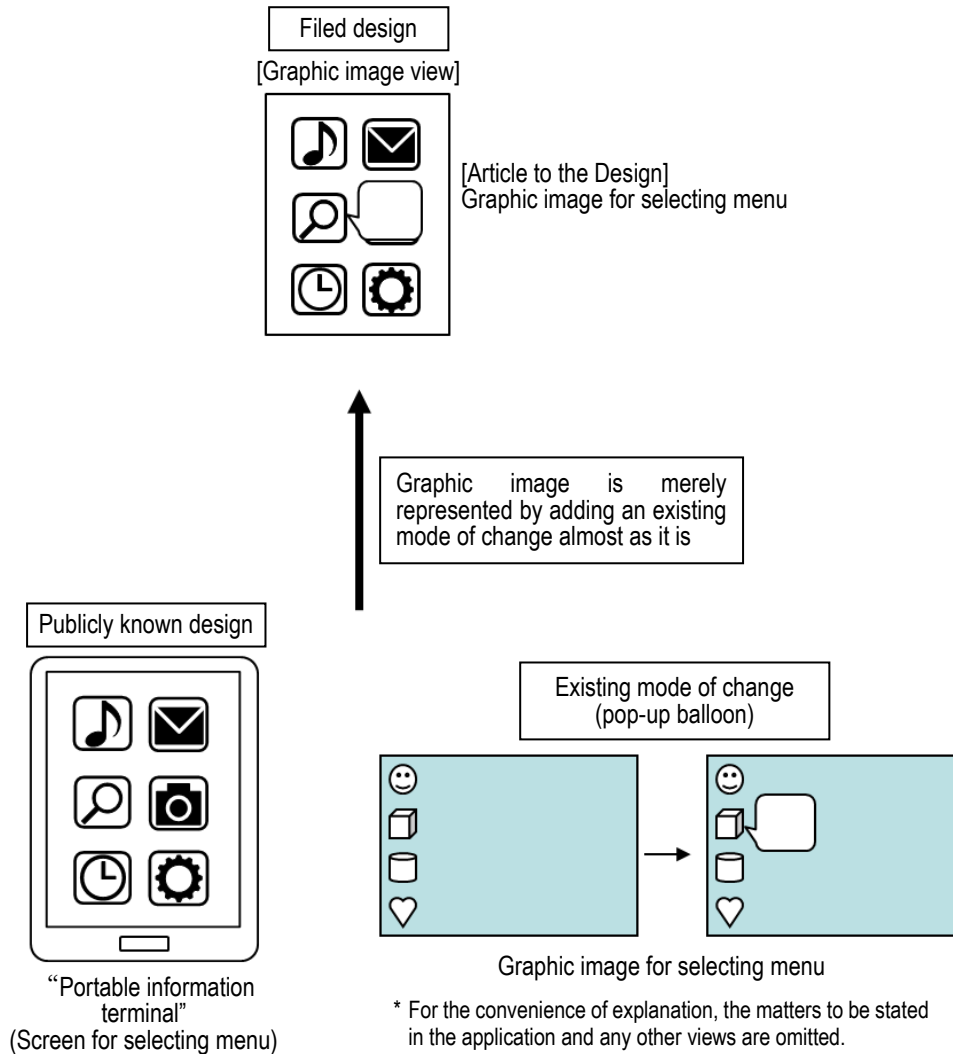
Where a graphic image constitutes a publicly known graphic image from which organized compartment elements have been deleted, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the change of layout following the deletion (and with respect to any added modifications), it can be found that the design could have been easily created.



\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(9) Examples of designs that could have been easily created through addition of existing mode of change

Where a graphic image is merely a publicly known graphic image to which an existing mode of change has been added, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the graphic image to which the mode of change has been added (and with respect to any added modifications), it can be found that the design could have been easily created.



### 6.3.3 Determining creative difficulty in graphic images that change

Regarding designs including a graphic image, creative difficulty in cases where the graphic image changes is determined by making determinations as to whether or not the respective graphic images indicating before and after the change could have been easily created by a person skilled in the art based on materials that were publicly known prior to the application for design registration being filed, and whether or not the mode of change could have been easily created by a person skilled in the art. In other words, in either of the cases (1) or (2) below, the design in the application could not be found to be a design that could have been easily created. Furthermore, in cases where plural graphic images are included, on the question of

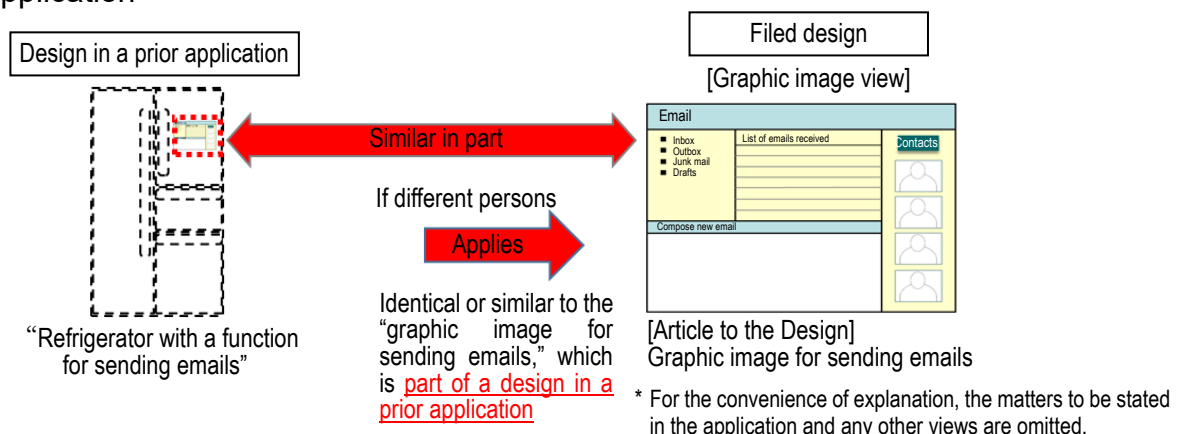
whether or not those graphic images can be found to be a single graphic image that changes, see 5.2.4 “Graphic images that change.”

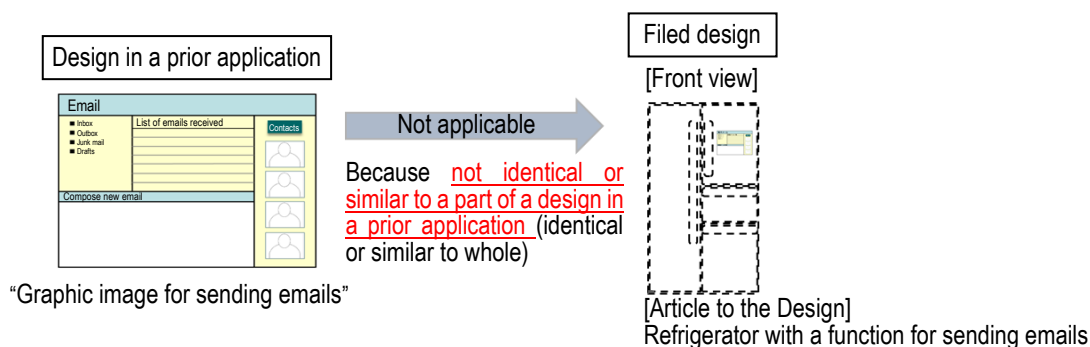
- (1) Where either of the graphic images indicating before and after the change could not have been easily created by a person skilled in the art
- (2) Where the mode of change could not have been easily created by a person skilled in the art

#### 6.4 The subject matter is not a design that is identical or similar to part of a design in a prior application

On the question of whether subject matter is identical or similar to part of a design in a prior application, in principle, general standards for determining that subject matter is not a design that is identical or similar to part of a design in a prior application should be followed (see Part III, Chapter IV “Exclusion from protection of a design in a later application that is identical or similar to part of a design in a prior application”). In cases where a **design including a graphic image as a part of an article** is the prior application and a **graphic image design** with a similar graphic image part has been filed in a later application, even if the (graphic image) design in the later application is not similar to the design in the prior application (which includes the graphic image as part of the article), this provision should still apply (even the design being similar does not prevent application of this provision). On the other hand, where a **graphic image design** is the prior application and a **design including a graphic image as a part of an article** is filed in which a graphic image similar to the **graphic image design** is the part for which the design registration is requested, given that the graphic image for which design registration is requested is similar to the whole of the design in the prior application, not a part of it, this provision does not apply.

<(Reference) Application of a design that is similar to part of a design in a prior application>





\* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

\* The design in the later application may also be registered, but under the provisions of Article 26 of the Design Act, the design right cannot be worked without the authorization of the holder of the design right for the design in the prior application.

## 7. The subject matter is not similar to the design in a prior application

The examiner should also determine similarity with designs in prior applications in the same manner as determining novelty (see 6.2.2 “Method of determining similarity between designs including a graphic image”). However, while the provisions of prior application take into account disclosed designs, including parts represented by broken lines, when making a determination on the provisions of prior application, similarity between parts for which design registration is requested should be determined between the design in a prior application and the design in a later application, or between multiple designs filed on the same date.

Furthermore, if the applicants are the same (or, in the case of joint applications by multiple applicants, if all applicants are the same) and if it complies with the requirements (for details, see Part V “Related Design”), given that both designs may be registered by making the design in the prior application (either design if both dates are the same) the principal design and making the design in the later application (the design other than the principal design if both dates are the same) the related design, the examiner should include a statement to that effect in any order for consultation or in the notification for reasons for refusal.