

Chapter II Building Design

1. Outline

Article 2, paragraph (1) of the Design Act defines the “shape, patterns or colors, or any combination thereof, of a building (including a part of a building; the same applies hereinafter)” along with the “shape, patterns or colors, or any combination thereof, of an article (including a part of an article; the same applies hereinafter),” which are tangible movables, as corresponding to a design under the Design Act.

This Chapter describes how an examiner should determine whether a design that has been filed as a building design complies with the requirements for registration as a building design.

2. Basic concept in examining building design

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

In addition to looking at the definition of buildings that are subject to design registration, this Chapter focuses on specific matters when examining building design. For other matters not described in this Chapter, see the relevant parts of the examination guidelines pertaining to each requirement for registration.

In examining a building design, the examiner should first determine whether the design for which the design registration is requested corresponds to a building design under the Design Act, and if it does, should proceed with the examination in accordance with the examination standards for each of the requirements for registration as described in Parts II and III, as well as with the matters contained in this Chapter.

3. Buildings under the Design Act

3.1 Requirements for categorization as a building under the Design Act

In order for the subject matter of an application for building design to constitute a building design under the Design Act, it must comply with both requirements (1) and (2) below.

- (1) The subject matter is a fixture of land
- (2) The subject matter is an artificial structure (including a civil engineering structure).

For details of each requirement (1) and (2) above, see 6.1.1.1 “The subject matter constitutes a building design under the Design Act” in this Chapter.

4. Concept of the “one application per design” requirement

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 building design. For general determination standards, see Part II, Chapter II “Filing of 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, the examiner should determine that the application contains two or more designs and does not fall under the category of applications for design registration that are filed for each design.

- (1) If two or more usages of the building, usages of the graphic image, or articles are stated together in the column of “Article to the Design” of the application (→ see 4.1)
 - (2) If two or more constituent objects are represented in the drawings, etc. (→ see 4.2)
- However, this excludes cases where the application for design registration is filed for the design of a set of articles.

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

If, for example, two or more usages of the building, usages of the graphic image, or articles are stated together in the column of “Article to the Design” of the application, the examiner should determine that the application for design registration constitutes an application for design registration containing two or more designs.

However, if the building has multiple usages, and if “complex building,” for example, is stated in the column of “Article to the Design” and multiple specific usages are stated in the column of “Description of Article to the Design”, the examiner should determine that the application for design registration constitutes an application for design registration filed for each design.

4.2 Concept of one design in statements in the drawings, etc.

In the drawings, etc. attached to an application for design registration, if the filed building is represented with multiple constituent objects, the examiner should determine whether the filed design pertains to a single building as follows.

- (1) Even in cases where multiple constituent objects are represented in the drawings, etc., if, from a common sense perspective, all of these constituent objects are essential for performing a specific single usage and function, the examiner should determine that the filed design is for a single building.
Example: A movable bridge that separates at the center
- (2) Even if the connection for performing a specific single usage and function is not strong like in (1) above, if the filed design falls under either of the following, the examiner should determine it is for a single building:

- (i) Cases where the constituent objects have been created in an integrated manner, such as giving them relevance in shape, etc. considering they will be constructed in close proximity; or
 - (ii) Cases where, from a common sense perspective, the constituent objects could be used in an integrated manner
Examples: School buildings and gymnasium; a commercial complex comprised of multiple buildings
- (3) If the constituent objects are found to have no connection for performing a specific single usage and function, the examiner should determine that the filed design is for two or more buildings.
Examples: A house and a radio tower; a bridge and a lighthouse

4.3 Concept of one design in cases where something fixed to a building or land is represented

The examiner should treat articles within the scope of appurtenances to the building, which, from a common sense perspective, are perpetually fixed to the building or land and which cannot be arbitrarily moved, as constituting a part of the building design. The examiner should also treat natural objects within the scope of appurtenances to the building, such as plants and rocks, whose position cannot be changed due to being perpetually fixed to the building or land, for example, as constituting a part of the building design.

<Examples of objects that are treated as constituting a part of the building design>

- (i) Finishing materials, etc. on buildings
Examples: Roof tiles, wallpaper, floor tiles, floorings, carpet laid on the floor, tatami mats, etc.
- (ii) Fixtures and furniture, etc.
Examples: Doors, windows, built-in partition walls, lights suspended from ceilings, lights recessed in ceilings, blinds, seats in a cinema
- (iii) Objects which accompany a building and are fixed outdoors
Examples: Wooden decks, pedestrian decks, gateposts, laid concrete blocks
- (iv) Natural objects, such as plants and rocks, that are determined to be within the scope of appurtenances to the building
Examples: Green walls fixed to the exterior of a building
Plants in a planter which cannot be relocated due to being fixed to the floor of the building, for example
Living trees planted between a house and the gateposts which belong to that house
Plants in a forecourt that belong to a hotel

(In addition, for treatment of these objects in determining similarity when determining the novelty requirement, see 6.2.4 “Evaluation of shape, etc. in cases where natural objects, etc. that constitute the design are included in part of a building” in this Chapter, and for treatment of these objects in determining the creative difficulty requirement, see 6.3.5 “Concept in cases where natural objects, etc. that constitute the design are included in part of a building” in this Chapter.)

However, even in cases that fall under the above, when making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, if the examiner determines that the object is clearly not fixed, the examiner should determine that two or more articles, etc. are represented.

4.4 Concept of one design in cases where something temporarily placed in a building, which is arbitrarily movable, is represented

If, from a common sense perspective, part of an application filed for a building design includes objects that are temporarily placed, which are arbitrarily movable and relocatable, the examiner should treat these objects as not constituting the building design.

The examiner should determine that such an application is not an application for a single building, and should notify reasons for refusal under Article 7 of the Design Act.

<Examples of objects treated as not constituting part of a building>

Examples: Tables in houses, office chairs, hotel beds, washing machines, refrigerators, rugs, removable oki-datami mats, dustbins

4.5 Concept of one design in cases where subject matter not categorized as a design under the Design Act is represented

If part of an application filed for a building design includes objects other than those described in 4.3 in this Chapter as constituting part of a building design, which are not categorized as a design under the Design Act, the examiner should treat these objects as not constituting the building design.

The examiner should determine that an application including such objects is not an application for a single building design, and should notify reasons for refusal under Article 7 of the Design Act.

Furthermore, even if objects are represented in drawings, etc., which do not constitute a design under the Design Act, if statement in the application or distinguishing indications in drawings, etc. are used to make it clear that these objects do not constitute the building design, they will not be reason for refusal, and they do not need to be deleted.

4.6 Concept of one design in cases where a graphic image is displayed on a building

If a graphic image under the Design Act is displayed on the display part of an image display device, etc. which is fixed to the building and land within the scope of appurtenances to the building, the examiner should perceive the graphic image as belonging to the building, and should treat it as constituting the building design.

<Example of a graphic image treated as constituting a building design>

Example: A graphic image for displaying the time, which is displayed on the display part of an image display device fixed to the exterior of a building

Similarly, a graphic image projected on the internal wall, external wall or ceiling, etc. of a building by means of a projector, etc., which is fixed to the building and land within the scope of appurtenances to the building, should also be treated as constituting the building design. Furthermore, in cases where, to all appearances, the

projector, etc. itself is not visible, even if the projector, etc. is not disclosed, if it can be determined that the graphic image has been projected by means of a projector, etc. that is fixed to the building and land within the scope of appurtenances to the building, its position, etc. does not necessarily have to be disclosed.

On the other hand, if the examiner determines that the graphic image is one that has been displayed on an image display device, etc. which has merely been placed without being fixed to the building and land within the scope of appurtenances to the building, or has been projected from outside the building, etc., the examiner should treat this graphic image as not constituting the building design. Therefore, if the subject matter of an application for building design includes such a graphic image, the examiner should determine that it does not fall under a single building design.

However, this does not apply if the application has been filed as a design for a set of articles, and it complies with the requirements for registration as a design for a set of articles.

4.7 Concept of one design in cases where a pattern or color is depicted on a building by switching on lighting apparatus

If a pattern or color is depicted on the internal or external walls, etc. of a building by switching on lighting apparatus, which is fixed to the building and land within the scope of appurtenances to the building, the examiner should perceive it as the pattern or color of the building itself, and should treat it as constituting the building design. Furthermore, in cases where, to all appearances, the light source itself is not visible, even if the lighting apparatus is not disclosed, if it can be determined that the pattern or color has been projected by means of lighting apparatus that is fixed to the building and land within the scope of appurtenances to the building, its position, etc. does not necessarily have to be disclosed.

On the other hand, if the examiner determines that the pattern or color is one that has been depicted by switching on lighting apparatus which has merely been placed without being fixed to the building and land within the scope of appurtenances to the building, or has been depicted by switching on lighting apparatus which is outside the building and land within the scope of appurtenances to the building, the examiner should treat this pattern or color as not constituting the building design. Therefore, if the subject matter of an application for building design includes such a pattern or color, the examiner should determine that it does not fall under a single building design.

4.8 Concept of one design for buildings with changing shape, patterns, or colors

The examiner should treat a building whose shape, patterns, or colors change based on a single usage and function as a single building, including the shape, patterns, or colors, or any combination thereof before and after the change.

<Examples of subject matter treated as a single building, including the shape, patterns, or colors, or any combination thereof, before and after the change>

Example 1: A sports stadium with a retractable roof

Example 2: A commercial building with a changing graphic image that is displayed on an image display device, etc. which is fixed to the building and land within the scope of appurtenances to the building
However, changes in the graphic image are limited to those within the

scope of changes allowable as a single graphic image design (see Part IV, Chapter I).

Example 3: A commercial building with a displayed pattern that changes by switching on lighting apparatus that is fixed to the building and land within the scope of appurtenances to the building
However, this is limited to cases where there is relevance in the patterns before and after the change.

4.9 Exceptions to the one application per design in building design

Even in cases where the subject matter is not found to be a single building, it may comply with the requirements for obtaining design registration as a design for a set of articles or as an interior design. Regarding a design for a set of articles that includes a building, see Part IV, Chapter III, and regarding interior design, see Part IV, Chapter IV.

5. Matters to be stated in the application and drawings, etc. of an application for design registration for a building design

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

During examination of a building design, 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.

5.1 Statements in the column of “Article to the Design”

When filing an application for design registration for a building design, the specific usage of the building should be clearly described.

Furthermore, for buildings with multiple usages, such as large-scale facilities with tenants from various industries, “Complex building” should be stated in the column of “Article to the Design”, and the specific usages should be described in the column of “Description of Article to the Design”.

In addition, if requesting design registration for part of a building, rather than the usage of the part for which the design registration is requested, the usage of the building should be stated in the column of “Article to the Design”, and if the usage and function of the part for which the design registration is requested is unclear from the other statement in the application and the drawings, etc. alone, this should be described in the column of “Description of Article to the Design”. For example, if the

bathroom section of a house is the part for which the design registration is requested, “house” should be stated in the column of “Article to the Design”, not “bathroom.”

<Examples of statement when filing an application for a single building (constituent object)>

Examples: House, school building, gymnasium, office building, hotel, department store, hospital, museum, bridge, gas tank, etc.

<Examples of statement when filing an application for multiple buildings (constituent objects)>

Examples: School, commercial building, etc.

<Examples of statement for a building with multiple usages>

Example: [Article to the Design] Complex building

[Description of Article to the Design] The lower floors of this building will be used for shops and the upper floors will be used for accommodation.

5.2 Statements in the column of “Description of Article to the Design”

If usage of the building cannot be clarified by statements in the column of “Article to the Design” alone, the specific usage should be stated in the column of “Description of Article to the Design”.

Furthermore, in cases of a building with multiple usages, specific usage should be stated in the column of “Description of Article to the Design”.

5.3 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 Part III, Chapter I “Industrially Applicable Design.”

Furthermore, regarding building design with changing shape, patterns, or colors, 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”.

5.4 Statements in the drawings, etc.

5.4.1 Necessary drawings

Regarding the requirement for statements in drawings, etc. attached to an application for design registration for a building design, since it is the same as filing an application for design registration for an article design, see Part III, Chapter I “Industrially Applicable Design.”

If requesting design registration for part of the “inside” of a building, like a room, etc., the exterior of the building does not need to be disclosed, provided that there is no impediment to making a finding on the usage, function, and shape, etc. of the part for which the design registration is requested, and the applicant also considers that the position, size, and scope of the part are ordinary in the shape, etc. of the entire building. If necessary, such as if the applicant considers there is something unique

about the position, size, and scope of the part for which the design registration is requested in relation to the entire building, the entire building may also be disclosed. If the position, size, and scope in relation to the entire building is not disclosed, the examiner should find that they are within the scope of ordinary.

Furthermore, if design registration as one design is being requested for a building comprised of multiple constituent objects, at least one drawing should be disclosed which clarifies their positional relationship.

However, this excludes cases where all multiple constituent objects are essential for performing a specific single usage and function, like, for example, a movable bridge that opens and closes at the center.

5.4.2 Indication of view

As with an application for design registration for an article design, indications of view should be stated using [front view], [rear view], [left side view], [right side view], [top view], [bottom view], [sectional view of ○○], [end elevational view of the ○○ cut part], [enlarged view of ○○], [perspective view], etc.

Or indications of view used in architectural drawings should be used, namely, [eastern elevation view], [western elevation view], [southern elevation view], [northern elevation view], [roof view], [cross sectional view of ○○], [longitudinal sectional view of ○○], etc.

5.4.3 Cases where articles extraneous to the design for which the design registration is requested are represented in drawings

Drawings for a building design (excluding reference views) should only represent the design for which the design registration is requested. However, as with applications for design registration for an article design, this excludes cases where “Description of the Design” includes an explanation of the articles extraneous to the design for which the design registration is requested, as well as cases where articles relevant to the design for which the design registration is requested can be clearly recognized from other articles because of distinguishing indications in drawings, etc.

6. Registration requirements for a building design

In order for the subject matter of an application to obtain a design registration as a building design, it must comply with all of the requirements for registration stipulated 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 in examining a building design with respect to the key requirements for registration.

- (1) The subject matter is an industrially applicable design (→ see 6.1)
- (2) The subject matter is novel (→ see 6.2)
- (3) The subject matter involves creative difficulty (is not something that could have been easily created) (→ see 6.3)
- (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 (→ see 6.4)

6.1 The subject matter is an industrially applicable design

If the subject matter of an application for building design does not comply with any of the following requirements, the examiner should determine that it does not been categorized as an industrially applicable design as provided in the main paragraph of Article 3, paragraph (1) of the Design Act.

- (1) The subject matter constitutes a design
- (2) The subject matter is a specific design
- (3) The subject matter is industrially applicable

6.1.1 The subject matter constitutes a design

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

6.1.1.1 Subject matter constitutes a building design under the Design Act

For a subject matter to constitute a building design under the Design Act, it must comply with both requirements (1) and (2) below.

- (1) The subject matter is fixtures of land
Land: Without distinction of topography, such as flat or sloping; including the bottom of water areas, such as seabeds and lakebeds.
Fixture: Something that is used which is continuously fixed to the land.
- (2) The subject matter is an artificial structure (including a civil engineering structure)
Structure: Structures eligible for design registration are broader in meaning than the terms defined in the Building Standards Act. They refer to material objects that are constructed, and include civil engineering structures. They also include internal shape, etc. where it can be visually recognized during normal conditions of use.^(Note)

(Note) Also includes cases where only part of the building interior is the part for which the design registration is requested. Excludes the extent not visually recognized during normal conditions of use.

* These definitions in the Examination Guidelines for Design are based on the legal purpose of the Design Act, that is, objects of the creation of design should be broadly protected by the Design Act.

<Examples categorized as a building under the Design Act>

Commercial buildings, houses, schools, hospitals, factories, sports stadiums, bridges, radio towers, etc.

6.1.1.2 Subject matter not categorized as a building under the Design Act

The examiner should determine that any subject matter falling under either (1) or (2) below, for example, is not categorized as a building under the Design Act.

- (1) Subject matter that does not comply with the requirement of being fixtures of land

The examiner should determine that the following, for example, do not comply with the requirement of being fixtures of land.^(Note 1)

<Examples of subject matter that does not comply with the requirement of being fixtures of land>

(a) Objects that can be fixed to land, but which can be traded as movables

Example: Garden lanterns^(Note 2)

(b) Temporary objects that can be set up for a short time

Example: Temporary tents

(c) Objects that can potentially be registered as real estate, etc., but which can be traded as movables

Examples: Ships, aircraft, motor homes

(Note 1) However, even if the subject matter falls under one of these categories, if it corresponds to an article under the Design Act, it could potentially be the subject of design registration as a design for an article.

(Note 2) However, if the subject matter is attached to the building, the examiner should treat it as constituting a part of the building design (see 4.3 “Concept of one design in cases where something fixed to a building or land is represented” in this Chapter).

(2) Subject matter that does not comply with the requirement of being an artificial structure

The examiner should determine that the following, for example, do not comply with the requirement of being an artificial structure.

<Examples of subject matter that does not comply with the requirement of being an artificial structure>

(a) Objects that are not artificial

Examples: Natural mountains, natural rocks, natural trees, natural rivers, natural waterfalls, natural sandy beaches

(b) Objects that have been modified by means of human intervention, but which retain natural objects or topography, etc. as the main element of the design

Examples: Ski slopes, golf courses

(c) Objects that are land itself, or are mere formations of land

In the case of a design for which design registration is requested for part of a building, where only subject matter not categorized as an artificial structure is indicated on the part for which the design registration is requested, the examiner should determine that it does not comply with this requirement.

Furthermore, for the handling of cases where, in addition to subject matter that is categorized as an artificial structure, subject matter of an application for building design includes some natural objects or other subject matter not categorized as a design under the Design Act, see 4.3 “Concept of one design in cases where something fixed to a building or land is represented” in this Chapter.

6.1.2 The subject matter is a specific design

(1) Requirement for the design to be specific

To obtain a design registration as a building design, it must be possible to directly derive from the statement in the application and drawings, etc. attached to the application as originally filed, that application for design registration is an application for design registration for a building design, based on the ordinary skill in the art of the design.

Next, for a design filed as a building design to be recognized as a specific design, it must be possible to directly derive the contents of a specific single design from the statement in the application and drawings, etc. attached to the application as originally filed, based on the ordinary skill in the art of the design.

If no specific contents concerning (i) through (v) below can be derived for the filed design, the examiner should determine that the design is not specific.

- (i) Usage and function of the building
- (ii) Usage and function of the part, if design registration is requested for part of a building
- (iii) Position, size, and scope of the part, if design registration is requested for part of a building
However, if requesting design registration for part of the “inside” of a building, the exterior of the building does not need to be disclosed, provided that there is no impediment to making a finding on the usage, function, and shape, etc. of the part for which the design registration is requested, and the applicant considers that the position, size, and scope of the part are ordinary in the shape, etc. of the entire building (For details, see this 5.4.1 “Necessary drawings” in this Chapter).
- (iv) Positional relationship of constituent objects, if design registration as one design is being requested for a building comprised of multiple constituent objects
- (v) Shape, etc. of building

Regarding the general requirements for statements in an application or drawings, etc. attached to the application, see Part III, Chapter I “Industrially Applicable Design.”

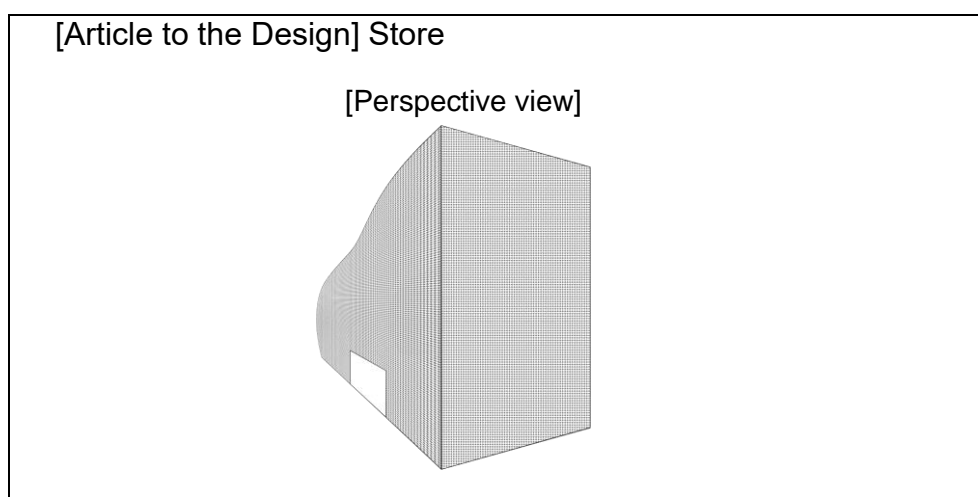
(2) Examples of cases where subject matter cannot be found to be a specific design

If an application for design registration for a building or the drawings, etc. attached to the application contain any of the following improper descriptions, for example, and if the contents of a specific single design cannot be directly derived even after making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, the examiner should determine that the design is not specific.

<Examples of cases where the examiner should determine that the design is not specific>

- (i) Where the specific usage of the building is unclear
- (ii) In the case of a design for which design registration is requested for part of a building, where the usage and function of that part are unclear
- (iii) Where it is unclear whether the design registration is being requested for a building design or an interior design
- (iv) Where design registration as one design is being requested for a building comprised of multiple constituent objects, and where their positional relationship is unclear
- (v) Where the specific shape, etc. in the design for which the design registration is requested as a building design is unclear

[Case example] Example of a design where specific shape, etc. is unclear



(Note) In this case example, the design of the gently sloping roof is represented in only one perspective view. As it is not possible to comprehend the specific shape, etc. of the entire design, the design is determined to be not specific.

6.1.3 The subject matter is industrially applicable

In building design, “industrially applicable” means that more than one of the same article can be constructed. The article does not need to have been industrially applied in reality. Just having the potential is enough.

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 building design 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 building design are described below.

6.2.1 Determining entity in the determination of similarity between building designs

Likewise with the determining entity in the determination of similarity between article designs, the determining entity in the determination of similarity between building designs is consumers (including traders) (see 2.2.1 “Determining entity” in Part III, Chapter II, Section 1 “Novelty”).

For example, in the case of a detached house, in general, the person who becomes the owner and the user of that house is considered the consumer. In the case of a large-scale commercial building, in general, the client who becomes the owner of that commercial building is considered the consumer. However, since it is conceivable that the owner of a commercial building also takes into account the convenience and focal points of the tenants and their customers, the consumer’s viewpoint may include the viewpoints of those customers and other users.

In the context of the usage of each filed building design, the examiner should determine similarity from the consumers’ viewpoint according to that usage.

6.2.2 Observation method in determining similarity between building designs

Since most buildings are far bigger than the human body in size, when observing a building design for the purpose of determining similarity, without limiting observation to a single perspective, the examiner should make comprehensive observations from multiple perspectives, such as observing the building exterior with the naked eye from the viewpoint of a person standing on the ground, and observing the building interior in detail from a viewpoint closer to the part of the building based on observations with the naked eye under normal use conditions.

Furthermore, regarding buildings used for retail purposes for example, since they are created with distinguishing features on certain surface, such as being decorated only on the aspect facing the street, observations of such buildings should be made with greater emphasis placed on those aspects. On the other hand, regarding tower-shaped buildings, such as radio towers, since they are often created uniformly from every direction, observations of such buildings should be made with equal emphasis on each aspect.

6.2.3 Determining similarity of usage and function

(1) Determining similarity of usage and function between building designs

During the determination of similarity between building designs, when determining similarity of usage and function between two designs, the examiner should find the usage and function of both designs based on their purpose of use, state of use, etc., after first taking into account the usage stated in the column of “Article to the Design” of the two designs being compared.

The examiner does not need to make a judgment of similarity based on a comparison of the detailed usage and function of both designs. Instead, the examiner should determine that there is similarity in the usage and function of both designs if they have commonality in their usage and function based on their purpose of use, state of use, etc.

In the case of designs which have commonality in usage and function, for example, that people enter inside them and spend a certain amount of time there—like houses, hospitals, restaurants, or offices—the examiner should determine that these buildings have similar usage and function.

On the other hand, in the case of civil engineering structures for example, given that these structures have various specific usages different from people entering inside them and spending a certain amount of time there—such as extending a road or railway over a river (like a bridge), or transmitting radio waves for broadcasting or communications (like a radio tower)—at times, the examiner may determine that such a civil engineering structure has dissimilar usage and function to a “house,” etc., and may even determine that two civil engineering structures have dissimilar usage and function to each other.

(2) Determining similarity of usage and function between a building and an article

Similar to (1) above, determining similarity of usage and function between a building design and an article design does not require judgment of similarity based on a comparison of the detailed usage and function of both designs. Instead, the examiner should determine that there is similarity in the usage and function of both designs if they have commonality in their usage and function based on their purpose of use, state of use, etc.

Therefore, by way of example, in the case of a “house,” which is a building design, and a “prefabricated house”,^(Note) which is an article design, since they have commonality in usage and function in terms of both being used for people to reside in, the examiner should determine that the two designs have similar usage and function.

(Note) A “prefabricated house” is a movable distributed in the market, and falls under the category of “article” under the Design Act.

(3) Determining similarity of usage and function between buildings and interiors

Similar to (1) above, determining similarity of usage and function between a building design and an interior design does not require judgment of similarity based on a comparison of the detailed usage and function of both designs. Instead, the examiner should determine that there is similarity in the usage and function of both designs if they have commonality in their usage and function based on their purpose of use, state of use, etc.

Therefore, by way of example, in the case of a design, where the part for which the design registration is requested is part of a living room inside a “house,” which is a building design, and the “interior of a residential living room,” which is an interior design, since they have commonality in usage and function in terms of both being used for people to enter inside and spend a certain amount of time there, the examiner should determine that the two designs have similar usage and function.

6.2.4 Evaluation of shape, etc. in cases where natural objects, etc. that constitute the design are included in part of a building

When determining similarity between designs, if part of the building includes natural objects, etc. that constitute the design—like the shape, etc. of branches,

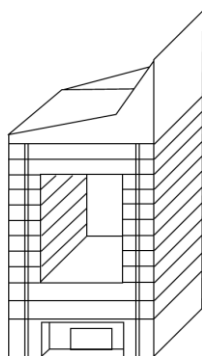
leaves or flowers on plants for example—the actual shape, etc. consisting of forms created by nature is not taken into consideration as a design characteristic. On the other hand, consideration should be given to formative characteristics with respect to the positional relationship between artificial structures and natural objects, etc. and to the constitution of the entire design of a building that includes them.

In addition, for the handling of cases where the subject matter of an application for building design includes some natural objects or other subject matter not categorized as a design under the Design Act, see 4.3 “Concept of one design in cases where something fixed to a building or land is represented” in this Chapter.

6.2.5 Case examples of determining similarity between building designs

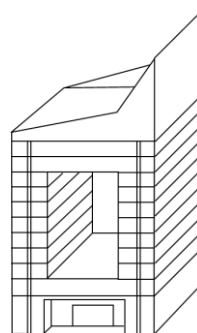
- (1) Examples where usage and function are similar
 - (i) Houses, hospitals, restaurants, office buildings
All of these have commonality in usage and function in terms of being used for people to enter inside and spend a certain amount of time there.
 - (ii) A railroad bridge and a road bridge
- (2) Examples where usage and function are dissimilar
 - (i) A gas tank and a hotel
 - (ii) A bridge and a lighthouse
- (3) Examples where shape, etc. is similar, and usage and function are identical

[Case example 1]



Publicly known design:

Office building

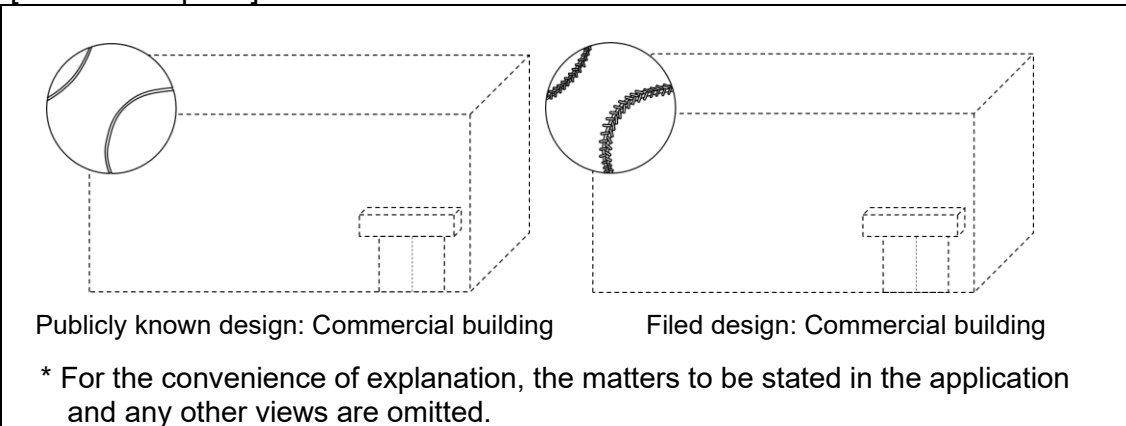


Filed design:

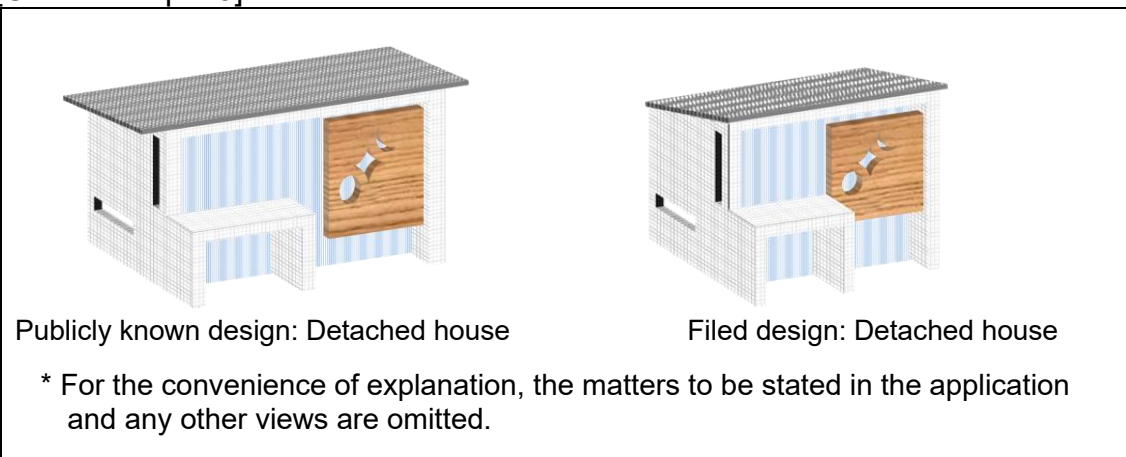
Office building

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

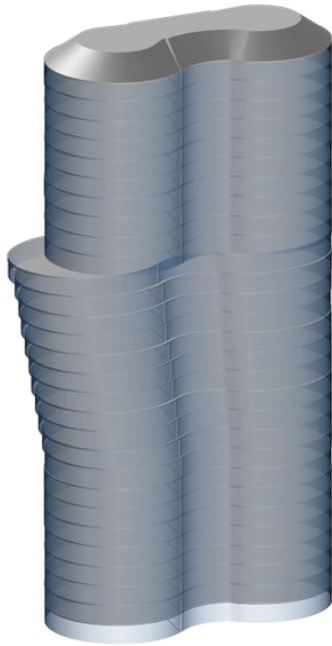
[Case example 2]



[Case example 3]



[Case example 4]



Publicly known design: Hotel



Filed design: Hotel

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

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

6.3.1 Determining entity for creative difficulty in building design

The examiner should examine and determine the creative difficulty of the filed building design, from the viewpoint of a person skilled in the art. A person skilled in the art refers to a person who, as of the time of the filing of the application for design registration, had ordinary skills concerning design in the industry in which buildings are constructed or sold.

6.3.2 Basic concept in determining the creative difficulty of building design

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.”

6.3.3 Ordinary techniques and minor modifications

6.3.3.1 Examples of ordinary techniques

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 buildings 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) Mere deletion of a constituent part

Refers to simply deleting a part that is recognized as an individual unit of creation of a design.

(d) Change of layout

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

(e) 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.

(f) 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.

(g) 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 various buildings without hardly changing their shape, etc.

6.3.3.2 Examples of minor modification

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” 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) Simple rounding or chamfering of corners and edges
- (b) Simple deletion of a pattern, etc.
- (c) Simple change in colors, simple coloring in each compartment, standard coloring based on required functions
- (d) Change in shape, etc. caused by a simple change of material
- (e) Simple change in the inclination angle of a roof

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

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.”

6.3.5 Concept in cases where natural objects, etc. that constitute the design are included in part of a building

If part of a building includes natural objects, etc. that constitute the design—like the shape, etc. of branches, leaves or flowers on plants for example—the shape, etc. consisting of forms created by nature is not evaluated as a creation of the design. On the other hand, formative characteristics with respect to the positional relationship between artificial structures and natural objects, etc. and to the constitution of the entire design of a building that includes them should be evaluated as a creation of the design.

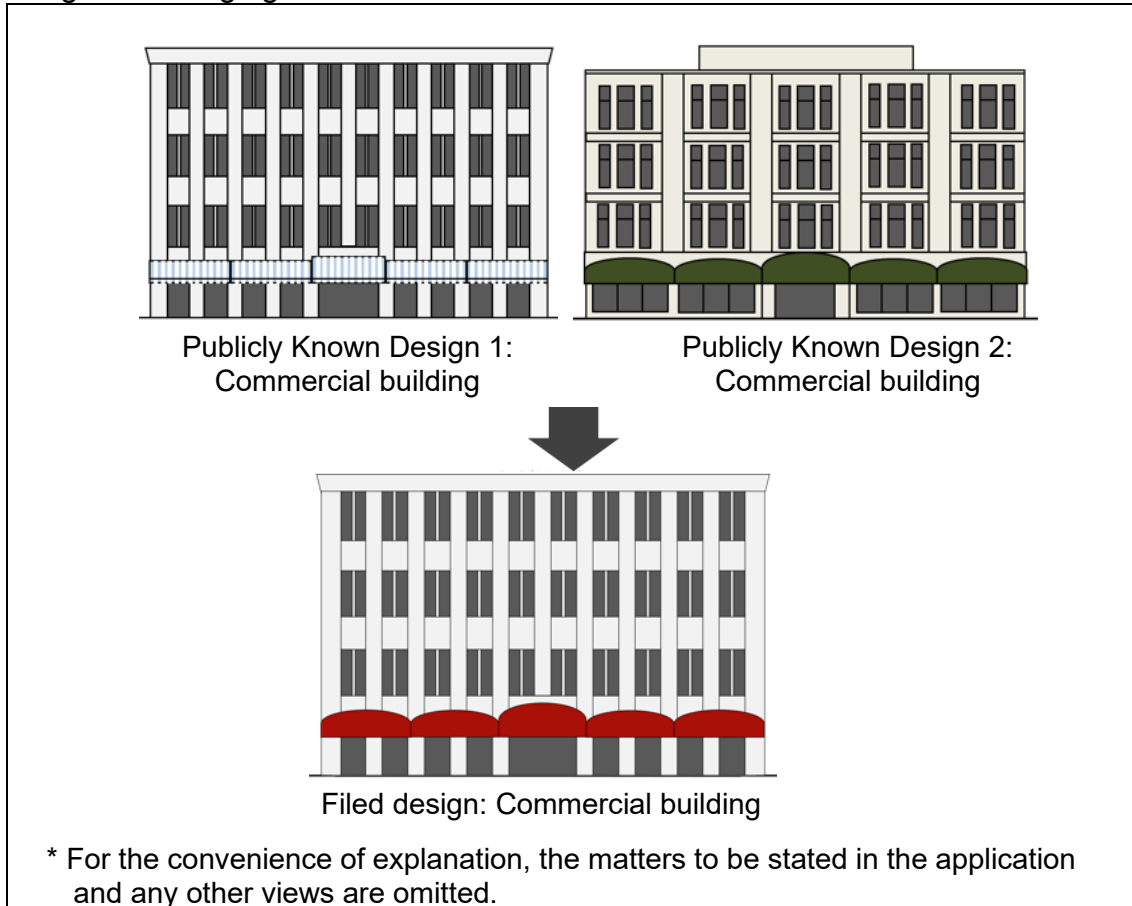
In addition, for the handling of cases where the subject matter of an application for building design includes some natural objects or other subject matter not categorized as a design under the Design Act, see 4.3 “Concept of one design in cases where something fixed to a building or land is represented” in this Chapter.

6.3.6 Examples of easily created designs

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.

[Case example 1] “Design through replacement”

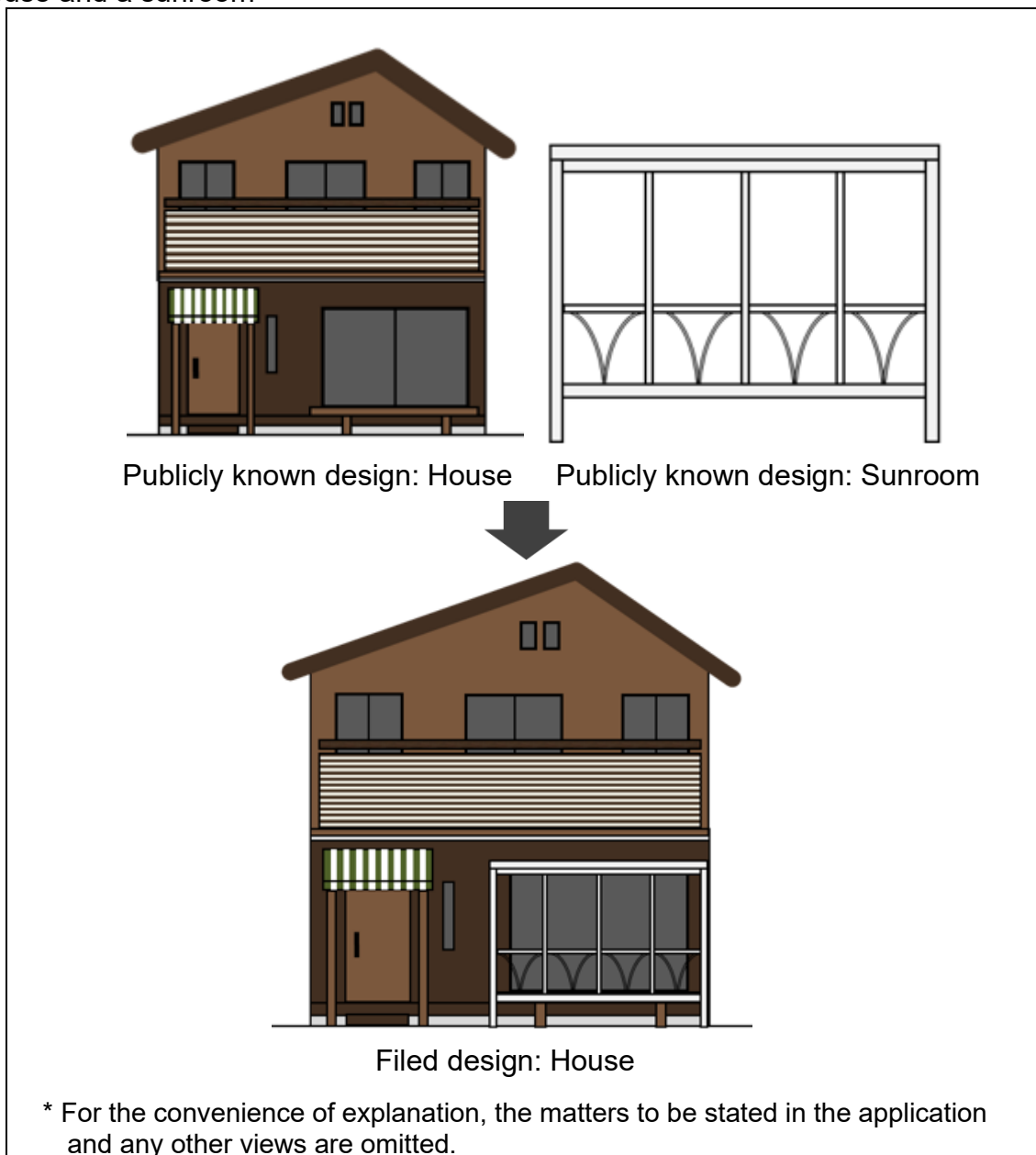
A design based on a publicly known commercial building, which merely represents an awning by replacing it with the awning of another publicly known commercial building and changing the color



(Note) In this case example, it is assumed that replacing awnings is an ordinary technique in the art of buildings, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. It typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 2] “Design through aggregation”

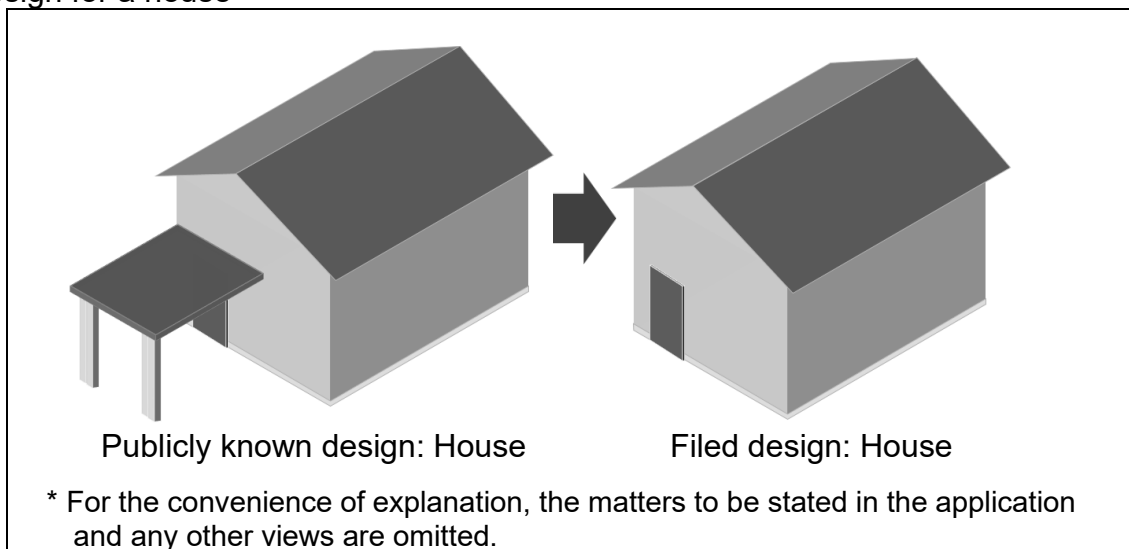
A design which merely represents the aggregation of publicly known designs for a house and a sunroom



(Note) In this case example, it is assumed that aggregating a house and a sunroom is an ordinary technique in the art of buildings, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. Furthermore, if the layout appears as a visual feature of the filed design, and if novelty or original design ideas from the viewpoint of a person skilled in the art are recognized, which are based on original ingenuity, the examiner should take the layout into consideration. This case example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 3] “Design through mere deletion of a constituent part”

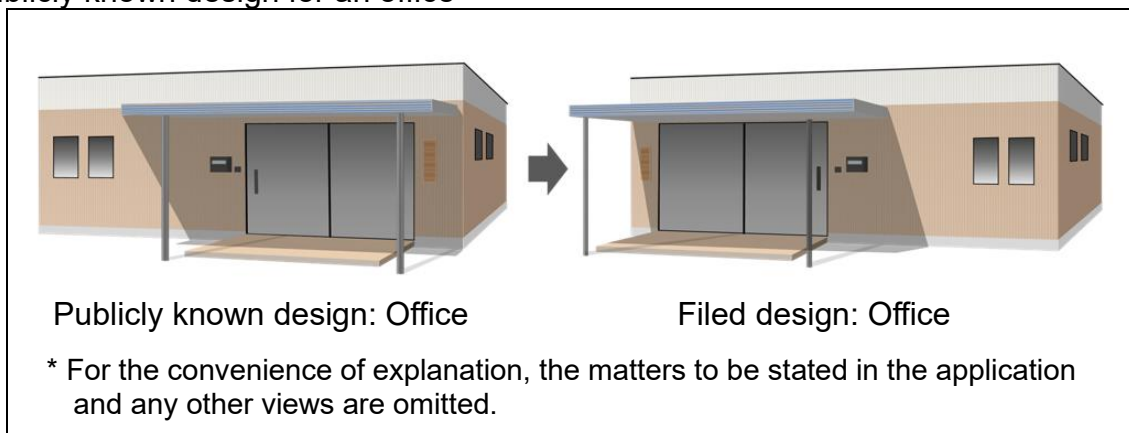
A design which merely represents the deletion of the portico from a publicly known design for a house



(Note) In the case example above, it is assumed that deleting the portico is an ordinary technique in the art of buildings, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. It typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 4] “Design through change of layout”

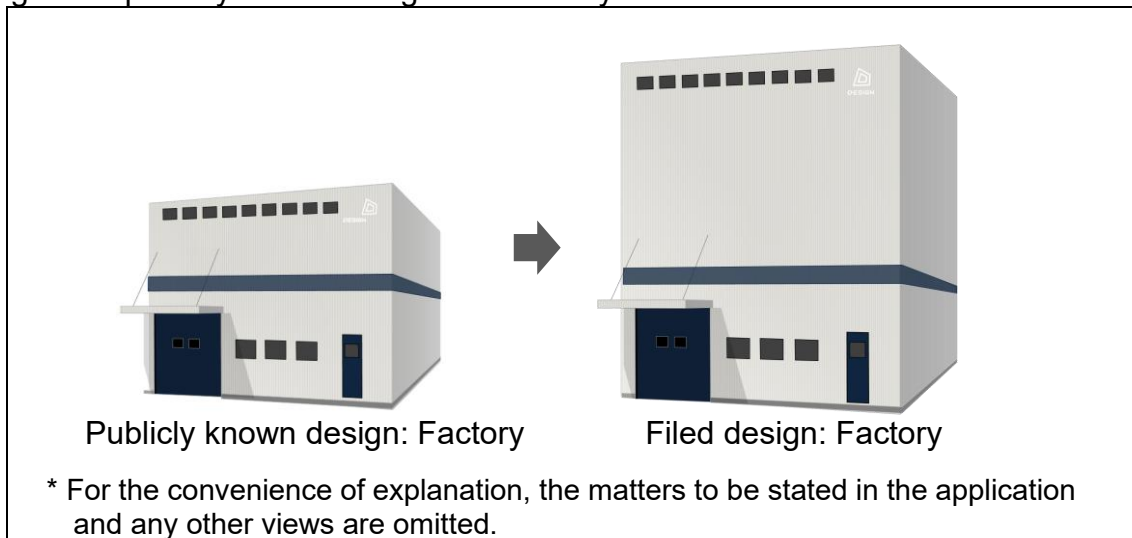
A design which merely represents the changed position of the point of entry in a publicly known design for an office



(Note) In the case example above, it is assumed that changing the position of the point of entry is an ordinary technique in the art of buildings, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. Furthermore, if the layout appears as a visual feature of the filed design, and if novelty or original design ideas from the viewpoint of a person skilled in the art are recognized, which are based on original ingenuity, the examiner should take the layout into consideration. The case example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 5] “Design through change of component ratio”

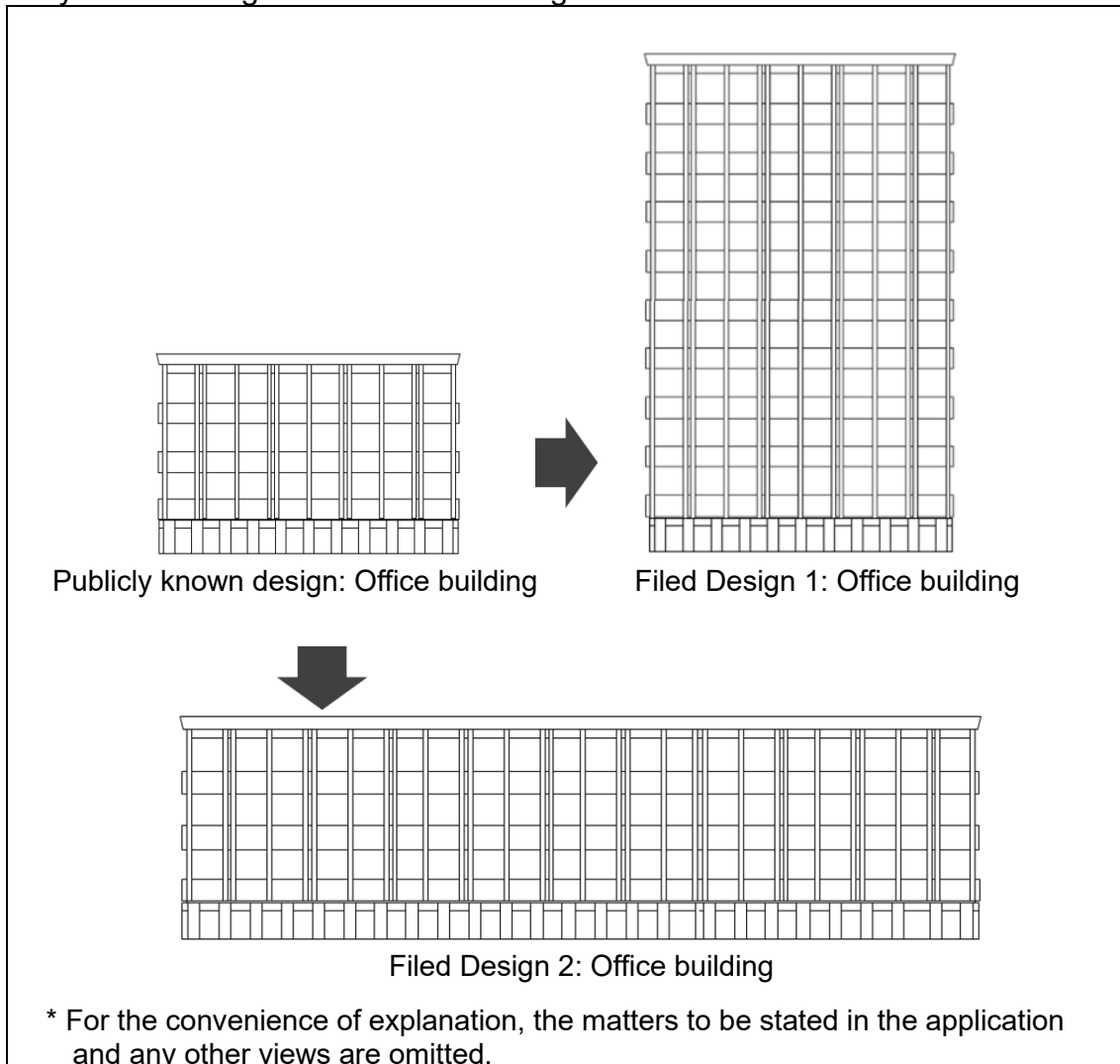
A design which merely represents the changed component ratio of width and height in a publicly known design for a factory



(Note) In the case example above, it is assumed that changing the component ratio of width and height is an ordinary technique in the art of buildings, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. It typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 6] “Design through change in number of units of a continuous constituent element”

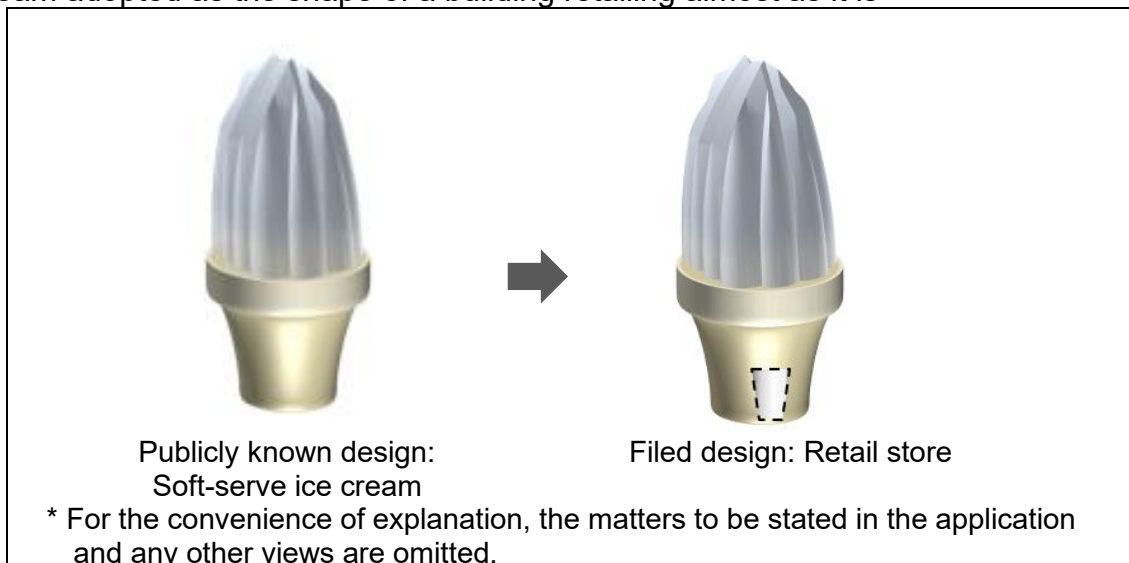
A design which merely represents an increase in the number of floors or width in a publicly known design for an office building



(Note) In this case example, it is assumed that increasing the number of floors or width of an office building is an ordinary technique in the art of buildings, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. It typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 7] “Design through use or diversion of a constituent element beyond the framework of the article, etc.”

A design which merely represents the publicly known shape of a soft-serve ice cream adopted as the shape of a building retailing almost as it is



(Note) In the case example above, it is assumed that adopting the publicly known shape of an article as the shape of a building retailing that article almost as it is is an ordinary technique in the art of buildings, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. It typically represents a method for determining creative difficulty assuming the filed design is novel. It is also assumed that modeling the shape of buildings retailing a food on the shape of that food is an established business practice.

6.4 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

Where the design in a later application is not found to be a creation of a new design, such as when part of the design in a prior application is filed as the design of a later application almost as it is, under Article 3-2 of the Design Act, the design in the later application may not be registered.

The examiner should determine similarity with the part of the design in the prior application in the same manner as with article design (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”).

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

The examiner should determine similarity with design in prior applications in the same manner as determining novelty (see 6.2 “The subject matter is novel” in this Chapter).

Furthermore, even if the design is similar to the design in a prior application, if the applicants are the same (or, in the case of joint applications by multiple applicants, if all applications are the same) and if it complies with the requirements for design

registration as a related design (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 principle design and making the design in the later application (the design other than the principle design if both dates are the same) the related design, the examiner should include a statement to that effect in any order for consultation and when notifying reasons for refusal.

8. Amendment and division of building design

8.1 Amendment of building design

A person undertaking a procedure with regard to an application for design registration, a request, or any other procedures relating to design registration may make amendments only while the case is pending in examination, trial or retrial (Article 60-24 of the Design Act).

Below describes the points that examiners should note regarding the amendment of building design. For other information on the basic handling of amendments, see Part VI, Chapter I “Amendment” and Chapter II “Dismissal of Amendments.”

8.1.1 Categories of amendments that change the gist

Where an amendment made to the statement in the application or any drawings, etc. attached to the application falls under any of the following, the examiner should determine that it changes the gist of the statement in the application or drawings, etc. attached to the application as originally filed.

- (1) An amendment that makes a change exceeding the scope of identity that can be inevitably derived based on the ordinary skill in the art of the design
- (2) An amendment that clarifies the gist of design (Note) that was unclear when originally filed

(Note) “Gist of design” refers to the contents of a specific design that can be directly derived from the statement in the application and drawings, etc. attached to the application based on the ordinary skill in the art of the design.

8.1.2 Amendment to interior design

If the subject matter of an application for building design contains multiple articles, buildings or graphic images and is not recognized as a single building design, and if it is recognized that, in essence, it should be filed as an interior design, the examiner should determine that an amendment which changes this application to one for design registration for an interior design does not change the gist of the statement in the application or drawings, etc. attached to the application as originally filed.

On the other hand, if the subject matter of an application for building design is found to fall under the category of a single building design, the examiner should determine that an amendment which changes the application to one for an interior design does change the gist of the design. (For the “one application per design” requirement for building design, see 4. “Concept of the ‘one application per design’ requirement” in this Chapter.)

Furthermore, when determining whether two designs are the same, in addition to the shape, etc. of both designs, the examiner should also compare usage or function and the layout of furniture and fixtures, etc., and in the case of design for which the design registration is requested for a part of an article, etc., the examiner should also determine whether their position, size, and scope are the same.

8.1.3 Amendment to a design for a set of articles

If the subject matter of an application for building design is found to fall under the category of a single building design, the examiner should determine that an amendment which changes the application from a building design to a design for a set of articles does change the gist of the design. (For the “one application per design” requirement for building design, see 4. “Concept of the ‘one application per design’ requirement” in this Chapter, and for the applicability requirements for interior design, see 6.1.1 “The subject matter constitutes a design” in Chapter IV “Interior Design” in this Part.)

Furthermore, when determining whether two designs are the same, in addition to the shape, etc. of both designs, the examiner should also compare usage and function, and in the case of design for which the design registration is requested for a part of an article, etc., the examiner should also determine whether their position, size, and scope are the same.

8.2 Division of a building design

For handling of the division of an application for design registration, see Part VIII, Chapter I “Division of Applications for Design Registration.”