

Chapter IV Requirements for Design Registration of International Applications for Design Registration

1. Novelty and creative difficulty

Information that serves as the basis for determination of novelty and creative difficulty is information that falls under any of the following (1) to (3), either in Japan or a foreign country, prior to the filing of the application for design registration.

- (1) “Described in a distributed publication” (Article 3, paragraph (1), item (ii) of the Design Act, Article 3, paragraph (2) of the Design Act)
- (2) “Made publicly available through an electric telecommunication line” (Article 3, paragraph (1), item (ii) of the Design Act, Article 3, paragraph (2) of the Design Act)
- (3) “Publicly known” (Article 3, paragraph (1), item (i) of the Design Act, Article 3, paragraph (2) of the Design Act)

In determining whether the information is prior to the filing of the application for design registration, the hours, minutes, and seconds should be taken into account.

However, in an international application for design registration, given that the time of filing is established on a daily basis pursuant to the provisions of Article 14(1) of the Geneva Act and Article 60-6, paragraph (1) of the Design Act and cannot be specified down to the hour and minute, where the filing date of an international application for design registration is the same as the dates on which information that serves as the basis for determination of novelty and creative difficulty falls under (1) to (3) above, those dates should not be regarded as being prior to the filing of the international application for design registration.

Where information has become publicly known in a foreign country, determination shall be made by converting the time into Japan time.

With regard to any other determination standards concerning novelty and creative difficulty, see Section 1 “Novelty,” Section 2 “Creative Difficulty” and Section 3 “Points to Note when Examining Novelty & Creative Difficulty” in Part III, Chapter II “Novelty & Creative Difficulty.”

2. Exclusion from protection of a design in a later application that is identical or similar to part of a design in a prior application

Since the provisions of Article 3-2 of the Design Act apply to an application for design registration that is filed during the period from the filing date of the prior application for design registration to the date of publication (including the said date) of the design bulletin for the said application for design registration (a Registered Design Bulletin or bulletin for giving public notice of an application for which refusal has become final and binding in the case where no agreement was reached by consultations or consultations were unable to be held where two or more applications have been filed for identical or similar designs on the same date) (excluding an application to which the provisions of the proviso apply), where the

filing date of an international application for design registration is the same as the date of publication of the design bulletin pertaining to the prior application, it should be treated as falling under the provisions of Article 3-2 of the Design Act.

With regard to any other determination standards concerning exclusion from protection of a design in a later application that is identical or similar to part of a design in a prior application, 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.”