

Examination Guidelines for Design

(Provisional translation)

Japan Patent Office

Examination Guidelines for Design

The Examination Guidelines for Design aims to ensure consistent interpretation and implementation of the Design Act in design examination. It already existed around 1930 as a document titled “Design Examination Arrangements.” In June 1968, the “Examination Guidelines for Design” was published to respond to the Design Act as revised in 1959, and has been used for over 30 years while undergoing slight additions and modifications from time to time.

Subsequently, a drastic revision was made to the Design Act in 1998 and, further, some provisions were revised in 1999. With regard to interpretation and implementation of the revised provisions, efforts were made to ensure consistent implementation through publication of the “Implementation Standards for Design Examination under the Design Act as Revised in 1998” and the “Implementation Standards for Design Examination under the Design Act as Revised in 1999,” but in examination practice, it was necessary to additionally read the existing “Examination Guidelines for Design.”

In light of such circumstances, the Design Examination Standards Office re-edited the “Examination Guidelines for Design” into those for the respective provisions concerning design examination practice, based on the existing “Examination Guidelines for Design,” “Implementation Standards for Design Examination under the Design Act as Revised in 1998” and the “Implementation Standards for Design Examination under the Design Act as Revised in 1999,” and hereby publishes it.

January 2002
Design Examination Standards Office,
Design Division,
Trademark, Design and Administrative Affairs Department,
Japan Patent Office

Examination Guidelines for Design (for the Design Act as revised in 2006)

The “Act for Partial Revision of the Design Act, etc.” (Act No. 55 of 2006) was promulgated on June 7, 2006, and major provisions revising the Design Act were decided to come into effect on April 1, 2007. In line with this development, we revised the following parts of the Examination Guidelines for Design that had been published to date. We also amended the relevant provisions cited in each Chapter accordingly.

This Examination Guidelines for Design is applied to applications for design registration that are filed on or after April 1, 2007. (Meanwhile, Part III “Exception to Lack of Novelty” is applied to applications for design registration that are filed on or after September 1, 2006.)

- | | |
|-------------------------|--|
| ○ Part II, Chapter II | “Determination of Similarity between Designs” |
| ○ Part II, 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” |
| ○ Part III | “Exception to Lack of Novelty” |
| ○ Part VI | “Prior Application” |
| ○ Part VII, Chapter I | “Partial Design” |
| ○ Part VII, Chapter III | “Related Design” |
| ○ Part VII, Chapter IV | “Design Including a Graphic Image on a Screen as Provided in Article 2(2) of the Design Act” |

April 2007

Design Examination Standards Office,

Design Division,

Trademark, Design and Administrative Affairs Department,

Japan Patent Office

Partial Revision of the Examination Guidelines for Design

Of the existing “Examination Guidelines for Design,” we revised Part VII, Chapter IV “Design Including a Graphic Image on a Screen as Provided in Article 2(2) of the Design Act” and Part X “Procedures for Priority Claim under the Paris Convention, etc.” The revisions were deliberated at the first meeting of the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (hereinafter referred to as the “Design System Subcommittee”) that was held in July 2008. Then, after inviting public comments in and outside the Japan Patent Office from September to October, 2008, and making necessary amendments based on those comments, the revisions were approved at the second meeting of the Working Group on the Examination Guidelines for Design of the Design System Subcommittee that was held in October 2008.

Part VII, Chapter IV and Part X of these Examination Guidelines for Design apply to applications that are examined on or after October 31, 2008.

- Part VII, Chapter IV “Design Including a Graphic Image on a Screen as Provided in Article 2(2) of the Design Act”
- Part X “Procedures for Priority Claim under the Paris Convention, etc.”

October 2008
Design Examination Standards Office,
Design Division,
Trademark, Design and Administrative Affairs Department,
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

In line with the revision of the Design Act by the “Act for Partial Revision of the Patent Act, etc.” (Act No. 16 of April 18, 2008), we amended “30 days” to “three months” in the following items of the Examination Guidelines for Design.

The revisions in “Part VIII, Chapter II Dismissal of Amendments” and “Part IX, Chapter IV New Application for Amended Design” are applied to applications for which a certified copy of a ruling dismissing an amendment is served on or after April 1, 2009. The revisions in “Part IX, Chapter II Conversion of Application” are applied to applications for which a certified copy of the examiner’s initial decision to the effect that the original patent application is to be refused is served on or after April 1, 2009.

- Part VIII, Chapter II “Dismissal of Amendments”
- Part IX, Chapter II “Conversion of Application”
- Part IX, Chapter IV “New Application for Amended Design”

July 2009

Design Examination Standards Office,

Design Division,

Trademark, Design and Administrative Affairs Department,

Japan Patent Office

Partial Revision of the Examination Guidelines for Design

We newly added Part XI “Procedure of Examination” to the Examination Guidelines for Design. The “Procedure of Examination” outlines how substantive examination of designs should be conducted, and its contents were deliberated at the third meeting (November 2009) and the fourth meeting (January 2010) of the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (hereinafter referred to as the “Design System Subcommittee”) that were held during FY2009. Then, after inviting public comments in and outside the Japan Patent Office in February 2010 and making necessary amendments based on those comments, the contents were approved by the Working Group on the Examination Guidelines for Design of the Design System Subcommittee.

In addition, as a result of adding “Procedure of Examination” as Part XI, we moved former Part XI “Others” down to Part XII “Others.”

This Examination Guidelines for Design is applied to applications for design registration that are examined on or after April 1, 2010.

- Part XI “Procedure of Examination”
- Part XII “Others”

April 2010
Design Examination Standards Office,
Design Division,
Trademark, Design and Administrative Affairs Department,
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

Of the existing “Examination Guidelines for Design,” we revised Part II, Chapter I “Industrially Applicable Design,” Part VII, Chapter I “Partial Design,” and Part VII, Chapter IV “Design Including a Graphic Image on a Screen.” The revisions were deliberated at the fifth meeting (March 2011) and the sixth meeting (May 2013) of the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (hereinafter referred to as the “Design System Subcommittee”). Then, after inviting public comments in and outside the Japan Patent Office from May to June of 2011 and making necessary amendments based on those comments, the revisions were approved by the Working Group on the Examination Guidelines for Design of the Design System Subcommittee.

Part II, Chapter I, Part VII, Chapter I, and Part VII, Chapter IV of this Examination Guidelines for Design apply to applications for design registration that are filed on or after August 1, 2011.

July 2011

Design Examination Standards Office,

Design Division,

Trademark, Design and Administrative Affairs Department,

Japan Patent Office

Partial Revision of the Examination Guidelines for Design

We newly added Part XI “International Application for Design Registration” and amended Part II, 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,” Part VI “Prior Application,” Part VII, Chapter III “Related Design,” Part IX, Chapter I “Division of Applications for Design Registration,” Part X “Procedure for Priority Claim under the Paris Convention, etc.,” and Part XII “Procedure of Examination” at the same time. These revisions respond to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and were deliberated at the first meeting of the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (October 2014) and the second meeting of the Working Group on the Examination Guidelines for Design (October 2014). Then, after inviting public comments in and outside the Japan Patent Office from October to November, 2014, and making necessary amendments based on those comments, the revisions were approved at the third meeting of the Working Group on the Examination Guidelines for Design (December 2014).

In addition, as a result of adding “International Application for Design Registration” as Part XI, we moved former Part XI “Procedure of Examination” and Part XII “Others” down to Part XII “Procedure of Examination” and Part XIII “Others,” respectively.

This Examination Guidelines for Design is applied to applications for design registration that are examined on or after May 13, 2015.

- | | |
|------------------------|--|
| ○ Part II, 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” |
| ○ Part VI | “Prior Application” |
| ○ Part VII Chapter III | “Related Design” |
| ○ Part IX, Chapter I | “Division of Applications for Design Registration” |
| ○ Part X | “Procedure for Priority Claim under the Paris Convention, etc.” |
| ○ Part XI | “International Application for Design Registration” |
| ○ Part XII | “Procedure of Examination” |
| ○ Part XIII | “Others” |

April 2015
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

We revised Part VII, Chapter IV “Design Including a Graphic Image on a Screen”. This revision was deliberated at the meeting of the Working Group on the Examination Guidelines for Design of the Design System Subcommittee (from March to November 2015) in response to the report of “Global business promotion support to Japanese companies by the protection of the rights of creative designs” submitted in January 2014 by the Design System Subcommittee of the Intellectual Property Committee of the Industrial Structure Council (hereinafter referred to as the “Design System Subcommittee”). Then, after the Design System Subcommittee's confirmation followed by the public comments inviting procedure (from December 2015 to January 2016), the revision was approved.

Part VII, Chapter 4 of the Revised Examination Guidelines for Design will be applied, with regard to “74.4.3 Creative difficulty,” to applications for design registration to be examined on April 1, 2016 and after and, with regard to the parts other than “74.4.3 Creative difficulty,” to applications for design registration on April 1, 2016 and after.

○ Part VII Chapter IV “Design Including a Graphic Image on a Screen”

March 2016
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

We revised Part I, Chapter II “Finding of the Design in an Application for Design Registration”, Part II, Chapter I “Industrially Applicable Design”, and Part III, “Exception to Lack of Novelty”. The revisions were deliberated at the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (from December of 2016 to February of 2017). Then, after inviting public comments (from February to March of 2017), the revisions were amended based on those comments.

The Revised Examination Guidelines for Design will be applied to applications for design registration to be examined on April 1, 2017 and after.

- | | |
|----------------------|---|
| ○ Part I, Chapter II | “Finding of the Design in an Application for Design Registration” |
| ○ Part II, Chapter I | “Industrially Applicable Design” |
| ○ Part III | “Exception to Lack of Novelty” |

March 2017
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

We revised “Part II, Chapter I, Industrially Applicable Design”, “Part VII, Chapter I Partial Design”, and “Part XI, Chapter VIII International Application for Design Registration for a Partial Design” of the Examination Guidelines for Design. The revisions were deliberated at the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (February of 2018). Then, after inviting public comments (from March to April of 2017), the revisions were amended based on those comments.

The Revised Examination Guidelines for Design will be applied to applications for design registration to be examined on May 1, 2018 and after.

- Part II, Chapter I “Industrially Applicable Design”
- Part VII, Chapter I “Partial Design”
- Part XI, Chapter VIII “International Application for Design Registration for a Partial Design”

April 2018
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

In line with the revision of the Design Act by the “Act of Partial Revision of the Unfair Competition Prevention Act, etc.” (Act No. 33 of May 23, 2018), we amended “six months” to “one year” in the Part III “Exception to Lack of Novelty” of the Examination Guidelines for Design.

The revised examination guidelines are applied to the designs being published on or after December 9, 2017 and filed on or after June 9, 2018.

○ Part III “Exception to Lack of Novelty”

June 2018
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

We revised “Part V, One Application per Design”, “Part VII, Chapter II Design for a set of articles”, and “Part XIII, Appendix “Table of Constituent Articles of Sets of Articles” of the Examination Guidelines for Design. The revisions were deliberated at the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (from September to October of 2018). Then, after inviting public comments (from November to December of 2018), the revisions were amended based on those comments.

The Revised Examination Guidelines for Design will be applied to applications for design registration to be examined on January 10, 2019 and after.

- Part II “One Application per Design”
- Part VII, Chapter I “Partial Design”
- Part XIII, Appendix “Examples of Constituent Articles of Sets of Articles”

January 2019
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

We revised “Part I, Application/Drawings”, “Part II, Chapter I Industrially Applicable Design”, “Part VI, Prior Application”, “Part VII, Chapter I Partial Design”, “Part VII, Chapter 3 Related Design”, “Part VII, Chapter IV Design Including a Graphic Image on a Screen”, “Part VIII, Chapter II Dismissal of Amendments”, “Part X, Procedure for Priority Claim under the Paris Convention, etc.”, “Part XI, Chapter VIII International Application for Design Registration for a Partial Design”, and “Part XII, Chapter II Details” of the Examination Guidelines for Design.

The revisions were deliberated at the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (from September to October of 2018). Then, after inviting public comments (from November to December of 2018), and the revisions of the Ordinance for Enforcement of the Design Act promulgated on April 26, 2019, the revisions were made.

This revised Examination Guidelines for Design applies to applications for design registration that are filed on or after May 1, 2019.

○ Part I	“Application/Drawings”
○ Part II, Chapter I	“Industrially Applicable Design”
○ Part VI	“Prior Application”
○ Part VII, Chapter I	“Partial Design”
○ Part VII, Chapter III	“Related Design”
○ Part VII, Chapter IV	“Design Including a Graphic Image on a Screen”
○ Part VIII, Chapter II	“Dismissal of Amendments”
○ Part X	“Procedure for Priority Claim under the Paris Convention, etc.”
○ Part XI, Chapter VIII	“International Application for Design Registration for a Partial Design”
○ Part XII, Chapter II	“Details”

April 2019

Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Revision of the Examination Guidelines for Design

In line with the revision of the Design Act by the “Act for Partial Revision of the Patent Act, etc.” (Act No. 3 of May 17, 2019), we revised “Part I, Outline of Examination”, “Part II, Finding of the Design and Filing an Application for Each Design”, “Part III, Requirements for Design Registration”, “Part IV, Individual Applications for Design Registration”, “Part V, Related Design”, and “Part VII, Advantage of the Priority under the Paris Convention”.

In addition, in this revision, we conducted a general review of the structure and contents of the Examination Guidelines for Design from the perspective of clarification and simplification.

The revisions were deliberated at the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (from July 2019 to February 2020; during this period, public comments were invited from December 2019 to January 2020), and based on the revision of the Ordinance for Enforcement of the Design Act, which was promulgated in March 2020, the revisions were amended.

This revised Examination Guidelines for Design applies to applications for design registration that are filed on or after April 1, 2020.

- | | |
|------------|---|
| ○ Part I | “Outline of Examination” |
| ○ Part II | “Finding of the Design and Filing an Application for Each Design” |
| ○ Part III | “Requirements for Design Registration” |
| ○ Part IV | “Individual Applications for Design Registration” |
| ○ Part V | “Related Design” |
| ○ Part VII | “Advantage of the Priority under the Paris Convention” |

March 2020
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

In line with a revising of the system, which is drawn up in the “Regulatory Reform Implementation Plan (July 17, 2020 Cabinet Decision)” to make changes to administrative procedures which currently requires personal seals, and which was also adopted to achieve user convenience by digitizing application procedures etc. (so that paper works and personal seals are to be omitted, in principle) at the 13th session of the Intellectual Property Committee of Industrial Structure Council, we revised “Part III, Chapter 3 Exception to Lack of Novelty” to reflect the change of procedures to omit personal seal from certificate for requesting application of the provisions on exception to lack of novelty of design.

This revised Examination Guidelines for Design applies to applications for design registration that are filed on or after December 16, 2020.

- Part III, Chapter I “Exception to Lack of Novelty”

December 2020
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

In line with the revision of the Design Act by the “Act for Partial Revision of the Patent Act, etc.” (Act No. 3 of May 17, 2019), we revised “Part I, Chapter II, Design Examination Process”, “Part II, Chapter II, Finding of the Design and Filing an Application for Each Design” and “Part VII, Advantage of the Priority under the Paris Convention”.

The revisions were deliberated at the meetings of the Working Group on the Design Examination Standards of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (from July 2019 to February 2020; during this period, public comments were invited from December 2019 to January 2020), and based on the revision of the Ordinance for Enforcement of the Design Act, which was promulgated in March 2021, the revisions were made.

In this revised Examination Guidelines for Design, Part I, Chapter 2 “4. Notice of reasons for refusal (excluding international applications for design registration)” applies to applications for design registration requiring procedures within the designated time limit that elapses on or after April 1, 2021, Part VII “2.4 Procedure for priority claim under the Paris Convention” applies to applications for design registration requiring the submission of the priority documents within the statutory time limit that elapses on or after April 1, 2021, Part VII “2.2 Period for filing an application in Japan with a priority claim under the Paris Convention” applies to applications for design registration in Japan that are filed claiming priority on or after April 1, 2021 and the other parts apply to applications for design registration that are filed on or after April 1, 2021.

- Part I, Chapter II “Design Examination Process”
- Part II, Chapter II “Finding of the Design and Filing an Application for Each Design”
- Part VII “Advantage of the Priority under the Paris Convention”

March 2021
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

In line with the revision of the Design Act by the “Act for Partial Revision of the Patent Act, etc.” (Act No. 42 of May 21, 2021), we revised “Part VII Advantage of the Priority under the Paris Convention, 2.2 Period for filing an application in Japan with a priority claim under the Paris Convention”, “Part IX, Chapter V, Exception to Lack of Novelty concerning International Application for Design Registration, 2. Specific procedures for receiving application of the provisions of Article 4, paragraph (2) of the Design Act in case of an international application for design registration”, “Part IX, Chapter VIII, Right of Priority under the Paris Convention in International Applications for Design Registration, 3. Procedures for priority claim under the Paris Convention”.

In this revised Examination Guidelines for Design, Part IX “International Application for Design Registration” applies to international application for design registration which were filed on or after October 1, 2021, Part VII “Advantage of the Priority under the Paris Convention” applies to applications for design registration which lapse the period of priority pursuant to Article 4.C(1) of the Paris Convention on or after April 1, 2023.

- Part VII “Advantage of the Priority under the Paris Convention”
- Part IX “International Application for Design Registration”

March 2023
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Partial Revision of the Examination Guidelines for Design

In line with the revision of the Design Act by the “Act for Partial Revision of the Unfair Competition Prevention Act, etc.” (Act No. 51 of June 14, 2023), we revised “Part I, Chapter II, Design Examination Process”, “Part II, Chapter I, Finding of the Design in an Application for Design Registration”, “Part III, Chapter III, Exception to Lack of Novelty”, “Part VII Advantage of the Priority under the Paris Convention”, “Part VIII, Chapter I, Division of Applications for Design Registration”, “Part VIII, Chapter II, Conversion of Application” and “Part IX, Chapter VIII, Right of Priority under the Paris Convention in International Applications for Design Registration”.

Additionally, in this revision, we also revised “Part IV, Chapter I, Design Including a Graphic Image” from the perspective of clarification.

The revisions of “Part III, Chapter III” and “Part IV, Chapter I” were deliberated at the Working Group on the Examination Guidelines for Design of the Design System Subcommittee under the Intellectual Property Committee of the Industrial Structure Council (August and September 2023; public comments were invited from October to November 2023).

This revised Examination Guidelines for Design applies to applications for design registration that are filed on or after January 1, 2024.

○ Part I, Chapter II	“Design Examination Process”
○ Part II, Chapter I	“Finding of the Design in an Application for Design Registration”
○ Part III, Chapter III	“Exception to Lack of Novelty”
○ Part IV, Chapter I	“Design Including a Graphic Image”
○ Part VII	“Advantage of the Priority under the Paris Convention”
○ Part VIII, Chapter I	“Division of Applications for Design Registration”
○ Part VIII, Chapter II	“Conversion of Application”
○ Part IX, Chapter VIII	“Right of Priority under the Paris Convention in International Applications for Design Registration”

December 2023
Design Examination Standards Office,
Design Division,
Patent and Design Examination Department
(Physics, Optics, Social Infrastructure and Design),
Japan Patent Office

Examination Guidelines for Design
History of Revisions

June 12, 1968
Partial addition on June 27, 1985
Partial amendment on June 27, 1985
Partial amendment on December 11, 1985
Partial addition on March 5, 1987
Partial addition on March 15, 1988
Partial addition on March 23, 1989
Partial amendment on April 23, 1993
Partial amendment on November 8, 1993
Partial amendment on June 16, 1994
Partial addition on January 31, 2002
Partial amendment on January 31, 2002
Partial addition on April 1, 2007
Partial amendment on April 1, 2007
Partial amendment on October 31, 2008
Partial amendment on July 1, 2009
Partial addition on April 1, 2010
Partial amendment on August 1, 2011
Partial addition on April 10, 2015
Partial amendment on April 10, 2015
Partial amendment on March 11, 2016
Partial amendment on March 31, 2017
Partial amendment on April 27, 2018
Partial amendment on June 6, 2018
Partial amendment on January 9, 2019
Partial amendment on April 26 9, 2019
Amendment on March 19, 2020
Partial amendment on December 16, 2020
Partial amendment on March 31, 2021
Partial amendment on March 22, 2023
Partial amendment on December 15, 2023

Table of Contents (Entire Guidelines)

Part I Outline of Examination

Chapter I Principles of Examination and Flow of Examination

Chapter II Design Examination Process

Relevant Provisions

Part II Finding of the Design and Filing an Application for Each Design

Chapter I Finding of the Design in an Application for Design

Registration

Chapter II Filing an Application for Each Design

Relevant Provisions

Part III Requirements for Design Registration

Chapter I Industrially Applicable Design

Chapter II Novelty & Creative Difficulty

Section 1 Novelty

Section 2 Creative Difficulty

Section 3 Points to Note when Examining Novelty & Creative Difficulty

Chapter III Exception to Lack of Novelty

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

Chapter V Prior Application

Chapter VI Unregistrable Design

Relevant Provisions

Part IV Individual Applications for Design Registration

Chapter I Design Including a Graphic Image

Chapter II Building Design

Chapter III Design for a Set of Articles

Chapter IV Interior Design

Relevant Provisions

Part V Related Design

Relevant Provisions

Part VI Amendment

Chapter I Amendment

Chapter II Dismissal of Amendments

Relevant Provisions

Part VII Advantage of the Priority under the Paris Convention

Relevant Provisions

Part VIII Special Application

Chapter I Division of Applications for Design Registration

Chapter II Conversion of Application

Chapter III Special Provisions on Conversion of Application Concerning International Applications under the Patent Cooperation Treaty

Chapter IV New Application for Amended Design

Relevant Provisions

Part IX International Application for Design Registration

Chapter I International Application Which Is Deemed to Be an Application for Design Registration

Chapter II Finding of the Design in an International Application for Design Registration

Chapter III Filing an Application for Each Design in an International Application for Design Registration

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

Chapter V Exception to Lack of Novelty concerning International Application for Design Registration

Chapter VI Design for a Set of Articles in International Application for Design Registration

Chapter VII Amendments in International Application for Design Registration

Chapter VIII Right of Priority under the Paris Convention in International Applications for Design Registration

Relevant Provisions

Part X Others

Chapter I Feature Statement

Relevant Provisions

Appendix: Examples of Constituent Articles, etc. of Design for a Set of Articles

Points to Note When Referring to These Examination Guidelines for Design

In these Examination Guidelines for Design, matters requiring particular attention regarding individual applications for design registration—such as designs including a graphic image, building designs, designs for a set of articles, and interior designs—are described in the respective chapters in Part IV “Individual Applications for Design Registration.”

General matters other than the above are described in other parts of these examination guidelines. Examiners should proceed with examination of a filed design while referring to each of the relevant sections in accordance with the contents of the filed design.

Explanatory Notes

Abbreviations, etc. used throughout the Examination Guidelines for Design

Abbreviations, etc.	Meaning
Drawing, etc. attached to the application	A drawing, photograph, model, or specimen attached to the application
Shape, etc.	A shape, patterns or colors, or any combination thereof * In the case of “graphic images,” a “graphic image” as defined in Article 2 of the Revised Design Act refers to one in which elements of shape, etc. are integrated with elements corresponding to usage and function of an article, but in these Examination Guidelines for Design, when referring only to the visual elements of a “graphic image,” the term “shape, etc.” is used as in the case of an article or building.
Constituent element of the design	A shape, pattern, or color of an article, etc. to the design
Publicly known design	A design set forth in Article 3, paragraph (1), item (i) or (ii) of the Design Act
Disclosed design	A design that has become a publicly known design
Electronic design information	Design information available through the Internet
Person skilled in the art	A person ordinarily skilled in the art of the design
Article, etc. to the design	Article to the design or article to the building or graphic image
Design disclosed in a prior application	A design disclosed by the applicant of a prior application for design registration as the shape, etc. of an article, etc. that falls under the article etc. to the design described in the column of “Article to the Design” in the application
A set of drawings	In the case of a three-dimensional article, the front view, rear view, left side view, right side view, top view and bottom view that represent the design for which the design registration is requested, or drawings that are replaceable therewith; in the case of a flat and thin article, the surface view and back side view
Other necessary drawings	A development view, sectional view, end elevational view of the cut part, enlarged view, perspective view or other necessary drawings to be added when a set of drawings alone cannot sufficiently represent the design in an application for design registration
Appended Table	Appended Table of the Ordinance for Enforcement of the Design Act

Abbreviations, etc. for designs including a graphic image

Graphic image design	A design of a graphic image itself separated from an article, as added in the 2019 revision of the Design Act
Design including a graphic image on a part of an article etc.	General term for a design that includes a graphic image on part of an article or building
Design including a graphic image	General term for a “graphic image design” and a “design including a graphic image on a part of an article etc.”
Graphic image for operation	A graphic image provided for use in the operation of the device; a graphic image that gives an instruction in order to enable the target device to work according to its function
Graphic image for display	A graphic image displayed as a result of the device performing its function; a graphic image that includes a display that is related to some function of the device
Graphic image for operation	A graphic image that is provided for use in the operation of the

for performing the functions of an article	article in order to enable the article that displays the graphic image to perform its function
Graphic image for display necessary for the functions of an article	A graphic image for making necessary indications for performing the functions of the article that displays the graphic image
Graphic image for operation for performing the functions of a building	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
Graphic image for display necessary for the functions of a building	A graphic image for making necessary indications for performing the functions of the building that displays the graphic image
Graphic image for operation for performing the functions of an article, etc.	General term for a graphic image for operation for performing the functions of an article and a graphic image for operation for performing the functions of a building
Graphic image for making necessary indications for performing the functions of an article, etc.	General term for a graphic image for display necessary for the functions of an article and a graphic image for display necessary for the functions of a building

Abbreviations, etc. for building designs

Building	<p>Subject matter that is a fixture of land and an artificial structure. Buildings eligible for design registration are broader in meaning than the term for building defined in the Building Standards Act. They refer to material objects that are constructed, and include civil engineering structures.</p> <p>* 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.</p>
----------	---

Abbreviations, etc. for interior designs

Interior	Equipment and decorations inside a store, office, or other facility
----------	---

Abbreviations, etc. for designs for a set of articles

Constituent article, etc.	An article, building or graphic image constituting a set of articles
---------------------------	--

Abbreviations, etc. for related designs

Principal design	A single design selected from the applicant's own design for which an application for design registration has been filed
Fundamental design	A first selected design as a principal design
Related designs pertaining to the fundamental design	A related design of the fundamental design and the gradual related designs linked to the related design

Abbreviations, etc. for international applications for design registration

Geneva Act	Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs
Designated Contracting Party	A designated Contracting Party under Article 1(xix) of the Geneva Act of the Hague Agreement
International application	An international application under Article 1(vii) of the Geneva Act
International publication	Publication under Article 10(3)(a) of the Geneva Act
Date of the international registration	The date of the international registration under Article 10(2) of the Geneva Act
International registration	An international registration under Article 1(vi) of the Geneva Act

International application for design registration	An international application deemed to be an application for design registration under Article 60-6, paragraph (1) and paragraph (2) of the Design Act
International Register	International Register under Article 1(viii) of the Geneva Act
Statement in an application of an international application for design registration	Matters which are found to be stated in an application of an international application for design registration which was submitted under Article 6, paragraph (1), etc. of the Design Act
Statement in drawings of an international application for design registration	Matters which are found to be stated in drawings of an international application for design registration which was submitted under Article 6, paragraph (1) of the Design Act
International design classification	An international classification for industrial designs established by the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968, as amended on September 28, 1979

Part I

Outline of Examination

Part I.....	1
Chapter I Principles of Examination and Flow of Examination	1
1. Principles of examination	1
2. Flow of examination	1
Chapter II Design Examination Process	1
1. Finding of the design in an application for design registration	1
2. Search of prior designs, etc.....	1
2.1 Reference material	2
2.2 Method of a search of prior designs, etc.	2
2.3 Completion of a search of prior designs, etc.	3
3. Review of novelty, creative difficulty, etc.....	3
3.1 Confirmation of bibliographic data of the information	4
3.2 Determination of similarity between designs in determining novelty, etc.	4
3.3 Determination of creative difficulty.....	5
3.4 Determination on whether or not the application for design registration falls under any of the items of Article 17 of the Design Act	5
4. Notice of reasons for refusal (excluding international applications for design registration).....	6
4.1 Points to note when giving notice of reasons for refusal	6
4.2 Ensuring communication with the applicant.....	7
5. Orders for consultation (excluding international applications for design registration).....	8
5.1 Points to note when issuing orders for consultation	8
6. Notification of refusal in case of an international application for design registration	9
6.1 Notification of refusal.....	9
7. Where a written opinion or a written amendment of proceedings has been submitted	10
8. Examiner's decision	11
8.1 Decision of registration	11
8.2 Decision of refusal.....	11
Relevant Provisions.....	1

Chapter I Principles of Examination and Flow of Examination

1. Principles of examination

The examiner should conduct a substantive examination as to whether or not a design right ought to be granted for an application for design registration. The examiner is required to make a fair determination based on a high level of expert knowledge.

In conducting an examination, the examiner should take the following points in particular into consideration.

- (1) Consistent examination should be conducted according to the examination guidelines, etc., while taking into consideration the ensuring of promptness, accuracy, and fairness.
- (2) Effort should be made to maintain and further improve the quality of examination with regard to search of prior designs, etc. and determination on the requirements for registration, etc.
- (3) Efficient examination should be conducted, while taking into consideration the ensuring of communication with the applicants and their agents (hereinafter referred to as the “applicant(s)”).

2. Flow of examination

When examining an application for design registration, the examiner should follow the process below. For details of each process, see [Chapter II “Design Examination Process.”](#) Also, the main flow of the substantive examination is illustrated in Figure 1.

(1) Finding of the design in an application for design registration

First, the examiner should find the design in the application for design registration (hereinafter referred to as the “filed design” in some case). In finding the design, the examiner should make a comprehensive determination based on the statement in the application and drawings, etc. attached to the application. While finding the design in an application, the examiner should also consider whether the design falls under an industrially applicable design (main paragraph of Article 3, paragraph (1) of the Design Act), and whether it is an application for design registration that has been filed for each design (Article 7 of the Design Act). Furthermore, the examiner should also consider whether subject matter of an application for a design for a set of articles complies with the requirements set forth in Article 8 of the Design Act, and whether subject matter of an application for interior design complies with the requirements set forth in Article 8-2 of the Design Act.

(2) Search of prior designs, etc.

The examiner should conduct a search of prior designs, etc. to find (i) prior designs and (ii) shapes, patterns, or colors, or any combination thereof (shapes, etc.), or

graphic images that were publicly known, described in a distributed publication or made publicly available through an electric telecommunication line in Japan or a foreign country (hereinafter (i) and (ii) are collectively referred to as “prior designs, etc.”) which contribute to determining the requirements for registration, such as novelty and creative difficulty of the filed design (the items of Article 3, paragraph (1), Article 3, paragraph (2), and Article 3-2 of the Design Act), the requirements for a prior application (Article 9 of the Design Act), and the requirements for a related design (Article 10 of the Design Act) with regard to the design in the application.

(3) Review of novelty, creative difficulty, etc.

The examiner should review whether or not the contents of the prior designs, etc. found in a search of prior designs, etc. constitute a reason for refusal relating to the requirements for registration, such as novelty and creative difficulty of the filed design (the items of Article 3, paragraph (1), Article 3, paragraph (2), and Article 3-2 of the Design Act), or the requirements for a prior application (Article 9 of the Design Act).

In addition, the examiner should also review whether or not the application for design registration falls under any of the reasons for refusal provided in the items of Article 17 of the Design Act.

(4) Notice of reasons for refusal and orders for consultation

Where a reason for refusal is found as a result of the review, the examiner should give notice of reasons for refusal (Article 50 of the Patent Act as applied mutatis mutandis pursuant to Article 19 of the Design Act). The reasons for refusal should be stated in plain language insofar as possible by describing the key points in an easy to understand manner.

Where two or more applications for design registration have been filed for identical or similar designs on the same date, the two or more applications for design registration fall under the provision of the first sentence of Article 9, paragraph (2) of the Design Act, and an order for consultation is issued in the name of the Commissioner of the Patent Office under Article 9, paragraph (4) of the Design Act.

In case of an international application for design registration, a notice of reasons for refusal or an order for consultation is given through a notification of refusal to the International Bureau (Article 12 of the Geneva Act).

(5) Review of written opinions and written amendments of proceedings, etc.

Where a written opinion or a written amendment of proceedings has been submitted, the examiner should carefully read the written opinion and fully understanding its contents before reviewing the respective matters asserted in the written opinion, or should sufficiently review the contents of the written amendment of proceedings, and should determine whether the reason for refusal that had been indicated previously has been overcome.

Where a written amendment of proceedings has been submitted, the examiner should compare the design as originally filed and the design as amended, and should confirm that the gist of the statement in the application and drawings, etc. attached to the application as originally filed has not been changed.

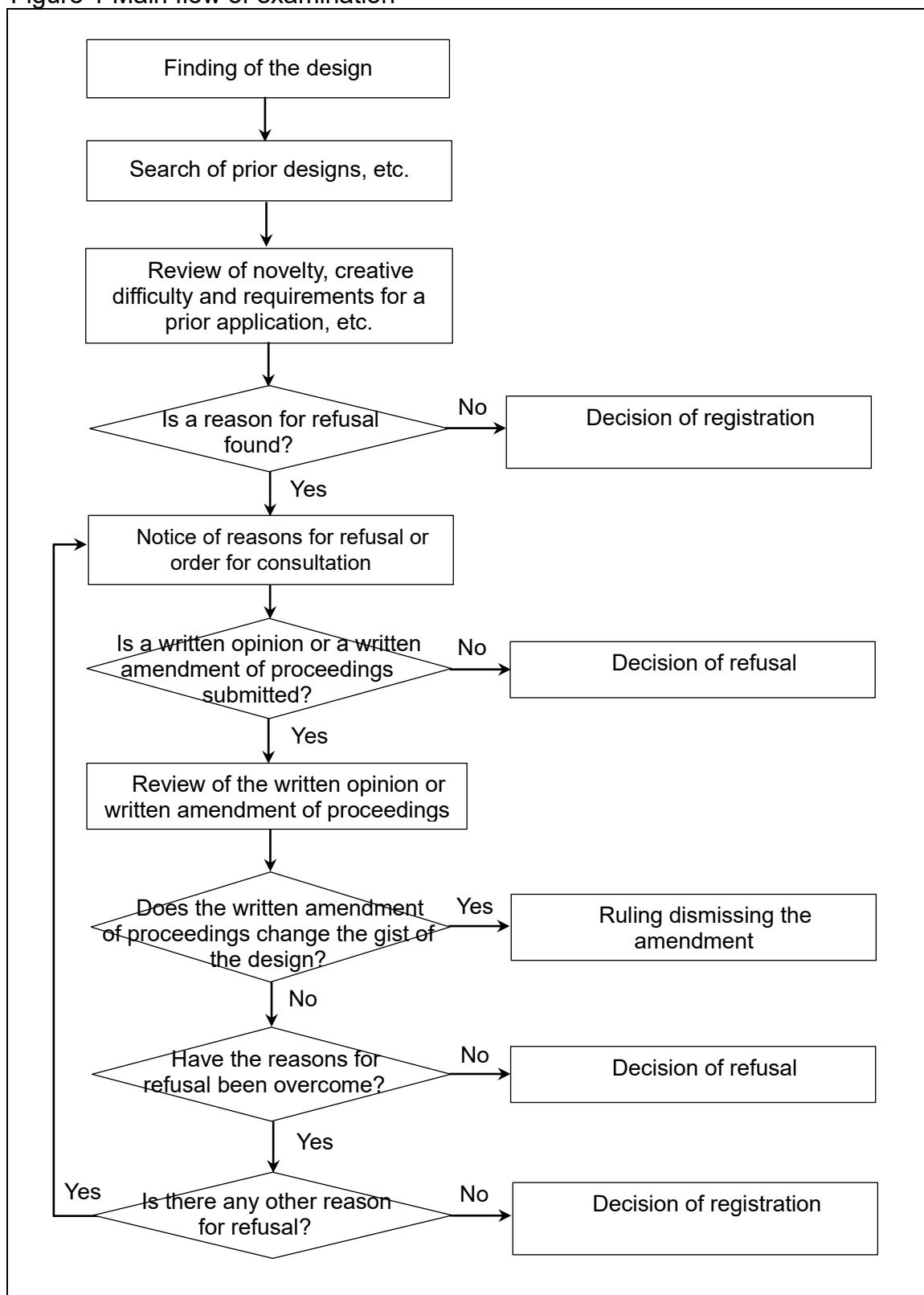
Where an amendment made to the application or drawings, etc. changes the gist of design, the examiner should dismiss the amendment by a ruling.

(6) Examiner's decision

Where no reason for refusal is found, the examiner should render a decision of registration. Where the reason for refusal has been overcome through submission of a written opinion or a written amendment of proceedings, and no other reason for refusal is found, the examiner should render a decision of registration (Article 18 of the Design Act).

Furthermore, upon reviewing the contents of a written opinion or a written amendment of proceedings, where the examiner determines that a notified reason for refusal has still not been overcome, the examiner should render a decision of refusal (Article 17 of the Design Act). When rendering a decision of refusal, the examiner should state in plain language the specific reasons why the notified reason for refusal has not been overcome.

Figure 1 Main flow of examination



Chapter II Design Examination Process

1. Finding of the design in an application for design registration

(1) Outline

As a prerequisite for determining whether a filed design complies with the requirements for registration, such as novelty and creative difficulty, the examiner needs to identify and understand the contents of the design. This is called “finding of the design.”

(2) Finding of the design

In finding the design in an application, the examiner should make a comprehensive determination based on the statement in the application and drawings, etc. attached to the application based on ordinary skill in the art of the design (the skill of a person skilled in the art).

A certificate and other relevant documents submitted under Article 43, paragraph (2) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act (hereinafter referred to as “priority certificate, etc.”) proving documents submitted under Article 4, paragraph (3) of the Design Act, and feature statements are not to be used as information that serves as the basis for finding the design.

Where a statement in the application and drawings, etc. attached to the application have been amended, the examiner should also fully understand the contents of the amendment.

(3) Points to note when finding the design

When finding the design in the application, if the examiner finds any improper description in the statement in the application or drawings, etc. attached to the application, the examiner should determine whether or not it is reasonable for the improper description to be interpreted favorably in finding the specific design.

Note that even if there is no disclosure of parts which the applicant considers to be outside the scope of creation, the examiner should determine that the design is specific if the content of a single creation can be identified by perceiving the disclosed scope as the part for which the design registration is requested.

2. Search of prior designs, etc.

The examiner should conduct a search of prior designs, etc., in order to find prior designs, etc. which contribute to determining the fulfillment of the requirements for registration, such as novelty and creative difficulty of the filed design (the items of Article 3, paragraph (1), Article 3, paragraph (2), and Article 3-2 of the Design Act), the requirements for a prior application (Article 9 of the Design Act), and the requirements for a related design (Article 10 of the Design Act).

Note that, where the art of the filed design cannot be specified, the examiner should conduct a review before the search of prior designs, etc. as to whether the design is an industrially applicable design (main paragraph of Article 3, paragraph (1) of the Design Act), whether the design does not comprise two or more designs (Article 7 of the Design Act), and in the case of a design for a set of articles, whether the design

complies with the requirements to be recognized as a design for a set of articles (Article 8 of the Design Act), and whether the design complies with the requirements to be recognized as an interior design (Article 8-2 of the Design Act), and if a reason for refusal is found, the examiner should give notice of reasons for refusal.

2.1 Reference material

Examination materials containing prior designs, etc. which contribute to determining the novelty, creative difficulty, etc. of a filed design are called “reference material.”

The examiner should find prior designs, etc. that are found to have points in common with the filed design, either as an entire design or in terms of the shape, etc. of individual parts, and record the examination materials containing the prior designs, etc. as reference material.

In addition, where there are examination materials containing prior designs, etc. which the examiner consulted to understand the filed design and the art of the design, the examiner should also record such examination materials as reference material.

2.2 Method of a search of prior designs, etc.

- (1) When filing an application for design registration, there are no mandatory items requiring the applicant is required to include such as an explanation about the shape, etc. that the applicant considers to be important in the design or about the part of the article, building or graphic image (hereinafter collectively referred to as the “article, etc.”) to which particular weight is given. Accordingly, in order to set the scope of examination materials used in the search of prior designs, etc. and to extract reference materials, before conducting the search of prior designs, etc., the examiner should first make their own inference as to the parts of the design that draw attention to shape, etc. and the extent to which they draw attention based on the statement in the application and drawings, etc. attached to the application. In making that inference, where a feature statement has been submitted, the examiner should also take the contents of that feature statement into consideration.
- (2) The examiner should conduct a search of prior designs, etc. through the database comprised of examination materials, such as applications for design registration, publicly known information (Japanese and foreign books, Japanese and foreign magazines, Japanese and foreign catalogs, design bulletins of Japanese and foreign patent offices, and Internet webpages), publications of unexamined patent applications, and publications of registered utility model applications.
- (3) Based on the examiner’s knowledge, experience and past determinations in examining applications for design registration in the art of the filed design, the examiner should set the scope of examination materials to be searched, and conduct the search with priority for fields most relevant to the filed design. In addition, the examiner should expand the scope of the search as necessary for each case as in the “Examples of expanded scope of search” below.

<Examples of expanded scope of search>

- (i) Where there is a Japanese design classification or an international design classification established under the Locarno Agreement^(Note) (hereinafter referred to as an “international design classification”) that is likely to cover articles, etc. that have commonality in their usage (purpose of use, state of use, etc.) and function with the article, etc. to the design in the filed design, the examiner should conduct a search on applications for design registration and publicly known information that are categorized under that Japanese design classification or that international

design classification.

(Note) Officially, the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968, as amended on September 28, 1979

- (ii) Where there is a Japanese design classification or an international design classification that is likely to represent constituent elements of the filed design, the examiner should conduct a search on applications for design registration and publicly known information that are categorized under that Japanese design classification or that international design classification.
- (iii) Where the filed design is a design of a component or a design for which the design registration is requested for a part of an article, etc., and there is a Japanese design classification or an international design classification that covers articles, etc. that are likely to include prior designs which have a part of the shape, etc. of the component or of the “part for which design registration is requested,” the examiner should conduct a search on applications for design registration and publicly known information that are categorized under that Japanese design classification or that international design classification.
- (iv) Where there is a technical field of patents that is related to the article, etc. to the design of the filed design, and the shape, etc. of the article, etc. is likely to be represented in publications of unexamined patent applications and publications of registered utility model applications, etc. in that technical field, the examiner should conduct a search on publications of unexamined patent applications and publications of registered utility model applications in that technical field.
- (v) Where the filed design is unlikely to comply with the requirement for registration of creative difficulty, the examiner should conduct a search, as needed, on information that serves as the basis for determining creative difficulty.
- (vi) Where reference material is recorded for prior designs, etc. that have been found, the examiner should conduct a search on the reference material of those prior designs, etc.
- (vii) Where the applicant of an application for design registration has filed an application for design registration in the past, the examiner should conduct a search on that past application for design registration and its reference material.

2.3 Completion of a search of prior designs, etc.

Where sufficient prior designs, etc. for determining the novelty, creative difficulty, etc. have been found for the filed design, or where finding useful prior designs, etc. has become highly unlikely even if the scope of the search is expanded, the examiner should complete the search of prior designs, etc.

3. Review of novelty, creative difficulty, etc.

The examiner should review as follows whether or not the contents of the prior designs, etc. found in a search of prior designs, etc. constitute a reason for refusal relating to the requirements for registration, such as novelty and creative difficulty of the filed design (the items of Article 3, paragraph (1), Article 3, paragraph (2), and Article 3-2 of the Design Act), or the requirements for a prior application (Article 9 of the Design Act).

In addition, the examiner should also review whether or not the application for design registration falls under any of the reasons for refusal provided in the items of Article 17 of the Design Act.

3.1 Confirmation of bibliographic data of the information

In considering application of the provisions of the items of Article 3, paragraph (1) and Article 3, paragraph (2) of the Design Act, the examiner should confirm the relationship between the date on which the prior design, etc. became publicly known and the reference date for the determination on the requirements for registration, etc. of the filed design. (In considering application of the provisions of the items of Article 3, paragraph (1) and Article 3, paragraph (2) of the Design Act, the examiner should take not only the date but also the exact time into consideration.)

In considering application of the provisions of Article 3-2 and Article 9 of the Design Act, the examiner should confirm the relationship of the reference date for the determination on the requirements for registration, etc. for the filed design with the reference date for the determination on the requirements for registration, etc. and the date of publication of the design bulletin for the prior design (the design in the prior application). The examiner should also confirm the relationship of the applicant of the filed design with the applicant or holder of the design right of the prior design (the design in the prior application).

Here, the “reference date for the determination on the requirements for registration, etc.” refers to any of the following dates.

- (1) The filing date
- (2) The filing date of the first application that serves as the basis for the right of priority under the Paris Convention, etc.
- (3) The filing date of the original application in the case of a divisional application or a converted application
- (4) The date of submission of the written amendment of proceedings in the case of a new application following a ruling dismissing an amendment

Where a found prior design is a disclosed design for which application of the provisions on exception to lack of novelty (Article 4, paragraph (1) or (2) of the Design Act) is requested, the examiner should confirm whether or not the request for application of the provisions on exception to lack of novelty complies with the prescribed requirements.

3.2 Determination of similarity between designs in determining novelty, etc.

In considering reasons for refusal relating to novelty (the items of Article 3, paragraph (1) of the Design Act), prior application (Article 9 of the Design Act) or exclusion from protection of a design in a later application that is identical or similar to part of a design in a prior application (Article 3-2 of the Design Act), the examiner should make a determination by comparing the filed design with the prior design while mainly giving consideration to the following points.

- (1) In determining similarity between the filed design and the prior design cited in the notice of reasons for refusal (hereinafter referred to as the “cited design”), consumers (including traders) should be the determining entity.
- (2) The examiner should determine whether or not the usage and function of the article, etc. to the design of the filed design and that of the cited design are identical or similar. This does not require judgment of similarity based on a comparison of the detailed usage and function of the articles, etc. It is sufficient to determine that there is similarity in the usage and function of the articles, etc. if the articles, etc. have commonality in their usage (purpose of use, state of use, etc.) and function.

- (3) After confirming that the cited design is sufficiently represented to a level comparable with the filed design, and finding the common points and different points in the shape, etc. of the entire articles, etc. to the design (basic constitution) and the shape, etc. of each part of the two designs by comparing the filed design and the cited design, the examiner should conduct further individual evaluation of the common points and different points from the viewpoints in (i) and (ii) below.
- (i) Finding of whether or not the shape, etc. is the part that draws attention when observed by comparison, and evaluation of the extent to which it draws attention
 - (ii) Evaluation of the extent to which the shape, etc. draws attention in comparison to prior designs
- With regard to a design for which the design registration is requested for a part of an article, etc., after finding the common points and different points in the usage and function, position, size, scope and shape, etc. of the “part for which the design registration is requested,” the examiner should conduct further individual evaluation of the common points and different points.
- (4) The examiner should determine whether or not the designs create different aesthetic impressions on consumers (including traders) when all common points and different points between the two designs are comprehensively observed as entire designs.

3.3 Determination of creative difficulty

The examiner should determine creative difficulty (Article 3, paragraph (2) of the Design Act) by reviewing whether or not the filed design could have been easily created based on prior publicly known shapes, etc.

In determining creative difficulty, the examiner should mainly give consideration to the following points.

- (1) A person ordinarily skilled in the art of the design (a person skilled in the art) should be the determining entity for creative difficulty.
- (2) The examiner should confirm that the information that serves as the basis for determining creative difficulty is a shape, etc., graphic image or design that is publicly known, or is a shape, etc., graphic image or design that is described in a distributed publication or was made publicly available through an electric telecommunication line.
- (3) Where determining that the design was created by an ordinary technique for a person skilled in the art, the examiner should confirm evidence of a specific fact showing this.

3.4 Determination on whether or not the application for design registration falls under any of the items of Article 17 of the Design Act

The examiner should review whether or not the application for design registration falls under any of the reasons for refusal provided in the items of Article 17 of the Design Act. For example, the examiner should review whether the filed design has any grounds of unregistrability (the items of Article 5 of the Design Act), whether applications for design registration have been filed for each design as provided by an Ordinance of the Ministry of Economy, Trade and Industry (Article 7 of the Design Act), and in the case of an application filed as a related design, whether it complies with the requirements for obtaining design registration as a related design (Article 10 of the Design Act).

4. Notice of reasons for refusal (excluding international applications for design registration)

Where a reason for refusal is found, the examiner should give notice of reasons for refusal to the applicant and should give the applicant an opportunity to submit a written opinion, designating an adequate time limit for such purpose (Article 50 of the Patent Act as applied mutatis mutandis pursuant to Article 19 of the Design Act).

Furthermore, an extension of the time limit may be requested even after the expiration of the said time limit, but only within the time limit specified by an Ordinance of the Ministry of Economy, Trade and Industry (Article 5, paragraph (3) of the Patent Act as applied mutatis mutandis pursuant to Article 68, paragraph (1) of the Design Act).

4.1 Points to note when giving notice of reasons for refusal

When giving notice of reasons for refusal, taking the following points in particular into consideration, the examiner should indicate the reasons specifically so that the applicant can clearly understand the purport of the reasons for refusal.

- (1) The reasons for refusal should be stated in plain language insofar as possible by describing the key points in an easy to understand manner so as to make it easy for the applicant to understand.
- (2) With regard to a design which is not specific and which is clearly not an industrially applicable design as provided in the main paragraph of Article 3, paragraph (1) of the Design Act, the examiner should specifically indicate the improper part in the statement in the application and drawings, etc. attached to the application and the reason therefor.
- (3) Where the filed design falls under the provisions of the items in Article 3, paragraph (1), Article 3-2 or Article 9, paragraph (1) of the Design Act and does not comply with the requirements of novelty, prior application, etc., the examiner should specifically indicate the reason for the examination determination in the notification of reasons for refusal. Also, in specifying a cited design, the examiner should state information identifying the source of the cited design (document name, date of publication, issue number, volume, the relevant page, the relevant position on the page, etc.). In doing so, if the filed design is a design of a component or a design for which the design registration is requested for a part of an article, etc., the examiner should clearly indicate the part cited for making the comparison and determination as needed.

In addition, where the filed design falls under both the provision of Article 3-2 of the Design Act and the provision of Article 9, paragraph (1) of the Design Act (where the filed design and the design in the prior application are identical or similar designs for which the design registration is requested for a part of an article, etc., and their applicants are not the same), the examiner should apply the provision of Article 3-2 of the Design Act in examination practice.

However, where the prior application is an application involving a request for the design to be kept secret, and where it is necessary to wait for publication of the design bulletin after the period for which secrecy was requested has lapsed before giving notice of reasons for refusal under Article 3-2 of the Design Act, in the

interests of expediting the examination, the examiner should give notice of reasons for refusal under Article 9, paragraph (1) of the Design Act without waiting for publication of the design bulletin after the period for which secrecy was requested has lapsed.

- (4) Where the filed design falls under the provision of Article 3, paragraph (2) of the Design Act and does not comply with the requirement for registration of creative difficulty, the examiner should specifically indicate the reason for the examination determination in the notification of reasons for refusal. In doing so, the examiner should present the information that serves as the basis for determining creative difficulty and a specific fact showing that the design was created by an ordinary technique for a person skilled in the art, unless they are so obvious that such presentation is not required.

In presenting information that serves as the basis for determining creative difficulty, the examiner should state information identifying the source (document name, date of publication, issue number, volume, the relevant page, the relevant position on the page, etc.).

In addition, the examiner should apply the provision of Article 3, paragraph (2) of the Design Act only where the filed design does not fall under any of the designs provided in the items of Article 3, paragraph (1) of the Design Act.

- (5) Where the application for design registration does not comply with the requirement of one application per design provided in Article 7 of the Design Act, the examiner should specifically indicate in the notification of reasons for refusal the reason why the application is not found to be filed for each design as provided by an Ordinance of the Ministry of Economy, Trade and Industry or classifications of articles equivalent in level to such classification.
- (6) Where the application for design registration falls under another reason for refusal, the examiner should specifically state that reason.

4.2 Ensuring communication with the applicant

- (1) Where it is found to contribute to prompt and accurate examination, the examiner should utilize telephone, facsimile, interviews, etc. as supplementary means for ensuring communication with the applicant, and make effort to deal with the applicant in a careful and easy-to-understand manner. Interviews, etc. are held based on "Interview Guidelines [Design Examination]," and an interview record or a response record is prepared in order to secure the transparency of the procedure. Where there is an agent for the application for design registration, the interview, etc. is held with the agent, in principle.

Note that where the shape, etc. of the entire article, etc. to the design is not disclosed, but there is no specific reason for refusal, such as in the case where the contents of a single creation can be identified by perceiving the disclosed scope as the part for which the design registration is requested, the examiner should not confirm the intention of the applicant or encourage the applicant to make amendments with regard to the parts that are not disclosed.

- (2) The examiner should ensure that practices are carried out in such a way as to maintain or secure the continuity of examination even if the examiner in charge is changed. Where the examiner makes a different determination from that of the

previous examiner in charge, the examiner should pay particular attention to communicating with the applicant.

5. Orders for consultation (excluding international applications for design registration)

Where two or more applications for design registration have been filed for identical or similar designs on the same date, the two or more applications for design registration fall under the provision of the first sentence of Article 9, paragraph (2) of the Design Act, and become subject to an order for consultation under Article 9, paragraph (4) of the Design Act, regardless of whether they are applications for design registration filed by the same person or by different persons.

5.1 Points to note when issuing orders for consultation

When giving an order for consultation, the examiner should take the following points into consideration.

- (1) Handling of applications for design registration filed by different persons for identical or similar designs on the same date
 - (i) An order for consultation is issued in the name of the Commissioner of the Patent Office to the respective applicants for design registration under Article 9, paragraph (4) of the Design Act.
 - (ii) Where a report on the results of consultations is submitted within the designated time limit, an examiner's decision to the effect that a design registration is to be granted is rendered only for the application for design registration filed by one applicant for design registration that was selected in the consultations.
 - (iii) Where no report on the results of consultations is submitted within the designated time limit, it is deemed that no agreement was reached by consultations under Article 9, paragraph (5) of the Design Act, and the respective applicants for design registration are given notice of reasons for refusal under the second sentence of Article 9, paragraph (2) of the Design Act.
- (2) Handling of applications for design registration filed by the same person for identical or similar designs on the same date
 - (i) An order for consultation is issued in the name of the Commissioner of the Patent Office to the applicant for design registration under Article 9, paragraph (4) of the Design Act. However, where the applicant is the same person, since time for consultations is not deemed necessary, at the same time as issuing an order for consultation in the name of the Commissioner of the Patent Office, the applicant is given notice of reasons for refusal based on the provisions of the second sentence of Article 9, paragraph (2) of the Design Act.
 - (ii) Where no report on the results of consultations is submitted within the designated time limit, it is deemed that no agreement was reached by consultations under Article 9, paragraph (5) of the Design Act, and an examiner's decision is rendered to the effect that each application for design registration should be refused based on the previously given notice of reason for refusal under the second sentence of Article 9, paragraph (2) of the Design Act.

- (3) Handling of the case where procedures for withdrawal or waiver or for amendment are taken only for one or some of the applications for design registration subject to consultations, and where no report on the results of consultations is submitted

Even if procedures for withdrawal or waiver or for amendment are taken only for one or some of the applications for design registration subject to consultations, the examiner may not as a result immediately deem that agreement has been reached by consultations, and must wait for the report on the results of consultations until the expiration of the designated time limit.

In principle, a report on the results of consultations is required for each application for design registration that is subject to consultations. Where no report on the results of consultations is submitted by the designated time limit, it may be deemed that no agreement was reached by consultations under Article 9, paragraph (5) of the Design Act; however, if, within the designated time limit, an amendment has been made to make the design in an application for design registration subject to consultations a principal design or its related design, or if either of the applications for design registration subject to consultations has already been withdrawn or waived, such procedures for amendment or for withdrawal or waiver will result in the reason for consultations being overcome. Consequently, the examiner should not deem that no agreement was reached by consultations.

6. Notification of refusal in case of an international application for design registration

In cases where an international application for design registration does not satisfy conditions for grant of protection under the Japan's laws and regulations, the examiner should give a notification of refusal (Article 12(1) and (2) of the Geneva Act).

6.1 Notification of refusal

When giving a notification of refusal, the examiner should take the following points into consideration.

- (1) Cases where an international application for design registration does not comply with conditions for granting protection under the Japan's laws and regulations include the following cases:
- (i) Case where the said international application for design registration has reasons for refusal (the items of Article 17 of the Design Act)
 - (ii) Case where the said international application for design registration is subject to an order for consultation (Article 9, paragraph (4) of the Design Act)
 - (iii) Case where waiting until procedures or dispositions for the said international application for design registration has become final and binding is necessary
 - (iv) Case where waiting until dispositions for an application other than the said international application for design registration have become final and binding is necessary (wait notice)

Where a notification of refusal has been given, during subsequent procedures, a notice of reasons for refusal, etc. shall be given not through a notification of refusal but through a normal notice of reasons for refusal, etc.

- (2) A notification of refusal shall be given to the International Bureau within 12 months

after an international publication (Article 12(2)(a) of the Geneva Act, Regulation 18(1)(b) of the Common Regulations of the Hague Agreement).

- (3) All reasons^(Note) for the refusal shall be stated in a notification of refusal (Article 12(2)(b) of the Geneva Act). Reference shall also be made to the main provisions of laws and regulations corresponding to those reasons (Rule 18(2)(iii) of the Common Regulations of the Hague Agreement).

(Note) "All reasons" to be stated in a notification of refusal shall be reasons that can be presented when giving a notification of refusal, and shall be to the extent that is reasonable to notify at the same time.

- (4) A notification of refusal shall be given in English (Rule 6(3)(i) of the Common Regulations of the Hague Agreement).

7. Where a written opinion or a written amendment of proceedings has been submitted

- (1) Review of the contents of a written opinion or a written amendment of proceedings

Where a written opinion or a written amendment of proceedings has been submitted after giving notice of reasons for refusal, the examiner should carefully read the written opinion and fully understand its contents before reviewing the respective matters asserted in the written opinion, or should sufficiently review the contents of the written amendment of proceedings, and should make a determination as to whether the reason for refusal that had been indicated previously has been overcome.

- (2) Handling of a written amendment of proceedings

Where an amendment made to the application or drawings, etc. is found to change the gist of the statement in the application or drawings, etc. attached to the application as originally filed (the cases indicated in (i) and (ii) below), the examiner should dismiss the amendment by a ruling (Article 17-2 of the Design Act). A ruling dismissing an amendment is made by indicating the reason therefor (or all such reasons if there are multiple).

(i) 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

(ii) An amendment to clarify the gist of design that was unclear when originally filed

Where the amendment does not change the gist of the statement in the application or drawings, etc. attached to the application as originally filed, the examiner should continue the examination based on the amended statement in the application and amended drawings, etc. attached to the application.

An amendment may only be made while the application for design registration is pending in examination, trial or retrial (Article 60-24 of the Design Act).

- (3) Notice of reasons for refusal after submission of a written opinion or a written amendment of proceedings

Where a previously given notice of reasons for refusal has been overcome through submission of a written opinion or a written amendment of proceedings, but another

reason for refusal has been found, the examiner should give notice of reasons for refusal once again.

8. Examiner's decision

8.1 Decision of registration

Where no reason for refusal is found for an application for design registration, the examiner should render a decision of registration. In addition, where the reason for refusal has been overcome through submission of a written opinion or a written amendment of proceedings, and no other reason for refusal is found, the examiner should render a decision of registration (Article 18 of the Design Act).

In rendering a decision of registration, if there is a design that is categorized as any of the prior designs, etc. shown below, which does not constitute a reason for refusal but was particularly referred to in examination of the filed design, the examiner should publish the examination materials containing those prior designs, etc. as reference material in a design bulletin.

- (1) A prior design that is found to have common points with the filed design in terms of the entire design
- (2) A prior design, etc. that is found to have common points with the filed design in terms of a part of the shape, etc.
- (3) A prior design, etc. that is found to have common points in the shape, etc. described as a feature in the feature statement

8.2 Decision of refusal

Where a reason for refusal is not overcome by a written opinion or a written amendment of proceedings submitted in response to notice of reasons for refusal, the examiner should promptly render a decision of refusal (Article 17 of the Design Act).

When rendering a decision of refusal, the examiner should take the following points into consideration.

- (1) The specific reasons why the reason for refusal has not been overcome should be stated in plain language.
- (2) With regard to the matters asserted in a written opinion, the determination made by the examiner should be clearly stated in accordance with the purport of the reason for refusal.
- (3) In cases bound by a notified reason for refusal, where a decision of refusal cannot be rendered without citing a new prior design, etc., the examiner must cite that new prior design, etc., give notice of reason for refusal once again, and ensure that the applicant has an opportunity to state their opinion. However, a new prior design, etc. may be presented for reinforcing the fact that a shape, etc. that is ordinary in the art of the filed design is used or an ordinary technique for a person skilled in the art is used.

Relevant Provisions

Design Act: Article 16, Article 17, Article 17-2, Article 18, Article 19

Patent Act: Article 50, Article 52

Geneva Act: Article 12

Part II

Finding of the Design and Filing an Application for Each Design

Part II.....	1
Chapter I Finding of the Design in an Application for Design	
Registration	1
1. Outline	1
Chapter II Filing an Application for Each Design	1
1. Outline	1
2. Determination on whether or not the application for design registration has been filed for each design	1
2.1 Determination as to whether two or more articles, etc. are represented	2
2.2 Where a single article, etc. contains two or more physically separate “parts for which the design registration is requested”	6
2.2.1 Where there is unity in shape, etc.	7
2.2.2 Where there is unity in function	7
2.2.3 Where a part that performs a certain usage and function, or a part that is coordinated in shape, etc. is in “any other parts”	8
2.2.4 Where the part for which the design registration is requested is separated by an undisclosed part and represented in a physically separated state in the drawing	9
3. Determination of clarity of the usage and function of an article, etc. to the design	10
3.1 Basic concept in determining clarity of the usage and function of an article, etc. to the design.....	10
3.2 Examples where the usage and function of the article, etc. to the design are unclear	10
3.3 Examples where the usage and function of the article, etc. to the design are clear	12
4. Procedure of examination for determining clarity of the usage and function of an article, etc. to the design	13
4.1 Relationship with the provisions of the main clause of Article 3 of the Design Act.....	13
Relevant Provisions.....	1

Chapter I Finding of the Design in an Application for Design Registration

1. Outline

The finding of the filed design should be made by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application based on the ordinary skill in the art of the design, with regard to what kind of shape, patterns, or colors, or any combination thereof^(Note) was created for an article, etc. with what kind of function and usage.

This is because the Design Act provides that, when a person requesting a design registration files an application for design registration, the applicant must state necessary matters in the application, represent the design for which the design registration is requested in drawings, etc. attached to the application, and submit them to the Commissioner of the Patent Office (Article 6 of the Design Act), and that the scope of a registered design must be determined based upon the design represented in the statement in the application and the drawings, etc. attached to the application (Article 24 of the Design Act).

Consequently, the design for which the design registration is requested is determined based on the content of the statement in the application and what is represented in the drawings, etc. attached to the application, and therefore, the shape, etc. of the part that is not disclosed (excluding shapes, etc. for which indication of views are omitted by including a description stating that the views are identical to or mirror images of other views) shall not be handled as the shape, etc. of the part for which design registration is requested.

In cases where a shape, pattern, or color in a drawing represented as a “reference view” in drawings, etc. attached to the application is different from those shown in a set of drawings and other necessary drawings, such shape, pattern, or color shall not be taken into consideration in finding the shape, etc. of the design in the application. In addition, any part that is only disclosed in a drawing represented as a “reference view” without being disclosed in a set of drawings and other necessary drawings shall not be handled as a part for which the design registration is requested.

Documents that are not categorized as an application or drawings, etc. attached to the application, such as a feature statement, a “priority certificate, etc.” or a certificate for receiving application of the provisions of Article 4, paragraph (2) of the Design Act, are not to be used as information that serves as the basis for finding the filed design.

(Note)

Hereinafter referred to as the “shape, etc.,” except in 3.3 “The set of articles is coordinated as a whole” in Part IV, Chapter III “Design for a Set of Articles.”

Chapter II Filing an Application for Each Design

1. Outline

Article 7 of the Design Act provides that an application for design registration must be filed for each design.

Specific procedures are entrusted to the Ordinance for Enforcement of the Design Act. The Ordinance permits the procedure of filing applications for multiple designs in a single application, but provides that each application must only contain one design (one application per design).

By establishing one design right for one design, the “one application per design” requirement gives consideration to procedural expediency and convenience in the event of an infringement dispute, namely, clarifying the contents of the right and securing its stability, and preventing unnecessary disputes.

On the other hand, even if two or more designs are included in a single application, as long as the specific design is identifiable and there is no substantive deficiency, such an application constitutes a mere formal deficiency that different applications for design registration should have been filed for two or more designs which do not fulfill the requirement of one application per design. Accordingly, where an application for design registration does not comply with the “one application per design” requirement, registering that application as it is does not directly harm the interests of third parties in a substantial way. Therefore, failure to fulfill the requirements of Article 7 of the Design Act does constitute a reason for refusal, but does not constitute a reason for invalidation. Considering these circumstances, the examiner should not make an unnecessarily strict determination on the requirement that a single application may not contain two or more designs.

In addition to the above requirement, the Ordinance also prescribes a requirement that the article to the design, the usage of the building or graphic image to the design, a set of articles or interior must be clear so that a single design right does not become too broad in content.

In determining whether or not a filed design complies with this requirement, the examiner should make a comprehensive determination not only of the statement in the column of “Article to the Design” of the application, but also of statements in other columns of the application and of drawings, etc. attached to the application, and where the usage and function of the article, etc. to the design for which design registration is requested can be clearly recognized, the examiner should determine that the filed design complies with this requirement.

2. Determination on whether or not the application for design registration has been filed for each design

If the application for design registration falls under any 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) Where two or more articles, etc. are stated together in the column of “Article to

the Design” of the application

- (2) Where two or more articles, etc. are represented in the drawings, etc.
(including cases where multiple articles, etc. are arranged in the drawings, etc.)
However, this excludes cases where the application for design registration is filed for a design for a set of articles or for an interior design.
- (3) Where a single article, etc. contains two or more physically separate “parts for which the design registration is requested”

2.1 Determination as to whether two or more articles, etc. are represented

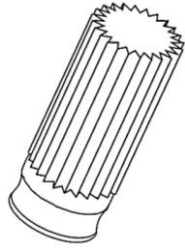
Where an article, etc. to the design is represented by multiple constituent objects in drawings, etc., the examiner should determine whether or not the filed design pertains to two or more articles, etc. as follows.

- (1) Concept in determining whether constituent objects are categorized as two or more articles, etc.
 - (i) Even in cases where multiple constituent objects are represented in the drawings, etc., if all of these constituent objects are commonly essential for performing a specific single usage and function, the examiner should determine that the filed design is for a single article, etc.
 - (ii) Even where their connection is not strong, if the following apply, the examiner should determine whether or not they constitute a single article, etc. by also complementarily considering such aspects.
 - (a) Where all of the constituent objects physically constitute a single bundle, or where they are coordinated as a single shape, etc. such as the case where they have been created in an integrated manner with close relevance in shape, etc.
 - (b) Where all of the constituent objects could be commonly used in an integrated manner
 - (iii) Where multiple constituent objects are not found to have any connection with each other for performing a specific single usage and function, the examiner should determine that they constitute two or more articles, etc.
However, where the constituent objects could be commonly distributed in an integrated manner, and all constituent objects are created in an integrated manner with close relevance in shape, etc., the examiner should determine that they constitute a single article, etc.

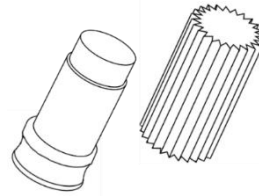
(2) Examples of subject matters determined to be a single article, etc.

[Case example 1] “Solid glue with a container”

[Perspective view]



[Perspective view with the lid off]

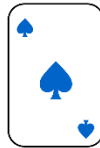
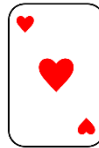
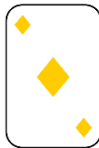


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* In general, solid glue needs to be kept in a container so that it can be applied without getting on the user's hands and prevented from drying out when stored. Since solid glue and a container with a lid are commonly accepted as essential for performing the usage and function of the solid glue, the examiner should determine that they constitute a single article.

[Case example 2] “Playing cards”

[Surface view 1]



[Surface view 2]



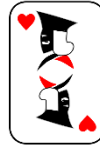
[Back side view]



[Surface view 3]



[Surface view 4]



[Surface view 5]

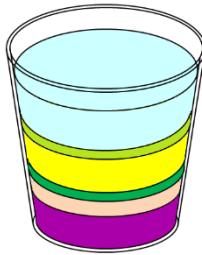


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* Playing cards are widely known as a card game consisting of four suits—hearts, diamonds, clubs, and spades—with 13 cards in each suit (consisting of number cards from 1 to 10 and picture cards jack, queen, and king), plus joker cards. Since all of these cards are commonly essential for performing the usage and function of the playing cards, the examiner should determine that they constitute a single article.

[Case example 3] “Jelly with a container”

[Perspective view]

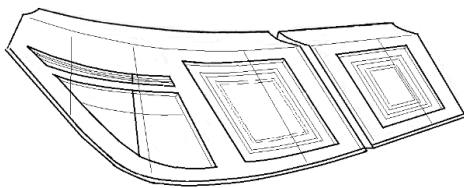


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

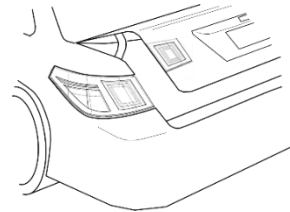
* Since jelly can be removed from a container and put in a bowl, etc., jelly with a container cannot necessarily be regarded as essential for performing a specific single usage and function; but complementarily considering that the transparent container and the multicolored jelly, which is visible from outside the container, have been created in an integrated manner, that they are commonly manufactured and distributed in the market in an integrated manner, and that they also exist in an integrated manner when served, the examiner should determine that they constitute a single article.

[Case example 4] “Tail lamp for a passenger car”

[Perspective view]



[Reference view showing the tail lamp installed on a vehicle]

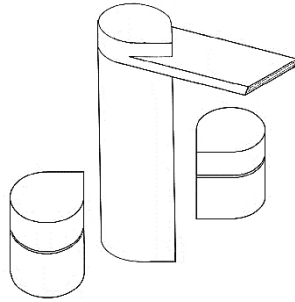


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* The tail lamp for a vehicle is physically separated into a component attached to the trunk and a component attached to the vehicle body. However, these two components are commonly recognized as a single unified tail lamp for a vehicle, and both components are essential for performing the usage and function of a tail lamp for a passenger car, so the examiner should determine that they constitute a single article.

[Case example 5] “Mixing faucet”

[Perspective view]

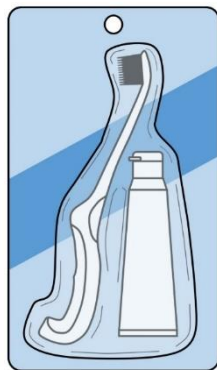


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* The mixing faucet is physically separated into a spout and two handles. However, since these three components are commonly recognized as a single unified mixing faucet, and all components are essential for performing the usage and function of a mixing faucet, and since they have a single coordinated form, the examiner should determine that they constitute a single article.

[Case example 6] “Toothbrush with toothpaste and a packaging container”

[Front view]

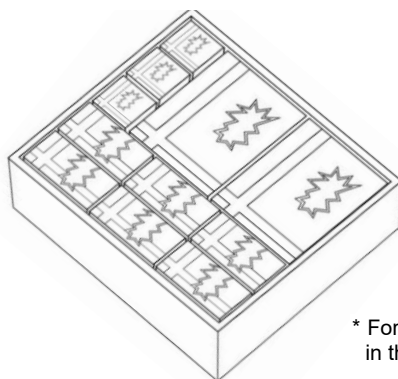


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* Toothpaste and a packaging container are represented along with a toothbrush. Since the toothpaste and the packaging container could be commonly distributed in an integrated manner with the toothbrush, and since all constituent objects are created in an integrated manner with close relevance in shape, etc., the examiner should determine that they constitute a single article.

[Case example 7] “Assorted cookies and table plate with packaging container”

[Perspective view]



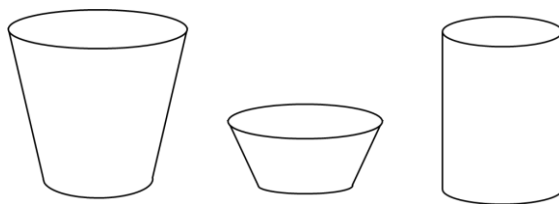
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* Although multiple constituent objects are represented, since they could be commonly distributed in an integrated manner, and since all constituent objects are created in an integrated manner with close relevance in shape, etc., the examiner should determine that they constitute a single article.

(3) Examples of subject matters determined to be two or more articles, etc.

[Case example] “Cups”

[Perspective view]



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

* Since these multiple cups are not found to be commonly essential for performing a specific single usage and function, and since none of them can be described as creations with a single coordinated form, the examiner should determine that they constitute two or more articles.

2.2 Where a single article, etc. contains two or more physically separate “parts for which the design registration is requested”

In an application requesting design registration for part of an article, etc., where a single article, etc. contains two or more physically separate “parts for which the design registration is requested,” the examiner should, in principle, not find it to be an application for design registration filed for each design.

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

- (1) Where there is unity in shape, etc.
- (2) Where there is unity in function
- (3) Where a part that performs a certain usage and function, or a part that is coordinated in shape, etc. is in “any other parts”

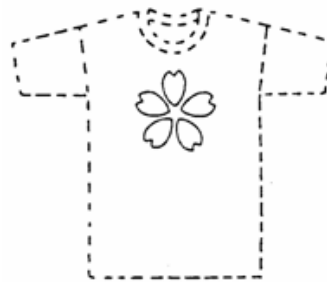
- (4) Where the part for which the design registration is requested is divided by an undisclosed part and represented in a physically separated state in the drawing

2.2.1 Where there is unity in shape, etc.

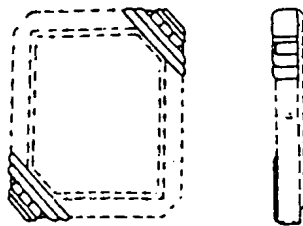
Even where two or more “parts for which the design registration is requested” are physically separate, if they are created with relevance to each other, such as shapes, etc. in mirror images or shapes, etc. that constitute a set, the examiner should determine that there is unity in shape, etc. and should treat them as one design.

Examples of subject matters determined to constitute one design

[Case example] “T-shirt”



[Case example] “Watch casing”

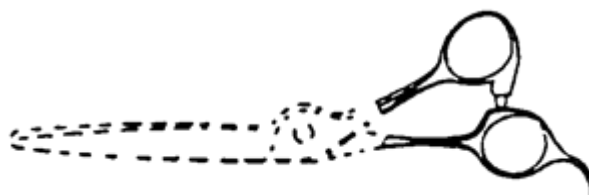


2.2.2 Where there is unity in function

Even where two or more “parts for which the design registration is requested” are physically separate, if they are created in an integrated manner because they perform one function as a whole, the examiner should determine that there is unity in function and should treat them as one design.

Examples of subject matters determined to constitute one design

[Case example] “Hairdressing scissors”



[Case example] “Mobile phone”

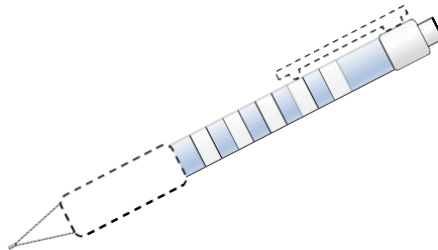


2.2.3 Where a part that performs a certain usage and function, or a part that is coordinated in shape, etc. is in “any other parts”

Even where a design contains two or more physically separate “parts for which the design registration is requested,” if a part that performs a certain usage and function, or a part that is coordinated in shape, etc. is in “any other parts,” the examiner should treat them as one design.

Example of subject matters determined to constitute one design

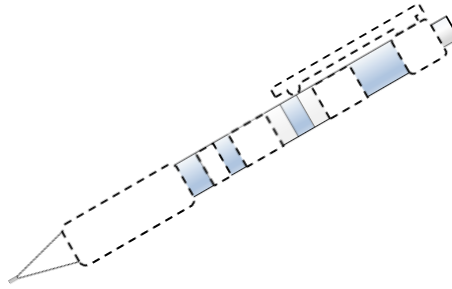
[Case example] “Mechanical pencil”



On the other hand, where the part for which the design registration is requested is physically separated into many parts, and is not coordinated as a single design that can become subject to comparison when comparing with another design, the examiner should not treat them as one design.

Example of subject matters determined to constitute two or more designs

[Case example] “Mechanical pencil”



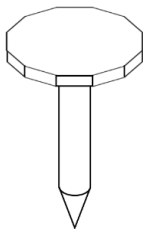
2.2.4 Where the part for which the design registration is requested is separated by an undisclosed part and represented in a physically separated state in the drawing

Even where a design contains two or more physically separate “parts for which the design registration is requested,” if they are separated by an undisclosed part and the parts for which the design registration is requested are only represented in a physically separated state in drawings, the examiner should treat them as one design.

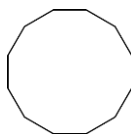
Example of subject matters determined to constitute one design

[Case example] “Nail”

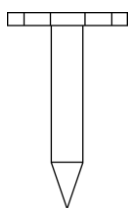
[Perspective view]



[Top view]



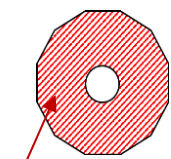
[Front view]



[Description of Article to the Design] (No description)

[Description of the Design] The rear view, right side view and left side view are omitted as they are identical with the front view.

[Bottom view]



This area is not disclosed in the drawing

A bottom view is not provided, and the red shaded area is not disclosed, therefore it is a “part which is not the part for which the design registration is requested.”

Consequently, the head and the body of the nail are represented in the drawing as two or more physically separate “parts for which the design registration is requested,” but in such case they are determined to constitute one design.

3. Determination of clarity of the usage and function of an article, etc. to the design

3.1 Basic concept in determining clarity of the usage and function of an article, etc. to the design

The design for which design registration is requested must have a clear usage and function of the article, etc. to the design.

Where the usage and function of the article, etc. to the design is unclear, or where it is indefinite as it could contain many articles, etc., the examiner should determine that the filed design does not comply with this requirement.

While taking into consideration the general rule that the “article to the design, or the usage of the building or graphic image to the design,” which is provided in Article 6 of the Design Act as a matter to be stated in an application, should be made clear in the statement in the column of “Article to the Design” of the application, the examiner should determine whether the filed design complies with this requirement by piecing together not only the statement in the column of “Article to the Design” of the application, but also other statements in the application and drawings, etc. attached to the application.

3.2 Examples where the usage and function of the article, etc. to the design are unclear

Where the application for design registration falls under the following, the examiner should determine that the usage and function of the article, etc. to the design are unclear in the filed design.

(1) Examples where the statement in the column of “Article to the Design” of the application falls under the following

- a. A statement that is not used as a general name in Japanese (or in English in the case of an international application for design registration) in the art of the design

(Examples: A statement in a language other than Japanese (or English in the case of an international application for design registration), an abbreviated name that is not yet recognized widely as a general name, a statement with a proper name, such as a trademark or trade name.

However, in the case of a statement in Japanese, even if it includes an alphabetic abbreviation (e.g. “LED,” “DVD,” etc.), as long as it is used as a general name, the examiner should still treat such statements as reasonable.)

- b. A statement in which the usage and function can in no way be identified (Examples: “Article,” “thing”)

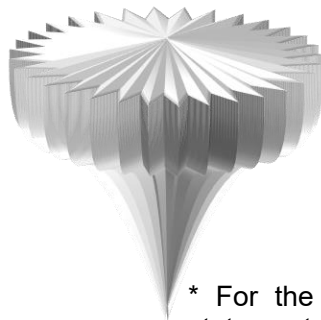
- (2) Examples where the usage and function of the article, etc. in the filed design cannot be clearly identified even after making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application

[Case example 1]

[Article to the Design] Industrial component

[Description of Article to the Design] (No description)

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

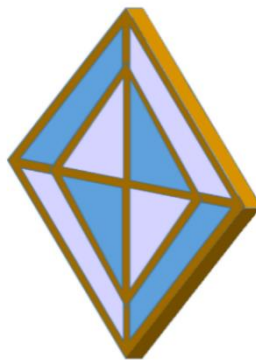
In this case example, the statement in the column of “Article to the Design” is unclear, and even taking the statements in the drawing into account, it is not possible to clearly identify the usage and function of the article, etc. to the design in this design.

[Case example 2]

[Article to the Design] Decorative component

[Description of Article to the Design] (No description)

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

In this case example, the statement in the column of “Article to the Design” is unclear, and even taking the statements in the drawing into account, the usage and function—such as what the article decorates—are unclear, and it is not possible to clearly identify the article, etc. to the design in this design.

[Case example 3]

[Article to the Design] Supporting frame

[Description of Article to the Design] (No description)

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

In this case example, the statement in the column of “Article to the Design” is unclear, and even taking the statements in the drawing into account, the usage and function—such as what the frame supports and for what purpose—are unclear, and it is not possible to clearly identify the usage and function of the article, etc. to the design in this design.

3.3 Examples where the usage and function of the article, etc. to the design are clear

(1) Examples of appropriate statements in the column of “Article to the Design” of the application

For example, see the “Examples of Articles, etc. to the Design” attached to the Guide for making Applications and Drawings for Design Registration.

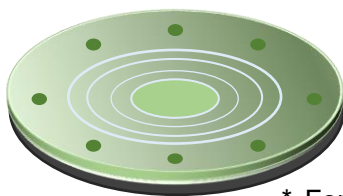
(2) Examples where the usage and function of the article, etc. in the filed design cannot be clearly identified from statements in the column of “Article to the Design” of the application alone, but where the usage and function can be clearly identified by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application

[Case example 1]

[Article to the Design] Tableware

[Description of Article to the Design] The article in this application is a table plate.

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

In this case example, the statements in the columns of “Article to the Design” and “Description of Article to the Design” are not inconsistent with the statements in the drawing, and by piecing each of these together, it is possible to clearly identify the usage and function of the article, etc. to the design in this design.

[Case example 2]

[Article to the Design] Footwear

[Description of Article to the Design] (No description)

[Perspective view]



* For the convenience of explanation, other statements in drawings are omitted.

In this case example, the statement in the column of “Article to the Design” is not inconsistent with the statements in the drawing, and by piecing each of these together, it is possible to clearly identify the usage and function of the article, etc. to the design in this design.

4. Procedure of examination for determining clarity of the usage and function of an article, etc. to the design

4.1 Relationship with the provisions of the main clause of Article 3 of the Design Act

Where a filed design falls under both a reason for refusal under Article 7 of the Design Act due to the usage and function of the article, etc. to the design being unclear and a reason for refusal under the main clause of Article 3 of the Design Act due to the design not being an industrially applicable design, the examiner should give notice of reasons for refusal under the main clause of Article 3.

Relevant Provisions

Design Act

Article 6 (1) A person seeking to have a design registration made must submit to the Commissioner of the Japan Patent Office an application stating the following matters accompanied by a drawing depicting the design for which the registration is sought:

- (i) the name, and domicile or residence of the applicant for the design registration;
 - (ii) the name and domicile or residence of the creator of the design; and
 - (iii) the article embodying the design, or the usage of the building or graphic image embodying the design.
- (2) If so provided by Order of the Ministry of Economy, Trade and Industry, the applicant may submit photographs, models, or specimens representing the design for which the registration is sought, in lieu of the drawing referred to in the preceding paragraph. In this case, the applicant must indicate in the application whether they are photographs, models, or specimens that are being submitted.
- (3) If neither the statement concerning the article embodying the design or the usage of the building embodying the design that is referred to in paragraph (1), item (iii), nor the drawings, photographs, or models attached to the application would give a person ordinarily skilled in the art of the design a concept of the material or size of the article or building, and by this reason the person would not be able to discern the design, the material or size of the article or building embodying the design must be stated on the application.
- (4) If the shape, pattern, or color of an article embodying a design, the shape, pattern, or color of a building embodying a design, or a graphic image embodying a design changes due to the way the article, building, or graphic image functions, and the applicant seeks to have a design registration made for the shapes and equivalent features of the article, the shapes and equivalent features of the building, or the graphic image as it appears before, during, and after that change, the applicant must indicate this and give an explanation of that function of the article, building, or graphic image in the application.
- (5) If colors of the design are applied to the drawing, photograph, or model to be submitted pursuant to the provisions of paragraph (1) or (2), the applicant may omit applying either the color black or white.
- (6) When the applicant omits applying the color black or white pursuant to the provisions of the preceding paragraph, the applicant must indicate this in the application.
- (7) If the applicant submits a drawing depicting a design pursuant to paragraph (1) or a photograph or model representing a design pursuant to paragraph (2), and the whole or part of the article embodying the design, building embodying the design, or graphic image embodying the design is transparent, the applicant must state this fact in the application.

Article 7 An application for design registration must be filed for each design as provided by Order of the Ministry of Economy, Trade and Industry.

Article 24 (1) The scope of a registered design must be determined based on the design depicted in the application, and in the drawing or represented in the

- photograph, model, or specimen attached to the application.
- (2) Whether a registered design is similar to another design must be determined based upon the aesthetic impression that the designs would create through the eye of their consumers.

Ordinance for Enforcement of the Design Act

- Article 4 (1) The case where an applicant may submit photographs in lieu of the drawings in Article 6(1) of the Design Act under paragraph (2) of said Article shall be the case where the design is clearly represented by photographs.
- (2) Where submitting photographs, they shall be submitted according to the Form No. 7.

- Article 5 (1) The case where an applicant may submit a model or specimen in lieu of the drawings in Article 6(1) of the Design Act under paragraph (2) of said Article shall be the case where the model or specimen falls under all of the following items:
- (i) difficult to break or does not easily change in shape or quality;
 - (ii) not inconvenient for handling or preserving;
 - (iii) where inserted into a bag under the following paragraph, its thickness is not more than 7 mm; and
 - (iv) its size is not more than length 26 cm × width 19 cm; provided, however that this shall not preclude the size being not more than length 1 m × width 1 m when using a thin cloth or paper.
- (2) Where submitting a model or specimen, it shall be inserted into a durable bag, and a written form prepared according to the Form No. 8 shall be affixed to the bag. In this case, where submitting a model or specimen under the proviso to item (iv) of the preceding paragraph, the cloth or paper shall be inserted into the bag by folding it to a thickness of not more than 7 mm.

- Article 7 Where an application for design registration is filed under Article 7 of the Design Act, an applicant should indicate clearly for each design for which the design registration is requested: the article to the design, usage of the building to the design or the graphic image to the design, a set of articles, or interior.

Form No. 2 [Notes]

- (39) Where the purpose of use and the state of the article, building or graphic image is unclear from the description of the column of the “article to the design” alone, an explanation which can help in understanding the article, building, or graphic image, such as the purpose of use or the state of use of the article, building, or graphic image, shall be stated in the column of “[Description of Article to the Design]”.

Part III

Requirements for Design Registration

Part III.....	1
Chapter I Industrially Applicable Design	1
1. Outline	1
2. Determination of the design applicability requirement	1
2.1 The subject matter is found to be an article, etc.	2
2.2 The subject matter is the shape, etc. of an article, etc. itself	4
2.3 The subject matter appeals to the eye.....	5
2.4 The subject matter creates an aesthetic impression through the eye.....	6
2.5 The subject matter constitutes a part that occupies a certain scope which may be subject to comparison with another design	6
3. The subject matter is a specific design.....	8
3.1 Requirement for the design to be specific	8
3.2 Examples where the design is determined not to be a specific design.....	9
3.2.1 Where the purpose of use, state of use, etc. of the article to the design is unclear.....	9
3.2.2 Where views are inconsistent and the contents of the design cannot be identified.....	9
3.2.3 Where drawings or photographs, etc. are unclear.....	9
3.2.4 Where the design is explained in an abstract manner.....	10
3.2.5 Where the material or size needs to be explained, but there is no such statement	11
3.2.6 Where drawings showing the states of change are needed, but there are no such drawings or explanation.....	11
3.2.7 Where colored drawings have a part that is not colored.....	11
3.2.8 Where the whole or part of the article, etc. is found to be transparent based on the drawings, but there is no explanation to that effect in the column of “Description of the Design” of the application	11
3.2.9 Where elements such as a centerline, baseline, horizontal line, fine line or shading to express shadows, indication line, code or character to explain the contents, or any other line, code or character which does not constitute the design are included in such a way that the design cannot be identified	11
3.2.10 Where drawings showing a three-dimensional shape fall under any of the following	13
3.2.11 Where drawings, etc. showing a flat and thin article fall under any of the following	14
3.2.12 Where drawings, etc. of an article in which a shape or a pattern continues or repeats continuously do not clearly show the continuous state	15
3.2.13 Where there is a deficiency in drawings, etc. in which the middle part of an article, such as a cord, is omitted	17
3.2.14 Where six views or two views alone cannot sufficiently represent the design, and there are no other views	17
3.2.15 Where there is a deficiency in indication of the cross section or the cut part, such as a sectional view	18
3.2.16 Where an enlarged view of a part does not have indications of the enlarged part.....	18

3.2.17 Where a separable article falls under the following	18
3.2.18 Where there is a deficiency in drawings of a transparent design	18
3.2.19 Where articles other than the design for which the design registration is requested are represented in the drawings (excluding reference views)	19
3.2.20 Where the article, etc. to the design in the application for design registration is unclear	20
3.2.21 Cases where it is unclear which part is the one for which the design registration is requested	20
3.2.22 Where the specific usage and function of the “part for which the design registration is requested” are unclear	22
3.2.23 Where the position, size, and scope of the “part for which the design registration is requested” cannot be specified	22
3.2.24 Where the shape, etc. of the “part for which the design registration is requested” is unclear	23
3.2.25 Where the boundary between the “part for which the design registration is requested” and “any other parts” is unclear	24
3.3 Examples where the design for which the design registration is requested for a part of an article, etc. is determined to be a specific design	24
3.3.1 Where it is clear from the “Description of the Design” and from drawings, etc., that the design is one for which the design registration is requested for a part of an article, etc.	25
3.3.2 Where the “part for which the design registration is requested” is clear from drawings, etc., even without statement in the column of “Description of the Design”	25
3.3.3 Where the boundary between the “part for which the design registration is requested” and “any other parts” is clear, even without indication of a boundary line	27
3.3.4 Where only a part of an article, etc. is shown, but there is no problem with the clarity of that part	27
3.3.5 Where the position, size, and scope of the “part for which the design registration is requested” can be derived even though only some of the “other parts” are shown	29
4. The subject matter is industrially applicable	30
Chapter II Novelty & Creative Difficulty	1
Section 1 Novelty	1
1. Outline	1
2. Determination of novelty	1
2.1 Basic concept in determining novelty	1
2.2 Determination of similarity	2
2.2.1 Determining entity	2
2.2.2 Approaches for determining similarity	2
2.2.2.1 Viewpoints for determining similarity between designs	3
2.2.2.2 Finding of the usage and function of the articles, etc. to the design of the two designs being compared, and determination of similarity	3

2.2.2.3 Finding of common points and different points in the usage and function of a part of an article etc., in the case of a design for which the design registration is requested for that part	4
2.2.2.4 Finding of common points and different points in the position, size, and scope of a part of an article etc., in the case of a design for which the design registration is requested for that part	4
2.2.2.5 Finding of the shape, etc., and finding of common points and different points in the shape, etc. of the two designs being compared	4
2.2.2.6 Individual evaluation of common points and different points in the shape, etc. of the two designs being compared	5
2.2.2.7 Comprehensive determination of similarity	8
2.2.2.8 Examples of designs for which the design registration is requested for part of an article, etc. that is similar to a publicly known design	11
Section 2 Creative Difficulty	1
1. Outline	1
2. Entity for determining creative difficulty	1
3. Basic concept in determining creative difficulty	1
4. Specific determination of creative difficulty	2
4.1 Information that serves as the basis for determination of creative difficulty	2
4.2 Ordinary techniques and minor modifications	3
4.2.1 Examples of ordinary techniques	3
4.2.2 Examples of minor modification	3
4.3 Novelty and originality of design ideas from the viewpoint of a person skilled in the art	4
5. Presentation of information that serves as the basis for determination of creative difficulty	4
5.1 Presentation of constituent elements, specific modes, etc. that were publicly known prior to filing	4
5.2 Presentation of the fact that the technique is an ordinary technique, etc. in the art	4
6. Examples of easily created designs	4
6.1 Design through replacement	5
6.2 Design through aggregation	11
6.3 Design through mere deletion of a constituent part	14
6.4 Design through change of layout	15
6.5 Design through change of component ratio	16
6.6 Design through change in number of units of a continuous constituent element	17
6.7 Design through use or diversion of a constituent element beyond the framework of the article, etc.	18
Section 3 Points to Note when Examining Novelty & Creative Difficulty 1	
1. Application of the provisions on novelty and creative difficulty	1
2. Information that serves as the basis for determination	1
2.1 "Described in a distributed publication" (Article 3, paragraph (1), item (ii), Article 3, paragraph (2))	1

2.2 “Made publicly available through an electric telecommunication line” (Article 3, paragraph (1), item (ii), Article 3, paragraph (2))	3
2.3 “Publicly known” (Article 3, paragraph (1), item (i), Article 3, paragraph (2))	4
Chapter III Exception to Lack of Novelty	1
1. Outline	1
2. Requirements for applying the provisions of Article 4, paragraph (2)	1
2.1 Person having the right to obtain a design registration	2
2.2 Fact that the disclosed design was disclosed as a result of an act of the person having the right to obtain a design registration for the disclosed design at the time of the disclosure	2
3. Specific procedures for seeking application of the provisions of Article 4, paragraph (2) of the Design Act	2
4. Procedures for determining application of the provisions of Article 4, paragraph (2) of the Design Act based on a “proving document”	3
4.1 Cases where a “proving document” prepared according to the following format is submitted	3
4.2 Cases where the “proving document” is submitted in a format different from that indicated in 4.1 above	4
4.3 Specific determination in regard to the contents stated in the “proving document”	4
4.3.1 “Disclosure date” of disclosed design	4
4.3.2 “The earliest date” (the proviso to Article 4, paragraph (3) of the Design Act)	5
4.3.3 Finding the disclosed design stated in the “proving document”	5
4.4 “Identical or similar design” to the disclosed design stated in the “proving document”	6
4.5 Determining application of the provisions of Article 4, paragraph (2) of the Design Act for a disclosed design after the disclosure date of the disclosed design stated in the “proving document”	6
4.6 Determination procedures of cases where a notice of reasons for refusal is given without admission of the application of the provisions of Article 4, paragraph (2) of the Design Act	8
5. Points to note in relation to determining application of the provisions of Article 4, paragraph (2) of the Design Act	8
5.1 Handling of cases where an identical or similar design to the disclosed design stated in the “proving document” has been disclosed by a third party, between the “date on which a design fell under the provisions” of Article 4, paragraph (2) of the Design Act and the date on which the application for design registration was filed	8
5.2 Handling of disclosed design A with respect to application A’ for design registration in cases where, in order to seek application of the provisions of Article 4, paragraph (2) of the Design Act with respect to application A for design registration of a principal design, disclosed design A, which was disclosed prior to the filing of the application for design registration, is stated in the “proving document,” but with respect to application A’ for design registration of a design subsequently filed as a related design, required procedures for seeking application of the provisions of Article 4, paragraph (2) of the Design Act were not conducted	10

6. Requirements for applying the provisions of Article 4, paragraph (1) of the Design Act.....	11
6.1 Person having the right to obtain a design registration for the disclosed design	11
6.2 Fact that the disclosure was against the will of the person having the right to obtain a design registration	11
6.3 Procedures for seeking application of the provisions of Article 4, paragraph (1) of the Design Act.....	11
6.4 Determining application of the provisions of Article 4, paragraph (1) of the Design Act.....	12
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 ..	1
1. Outline	1
2. Design bulletins that serve as the basis for application of the provisions of the main clause of Article 3-2 of the Design Act.....	1
3. Design described in the statement in the application and drawing, photograph, model or specimen attached to the application.....	2
4. Drawings for specifying the design disclosed in a prior application	2
4.1 In the case of an application for design registration for a whole design	2
4.2 In the case of an application for design registration for a design for which the design registration is requested for part of an article, etc.	3
4.3 In the case of an application for design registration for a design for a set of articles or for an interior design.....	3
5. Part of a design	3
6. Determination of similarity between part of a design disclosed in a prior application and a whole design in a later application	3
7. Design in a later application that is identical or similar to part of a design in a prior application	4
7.1 Determination of similarity between part of a design disclosed in a prior application and a design for which the design registration is requested for part of an article, etc. in a later application.....	4
7.2 Examples of applications for design registration for a design for which the design registration is requested for part of an article, etc. that fall under the provisions of Article 3-2 of the Design Act.....	5
8. Determining application of the provisions of the proviso to Article 3-2 of the Design Act.....	5
8.1 The applicant of the application for design registration and the applicant of the earlier application are the same person	5
8.2 The application for design registration was filed before the publication date of the design bulletin in which the earlier application was published under Article 20, paragraph (3) (except for a design bulletin in which the matters listed in Article 20, paragraph (3), item (iv) was published under Article 20, paragraph (4)).....	6
9. Time requirement concerning application of the provisions of Article 3-2 of the Design Act.....	6
9.1 Reference date for determination on application of the provisions of Article 3-2 of the Design Act with regard to division of an application for design	

registration, conversion of an application, or filing of a new application for an amended design	7
9.2 Reference date for determination on the provisions of Article 3-2 of the Design Act with regard to an application for design registration claiming priority under the Paris Convention, etc.	7
9.3 Time for giving notice of the reasons for refusal under Article 3-2 of the Design Act.....	7
9.4 Reference date for determination on the provisions of Article 3-2 of the Design Act with regard to an international application for design registration	7
10. Examples of applications for design registration for a whole design that fall under the provisions of Article 3-2 of the Design Act.....	9
Chapter V Prior Application.....	1
1. Outline	1
2. Determination of the requirements for prior application	1
2.1 Basic concept in determining the requirements for prior application	1
2.2 Categories of applications for design registration that are treated as prior applications	2
2.3 Categories of applications for design registration that are not treated as prior applications or applications filed on the same date.....	2
2.4 Applications for design registration that are subject to the provisions of Article 9, paragraph (1) or (2) of the Design Act.....	2
3. Determination of similarity	3
3.1 Determination of similarity between two whole designs	3
3.2 Determination of similarity between two “designs for which the design registration is requested for part of an article, etc.”	3
3.2.1 Viewpoints for determining similarity between two “designs for which the design registration is requested for part of an article, etc.”	4
3.2.2 Examples of applications for design registration for “designs for which the design registration is requested for part of an article, etc.” that are found to be similar under Article 9, paragraph (1) of the Design Act	5
3.3 Determination of similarity between a whole design and “a design for which the design registration is requested for part of an article, etc.”	5
3.3.1 Viewpoints for determining similarity between a “design for which the design registration is requested for part of an article, etc.” and a whole design	6
3.3.2 Examples of applications for design registration for whole designs and “designs for which the design registration is requested for part of an article, etc.” that are found to be similar under Article 9, paragraph (1) of the Design Act.....	7
4. Handling of applicants and filing dates	7
4.1 Applications for design registration filed for identical designs on different dates	7
4.2 Applications for design registration filed for similar designs on different dates	8
4.3 Applications for design registration filed for identical designs on the same date	8

4.4 Applications for design registration filed for similar designs on the same date	9
4.5 Handling of applications for design registration filed for identical designs on different dates	9
4.6 Handling of applications for design registration filed for similar designs on different dates	9
4.7 Handling of applications for design registration filed for identical or similar designs on the same date	10
4.7.1 Examples of cases where the contents of reports on multiple orders for consultations are found to be inconsistent	11
4.7.2 Handling of cases where no report is submitted in response to an order for consultations, and procedures for withdrawal or waiver, or for amendment, are taken only for one or some of the applications for design registration.....	12
5. Reference date for determination on the provisions of Article 9, paragraph (1) or (2) of the Design Act with regard to division of an application for design registration, conversion of an application, or filing of a new application for an amended design	12
6. Reference date for determination on the provisions of Article 9, paragraph (1) or (2) of the Design Act with regard to an application for design registration containing a priority claim under the Paris Convention, etc.	13
7. Reference date for determination on the provisions of Article 9, paragraph (1) or (2) of the Design Act with regard to an international application for design registration	13
Chapter VI Unregistrable Design	1
1. Outline	1
2. Basic concept in determining whether a design falls under grounds of unregistrability.....	1
3. Specific determination of whether a design falls under grounds of unregistrability.....	2
3.1 Design which is liable to injure public order.....	2
3.2 Design which is liable to injure morality	2
3.3 Design which is liable to create confusion with an article, building, or graphic image pertaining to another person's business	2
3.4 Design solely consisting of a shape that is indispensable for securing functions of the article or a shape that is indispensable for the usage of the building, or a design solely consisting of a display that is indispensable for the usage of the graphic image.....	2
4. Examination procedure for determining whether a design falls under grounds of unregistrability.....	6
Relevant Provisions.....	1

Chapter I Industrially Applicable Design

1. Outline

The main paragraph of Article 3, paragraph (1) of the Design Act provides that the creator of a design that is industrially applicable may be entitled to obtain a design registration for the said design. A “design” under the Design Act is defined in Article 2, paragraph (1) of the Design Act as “the shape, patterns or colors, or any combination thereof (hereinafter referred to as the “shape, etc.”), of an article (including a part of an article; the same shall apply hereinafter), the shape, etc. of a building (including a part of a building; the same shall apply hereinafter), or a graphic image (limited to those provided for use in the operation of the device or those displayed as a result of the device performing its function, and including a part of a graphic image (omitted); the same shall apply hereinafter).”

A design that does not fall under the term “design” as used in this definition may not be registered as a design. In addition, even if it falls under the term “design” as used in this definition, the design for which the design registration is requested must be an industrially applicable design.

The following three requirements can be derived from the provisions of the main paragraph of Article 3, paragraph (1) of the Design Act.

- (1) The subject matter constitutes a “design” under the Design Act (this requirement is hereinafter referred to as the “design applicability requirement” in this Chapter)
- (2) The subject matter is a specific design
- (3) The subject matter is industrially applicable

This Chapter describes the determination of the above three requirements.

Please note that, in this Chapter, subject matter that complies with the design applicability requirement shall be referred to as a “design.” Furthermore, subject matter which does not comply with the design applicability requirement, or which has not yet had its applicability determined, shall be distinguished from “designs” and shall be described as “subject matter of an application for design registration.”

2. Determination of the design applicability requirement

The term “design” shall mean the shape, etc. of an article or building, or a graphic image, which creates an aesthetic impression through the eye (Article 2, paragraph (1) of the Design Act). Therefore, unless subject matter of an application for design registration complies with all of the following requirements, the examiner should determine that it does not comply with the design applicability requirement.

- (1) The subject matter is found to be an article, building, or graphic image (hereinafter referred to as “article, etc.”) (→ see [2.1](#))
- (2) The subject matter is the shape, etc. of an article, etc. itself (→ see [2.2](#))
- (3) The subject matter appeals to the eye (→ see [2.3](#))

- (4) The subject matter creates an aesthetic impression through the eye (→ see [2.4](#))

Furthermore, where subject matter of an application for design registration is a design for which the design registration is requested for a part of an article, etc., in addition to each of the requirements above, unless the subject matter complies with all of the following requirements, the examiner should determine that it does not comply with the requirements for design registration

- (5) The subject matter constitutes a part that occupies a certain scope which may be subject to comparison with another design (→ see [2.5](#))

2.1 The subject matter is found to be an article, etc.

In order for the subject matter of an application for design registration to comply with the design applicability requirement, it must be a creation of the shape, etc. of an article or building, or a graphic image.

The requirements, etc. for subject matter of an application for design registration to be categorized as an article under the Design Act are as follows. Regarding the requirements for categorization as a building under the Design Act, see [3.1](#) “Requirements for categorization as a building under the Design Act” in Part IV, Chapter II “Building Design,” and regarding the requirements for categorization as a graphic image under the Design Act, see [3.](#) “Graphic images subject to protection under the Design Act” in Part IV, Chapter I “Design Including a Graphic Image.”

Furthermore, since an article or building and shape, etc. are inseparably integrated, creation of shape, etc. alone detached from the article or building—for example, creation of the pattern or color alone—is not found to be an article or building design.

(1) Articles subject to the Design Act

An article subject to the Design Act means a tangible object that is a movable distributed in the market.

(2) Examples of subject matter not found to be articles

(i) Subject matter that is not a movable, in principle

Land and any fixtures thereto, what is called real estate, is not found to be an article. However, subject matter that becomes real estate when used, but is industrially mass-produced and treated as a movable when sold (examples: a gate, a prefabricated bungalow) is found to be an article.

(ii) Subject matter that is not solid

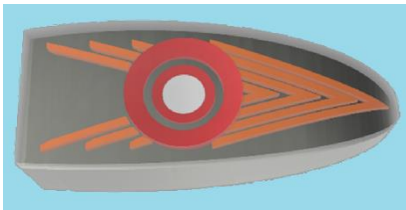
An intangible object, such as electricity, light or heat, is not found to be an article. Also, a tangible object that does not have a shape, etc. of its own, such as gas or liquid, is not found to be an article.

When an article has a lighting part,^(Note) and a pattern or color appears on the article itself with the turning on of the lighting part of the said article, such pattern and color should also be treated as elements constituting the design in the application.

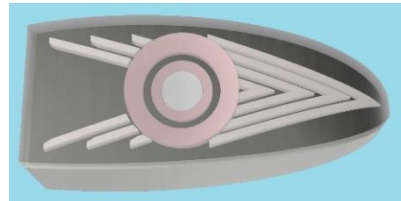
(Note) For example, articles to illuminate the surroundings, such as indoor or outdoor lighting fixtures and vehicular lamps, etc., and articles, etc. that have a lamp section for warning displays or power indicators as part of the article.

[Case example] Vehicular tail lamp

[Front view]



[Front view showing unlit state]



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

(In this case example, the “front view showing unlit state” is also illustrated for the purpose of clarification, but even without this drawing, it is recognized that the shape, etc. of the lighting part can be identified unhindered because the shape, etc. of its housing is identifiable by the drawing of the lit state alone. For an example of a design that is determined to be not specific without a drawing showing the unlit state, see [part \(3\) of 3.2.3 “Where drawings or photographs, etc. are unclear” in this Chapter.](#))

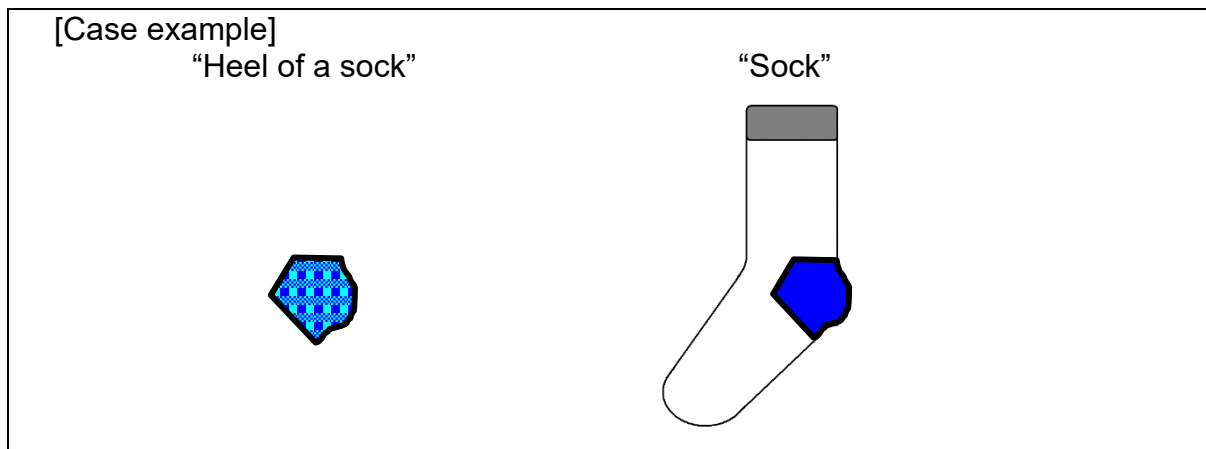
(iii) Subject matter which is a collection of powder or granules

Powder and granules are not found to be articles, because although the individual constituent objects are solid and have a certain shape, etc., a collection of them does not have a specific shape, etc. However, where the individual constituent objects are powder or granules, but a collection of them has a solid shape, etc., such as in the case of a sugar cube, the subject matter is found to be an article.

(iv) Subject matter which is a part of an article

Subject matter which cannot be isolated without destroying the article, such as the “heel of a sock” which is a part of a “sock,” is not found to be an article because it is not traded as an independent product by itself in a normal trading

state. However, a component constituting a part of a finished product (a component product) is found to be an article if it is interchangeable and is traded as an independent product in a normal trading state.



Even in cases where the application for design registration is requesting design registration for a part of an article, etc., the article to the design must correspond to an article subject to the Design Act, as in the following “Examples categorized as an article.”

<Examples categorized as an article>

- (i) Subject matter where the article to the design is a “sock,” which is found to be an article subject to the Design Act, and the “part for which the design registration is requested” is the “heel of a sock,” which is not found to be an article subject to the Design Act
- (ii) Subject matter where the article to the design is a “packaging container,” which is found to be an article subject to the Design Act, and the “part for which the design registration is requested” is the part of the “cap for a packaging container,” which is found to be an article subject to the Design Act

<Examples not categorized as an article>

- (i) Subject matter where only a pattern is represented in the drawing as the “part for which the design registration is requested,” and the article to the design is a “pattern to be represented on textile products”

2.2 The subject matter is the shape, etc. of an article, etc. itself

Since a design is the shape, etc. of an article, the examiner should determine that any subject matter that is not found to be the shape, etc. of an article, etc. itself does not correspond to a design under the Design Act.

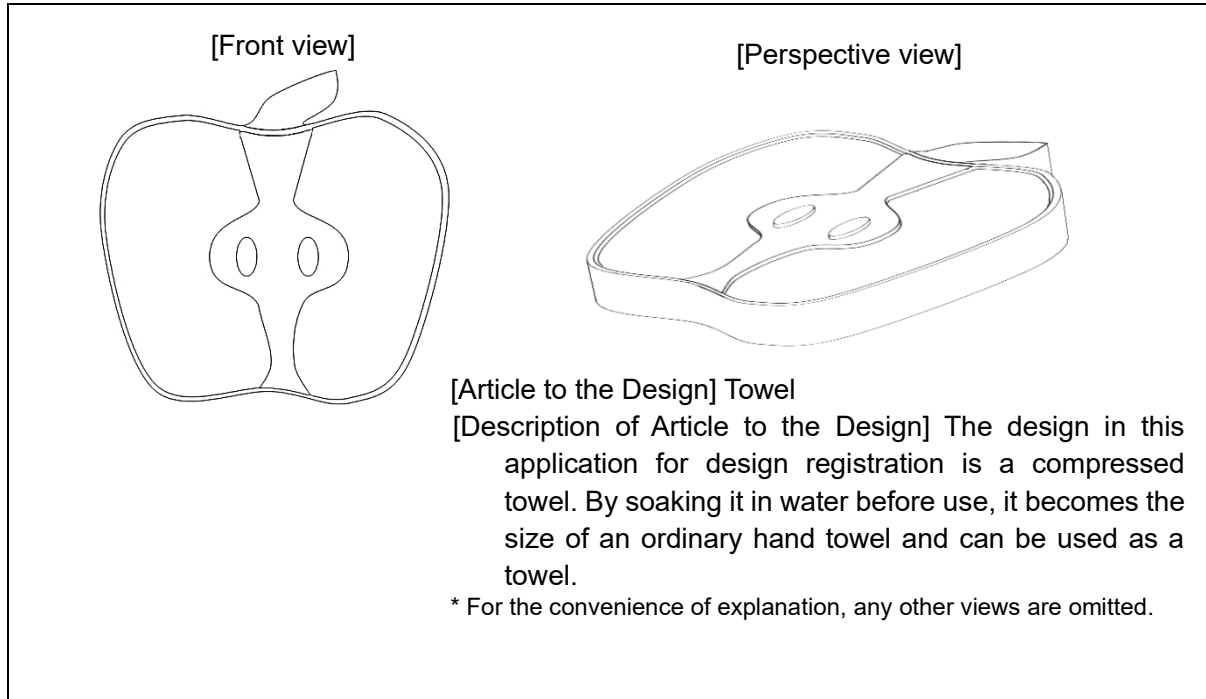
(1) Shape, etc. of an article, etc. itself

The shape, etc. of an article, etc. itself means the shape, etc. that arises from the characteristics or the nature of the article itself.

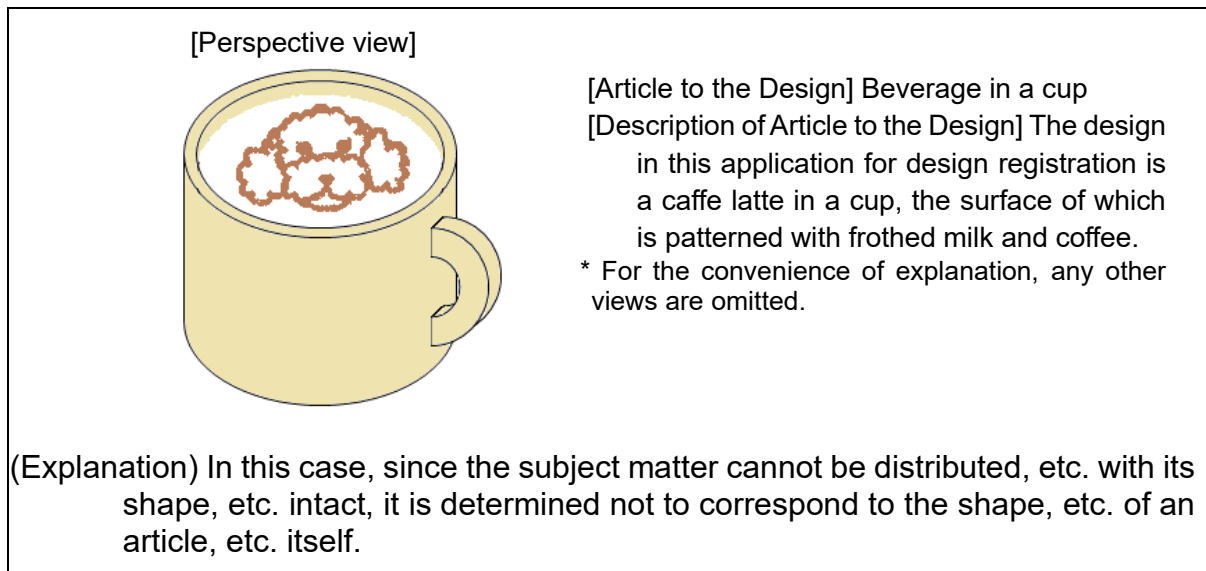
The examiner should also treat subject matter that is able to maintain a shape, etc. that is intended for sale as the shape, etc. of an article, etc. itself.

On the other hand, the examiner should determine that subject matter that is unable to maintain the shape, etc. does not correspond to the shape, etc. of an article, etc. itself.

(2) Example of subject matter determined to be the shape, etc. of an article, etc. itself



(3) Example of subject matter not determined to be the shape, etc. of an article, etc. itself



2.3 The subject matter appeals to the eye

Since Article 2 of the Design Act defines that a design creates an aesthetic impression through the eye, subject matter that does not appeal to the eye is not found to be a design.

(1) Subject matter that appeals to the eye

Subject matter that appeals to the eye refers to the subject matter of an application for design registration of which the entire shape, etc. can be recognized by the naked eye.

(2) Examples of subject matter that is not found to appeal to the eye

(i) One unit of powder or granules

Where the shape, etc. of one unit of subject matter is too fine to recognize by the naked eye, the subject matter is not found to appeal to the eye.

(ii) In the case of a design for which the design registration is requested for part of an article, subject matter where the entire shape, etc. of the “part for which the design registration is requested” cannot be visually recognized from outside in the normal trading state of the article to the design

(iii) In the case of a design for which the design registration is requested for part of an article, subject matter where the entire shape, etc. of the “part for which the design registration is requested” is too fine to recognize by the naked eye

2.4 The subject matter creates an aesthetic impression through the eye

Since Article 2 of the Design Act defines that a design creates an aesthetic impression through the eye, subject matter that does not create an aesthetic impression is not found to be a design.

While an aesthetic impression can also be created through the ear, such as in the case of music, in the case of a design, it is limited to an aesthetic impression that is created through the eye.

(1) Aesthetic impression

An aesthetic impression as provided in Article 2, paragraph (1) of the Design Act does not need to be refined beauty as in a work of art; it is sufficient for the subject matter to create some kind of aesthetic impression.

(2) Examples of subject matter that is not found to create an aesthetic impression through the eye

(i) Subject matter mainly for achieving a function or a working effect which hardly creates an aesthetic impression

(ii) Subject matter which is not coordinated as a design, and which only creates a complicated impression and hardly creates an aesthetic impression

2.5 The subject matter constitutes a part that occupies a certain scope which may be subject to comparison with another design

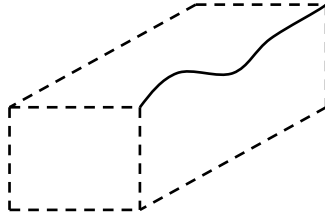
In the case of a design for which the design registration is requested for part of an article, the “part for which the design registration is requested” must be a part of the shape, etc. of the entire article to the design, which occupies a certain scope which may be subject to comparison with another design, that is, a closed area that is included in the shape, etc. of the appearance of the design. Furthermore, the boundary between the part for which the design registration is requested and any other parts must be clear.

(1) Examples of subject matter that is not determined to constitute a part that occupies a certain scope which may be subject to comparison with another design

- (i) Subject matter where the “part for which the design registration is requested” is only a ridge line

Since a ridge line does not have an area, it does not constitute a part that occupies a certain scope which may be subject to comparison with another design

[Case example] “A concrete block used in building”



- (ii) Subject matter that represents only the silhouette of the shape, etc. of the entire article to the design

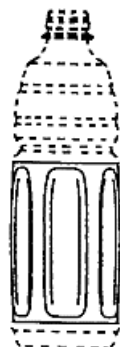
Since it is not found to be a closed area that is included in the shape, etc. of the appearance of the design, it does not constitute a part that occupies a certain scope which may be subject to comparison with another design.

[Case example] Subject matter representing only a projected silhouette of the side view of a passenger car

- (2) Examples of subject matter that is determined to constitute a part that occupies a certain scope which may be subject to comparison with another design

In both of the cases below, the “part for which the design registration is requested” is a part of the shape, etc. of the entire article, namely a packaging container, which occupies a certain scope which may be subject to comparison with another design.

[Case example 1]
“A packaging container”



[Case example 2]
“A packaging container”



3. The subject matter is a specific design

3.1 Requirement for the design to be specific

The design for which the design registration is requested, which is the object of a design right, must be one for which contents of a specific single design, that is, specific contents concerning (i) and (ii) below, can be directly derived from the statement in the application and drawings, etc. attached to the application as originally filed, predicated on the ordinary skill in the art of the design.

- (i) The usage and function based on the purpose of use, state of use, etc. of the article, etc. to the design
- (ii) The shape, etc. of the design for which the design registration is requested

Where the filed design is a design for which the design registration is requested for a part of an article, etc., in addition to the above, the specific contents concerning (iii) through (v) below must also be directly derivable. In addition, the drawings including the “part for which the design registration is requested” must clearly represent the minimum constituent elements necessary for recognizing the article to the design or the usage of the building or graphic image that is stated in the column of “Article to the Design” in the application.

- (iii) Usage and function of the “part for which the design registration is requested”
- (iv) Position, size, and scope of the “part for which the design registration is requested”

However, where the position, size, and scope of the part for which the design registration is requested can be derived in light of the nature of the article, the subject matter is found to be a specific design even if the entirety of “any other parts” is not indicated.

- (v) The boundary between the “part for which the design registration is requested” and “any other parts”

Since the subject matter that is protected as a design is an aesthetic creation concerning an article, etc., 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 only need to contain elements that are required to identify the contents of the creation of the design, and do not necessarily need to be indicated with equally high accuracy for the entire design, such as in the case of an engineering drawing for a product.

Where the shape, etc. of the entire article, etc. to the design is not illustrated in the drawings, the examiner should not treat the shape, etc. of the area that is not disclosed in the drawings (excluding cases where the drawings regarding such area are omitted in accordance with the Ordinance) as a part for which the design registration is requested, but should treat it as a design in which the part illustrated in the drawings is the part for which the design registration is requested. Also, even where the application or drawings, etc. attached to the application contains any improper description, such as an erroneous or ambiguous statement, if the improper

description falls under any of the following, the examiner should determine the subject matter to be a specific design.

- (a) Where it is reasonable to give a favorable construction upon making comprehensive determination^(Note) predicated on the ordinary skill in the art of the design
- (b) Where it is an improper description of a part that is minor enough to not affect the finding of the gist of the design (see [Part VI Chapter II “Dismissal of Amendments”](#)) even if the question as to which description is correct is left undecided

(Note) “Comprehensive determination” includes the determination as to whether or not it is reasonable to give a favorable construction to an improper statement of an application or improper depiction of drawings, etc. attached to the application, where such improper statement and depiction exist; the same shall apply hereinafter. Also, where it is simply described as “comprehensive determination” hereinafter, the determination is assumed to be made predicated on the ordinary skill in the art of the design.

3.2 Examples where the design is determined not to be a specific design

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, such as in 3.2.1 through to 3.2.25 below, the examiner should determine that the design is not a specific design.

3.2.1 Where the purpose of use, state of use, etc. of the article to the design is unclear

Where the purpose of use, state of use, etc. of the article to the design is unclear 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 a specific design.

3.2.2 Where views are inconsistent and the contents of the design cannot be identified

Where views in the drawings, etc. attached to the application are inconsistent and the contents of the design cannot be identified, the examiner should determine that the design is not a specific design.

3.2.3 Where drawings or photographs, etc. are unclear

Where the drawings, photographs and so on attached to the application are unclear, such as in the examples below, the examiner should determine that the design is not a specific design.

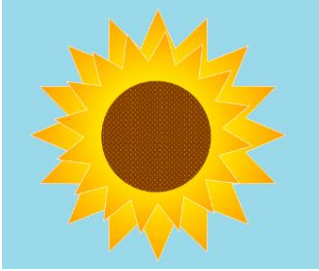
- (1) Where the contents of the design cannot be identified accurately due to the drawings or photographs being unclear, etc.
- (2) Where the contents of the design cannot be identified accurately because it is not possible to determine whether the background, highlights or shadows are shown

For example, as in the example below, where it is unclear whether the whole drawing shows the shape, etc. of the design in the application or whether the

drawing contains a background color, the examiner should determine that the design is not a specific design.

<Example requiring an explanation about the background color>

[Surface view]



[Article to the Design] Decorative sticker
[Description of Article to the Design] (No description)
[Description of the Design] Back side view is omitted as there is no pattern.

(In this example, it is unclear, whether the design in the application is only the sunflower part or the whole drawing including the pale blue periphery.)

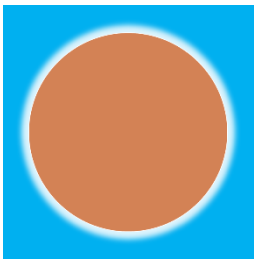
(3) Where the design has a lighting part, and drawings represent the lit state such that the shape, etc. of the design becomes unclear

However, where drawings show only the lit state, yet the shape, etc. of the design can be identified unhindered, or where a drawing showing the unlit state or a sectional view, etc. has been provided and the shape, etc. of the design can be identified, the examiner should determine that the design is a specific design (see [\(ii\) "Subject matter that is not solid" in 2.1 "The subject matter is found to be an article, etc." in this Chapter](#)).

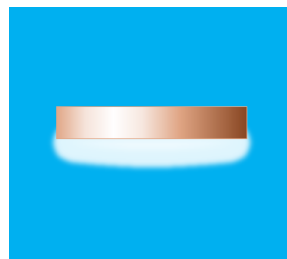
<Example representing only the lit state such that the shape, etc. cannot be identified>

[Article to the Design] Lighting fixture attached directly to the ceiling

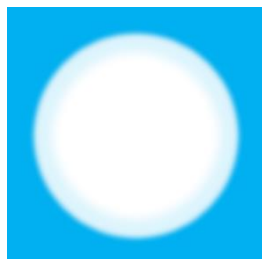
[Top view]



[Front view]



[Bottom view]



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

3.2.4 Where the design is explained in an abstract manner

Where the shape, pattern and color are explained in an abstract manner in the application or drawings by using characters or codes, etc., the examiner should determine that the design is not a specific design.

3.2.5 Where the material or size needs to be explained, but there is no such statement

Where the material or size of the article needs to be explained, but there is no such statement, the examiner should determine that the design is not a specific design (Article 6, paragraph (3) of the Design Act).

3.2.6 Where drawings showing the states of change are needed, but there are no such drawings or explanation

Where the article to the design is transformable or openable, and the drawings representing the states of the change of the design, such as the transforming or opening, are required in order to sufficiently represent the design, but such drawings and explanation are not included in the column of "Description of the Design" of the application, the examiner should determine that the design is not a specific design (Article 6, paragraph (4) of the Design Act) (Form No. 6 Note (22) of the Ordinance for Enforcement of the Design Act).

3.2.7 Where colored drawings have a part that is not colored

Where colored drawings have a part that is not colored, the examiner should determine that the design is not a specific design. However, this excludes cases where an explanation to the effect that the uncolored part is black or white is stated in the column of "Description of the Design" of the application (Article 6, paragraph (6) of the Design Act).

3.2.8 Where the whole or part of the article, etc. is found to be transparent based on the drawings, but there is no explanation to that effect in the column of "Description of the Design" of the application

Where the whole or part of the article, etc. appears to be transparent based on the drawings, and the design cannot be identified since there is no explanation to that effect in the column of "Description of the Design" of the application, the examiner should determine that the design is not a specific design (Article 6, paragraph (7) of the Design Act) (Form No. 6 Note (27) of the Ordinance for Enforcement of the Design Act).

3.2.9 Where elements such as a centerline, baseline, horizontal line, fine line or shading to express shadows, indication line, code or character to explain the contents, or any other line, code or character which does not constitute the design are included in such a way that the design cannot be identified

Where elements such as a centerline, baseline, horizontal line, fine line or shading to express shadows, indication line, code or character to explain the contents, or any other line, code or character which does not constitute the design are included in such a way that the design cannot be identified, the examiner should determine that the design is not a specific design.

<Example where the design cannot be identified>

[Article to the Design] Eraser

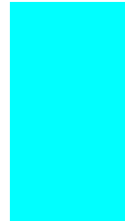
[Perspective view]



[Front view]



[Top view]



[Right side view]

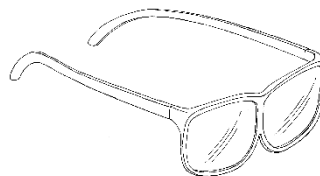


(Without an explanation, it is unclear whether the creation has different colors on each surface, or whether it is a single-color creation and the different colors show the tone of the shaded areas depending on the way the light falls onto the article.)

However, this excludes cases where a line, dot or any other mark for specifying the shape of the design is indicated, and a statement to that effect and a statement as to which mark specifies the shape are included in the column of “[Description of the Design]” in the application (Form No. 6 Note (7) of the Ordinance for Enforcement of the Design Act), and cases where it is obvious that the line, dot, etc. are depicted for the purpose of specifying the shape even without such explanation, in the light of nature and use/function of each part of the article, etc. to the design.

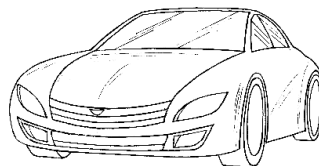
<Examples where it is obvious that the line, dot, etc. are for specifying the shape of the design even without an explanation>

[Article to the Design] Glasses



(Explanation) When considering the nature of the article “glasses,” given it is not general to place a line pattern, etc. on the center of a lens, the design can be identified even without an explanation about the line specifying the shape.

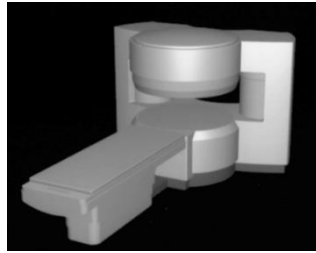
[Article to the Design] Passenger car



(Explanation) When considering the nature of the article “passenger car,” given it is not general to place a line pattern, etc. on the body or windows, the design can be identified even without an explanation about the line specifying the shape.

<Examples where it is obvious that brightness change is “shades” even without an explanation>

[Article to the Design] Medical image photographing apparatus



[Article to the Design] Mouse for electronic computer



Characters and signs indicated on an article, etc. are treated as elements constituting a design, except for those used only for conveying information.

<Examples of characters, etc. used only for conveying information>

- a. The text part of a newspaper or book
- b. Characters indicating ingredients or instructions for use in a normal manner

3.2.10 Where drawings showing a three-dimensional shape fall under any of the following

- (1) Where drawings have not been prepared clearly using orthographic projection methods etc., and the contents of the design for which the design registration is requested cannot be identified even when comprehensive determination is made based on the statement in the application and drawings, etc. attached to the application, the examiner should determine that the design is not a specific design.

Where the shape, etc. of the entire article to the design is not represented in the drawings, etc. attached to the application, nor is there a statement on omission of views, the examiner should treat such design as one for which the design registration is requested for a part of an article, etc.

Where a view is identical to or a mirror image of another view, it may be omitted if it is stated which view is identical or a mirror image in the column of “Description of the Design” of the application.

Also, where views have been prepared by the isometric projection method or prepared by the oblique projection method (limited to cabinet drawings (at a width-height-depth ratio of 1:1:1/2) or cavalier drawings (at a width-height-depth ratio of 1:1:1)), the views set forth in the left-hand column of the following table may be replaced by the views set forth in the right-hand column. In this case, if the views have been prepared by the oblique projection method, the distinction of cabinet drawings or cavalier drawings and the inclination angle need to be stated in the column of “Description of the Design” of the application for each view.

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

- (2) Where each view is prepared at different scales and a single design cannot be identified, the examiner should determine that the design is not a specific design. However, this excludes cases where a specific single design can be derived even though each view is prepared at different scale.
- (3) Where a specific single design cannot be identified because the distinction of a cabinet drawing or a cavalier drawing and the inclination angle have not been stated in the column of "Description of the Design" of the application for each drawing prepared by the oblique projection method, the examiner should determine that the design is not a specific design (Form No. 6 Note (9) of the Ordinance for Enforcement of the Design Act).

3.2.11 Where drawings, etc. showing a flat and thin article fall under any of the following

The examiner should determine whether the design for a flat and thin article is a specific design as follows.

Note, a flat and thin article refers to a thin article such as wrapping paper, a vinyl sheet, or woven cloth fabric. However, an article that has an overlapping part and is three-dimensional when used, such as a packaging bag, or a thick article, such as a flocked vinyl sheet, is treated as a three-dimensional article.

- (1) Where drawings, etc. have not been prepared clearly using a surface view and a back side view, and a single design cannot be identified even when comprehensive determination is made based on the statement in the application and drawings, etc. attached to the application, the examiner should determine that the design is not a specific design.

Where the shape, etc. of the entire article to the design is not represented in the drawings, etc. attached to the application, nor is there a statement on omission of views, the examiner should treat such design as one for which the design registration is requested for a part of an article, etc. Where the surface view and the

back side view are identical or mirror images or the back side has no pattern, the back side view may be omitted. In this case, a statement to that effect shall be included in the column of “[Description of the Design]” in the application.

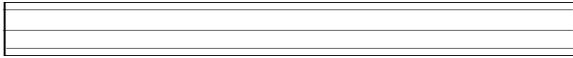
- (2) Where each view is prepared at different scales and a single design cannot be identified, the examiner should determine that the design is not a specific design. However, this excludes cases where a specific single design can be derived even though each view is prepared at different scale.

3.2.12 Where drawings, etc. of an article in which a shape or a pattern continues or repeats continuously do not clearly show the continuous state

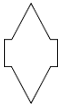
Where drawings of an article in which a shape or a pattern continues or repeats continuously do not clearly show the continuous state, the examiner should determine that the design is not a specific design (Form No. 6 Note (13) of the Ordinance for Enforcement of the Design Act). In each of the following examples, the examiner should determine that the continuous state is obvious.

<Example 1 of a case where the continuous state is obvious>

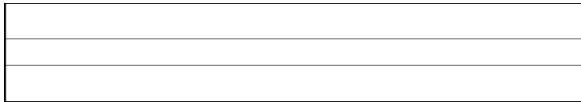
[Top view]



[Left side view]



[Front view]

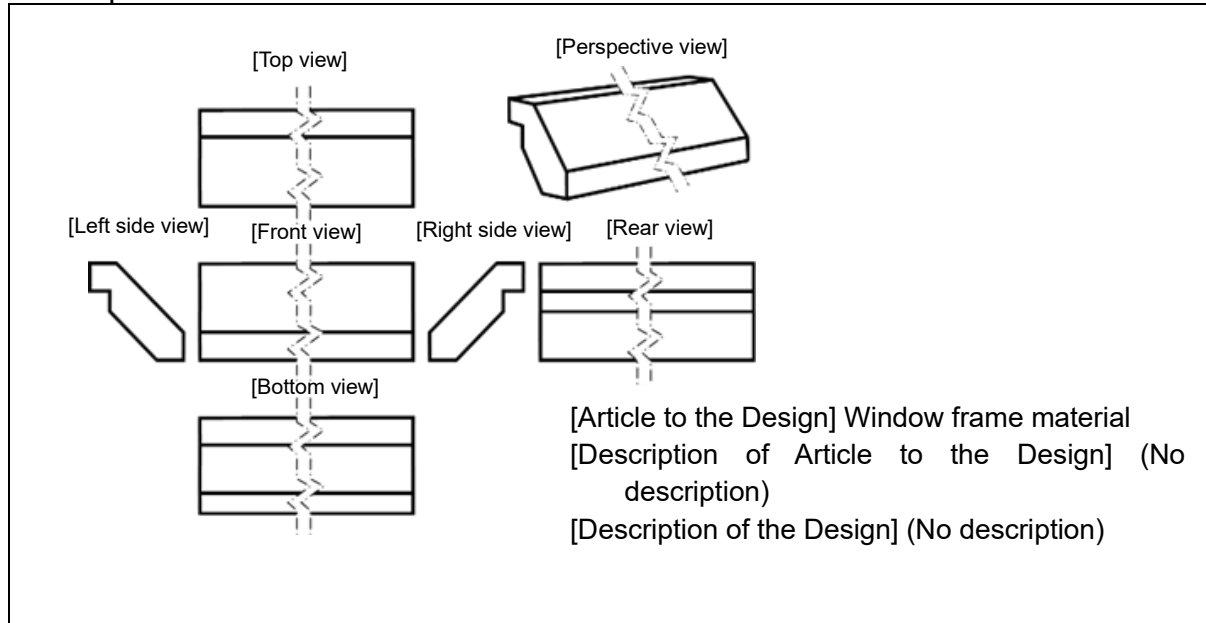


[Article to the Design] Wire

[Description of Article to the Design] (No description)

[Description of the Design] The rear view, right side view and bottom view are omitted as they are identical with the front view, left side view and top view, respectively. This design is continuous only to the left and right in the front view.

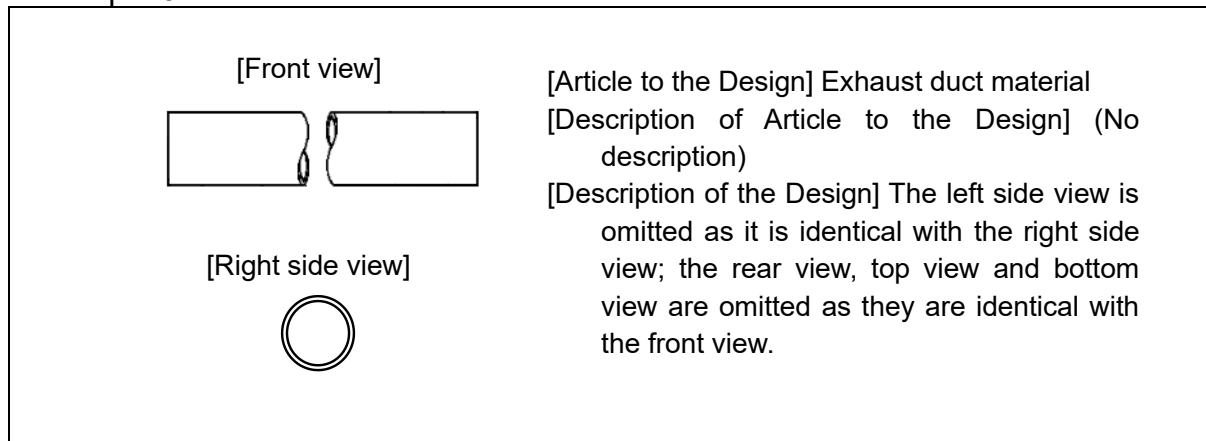
<Example 2 of a case where the continuous state is obvious>



When considering the contents of the drawings and the nature of the article “window frame material,” the continuous state is obvious even without a statement in the column of Description of the Design.

Where the statement in the column of “Article to the Design” is described as “XX material,” and the drawings are represented in a way that the same shape or pattern appears to continue or repeat continuously in one direction only (hereinafter referred to as a “long shaped object”), and no particular statement on the length is found in the column of Description of the Design, the examiner should find the article as a long shaped object.

<Example 3 of a case where the continuous state is obvious>



When considering the contents of the drawings and the nature of the article “exhaust duct material,” the continuous state is obvious even without a statement in the column of Description of the Design.

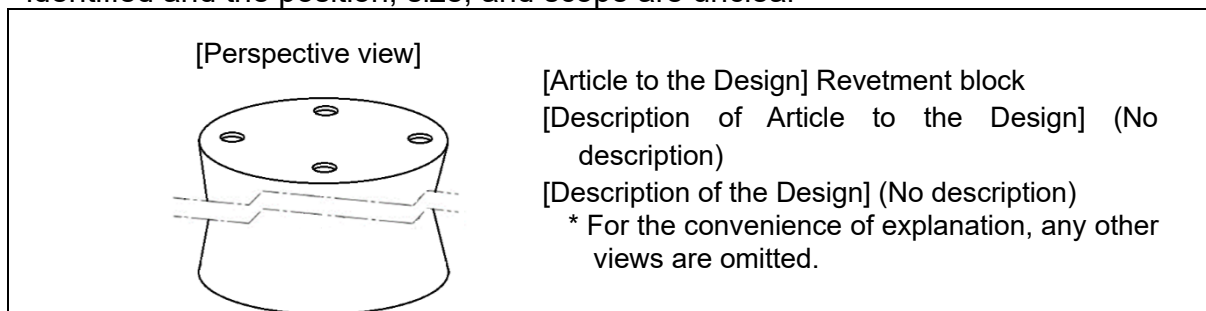
Where the statement in the column of “Article to the Design” is described as “XX material,” and the drawings are represented as a long shaped object, and no particular statement on the length is found in the column of Description of the Design, the examiner should find the article as a long shaped object.

3.2.13 Where there is a deficiency in drawings, etc. in which the middle part of an article, such as a cord, is omitted

Where drawings in which the middle part of an article is omitted (Form No. 6 Note (14) of the Ordinance for Enforcement of the Design Act) fall under the following, the examiner should determine that the design is not a specific design.

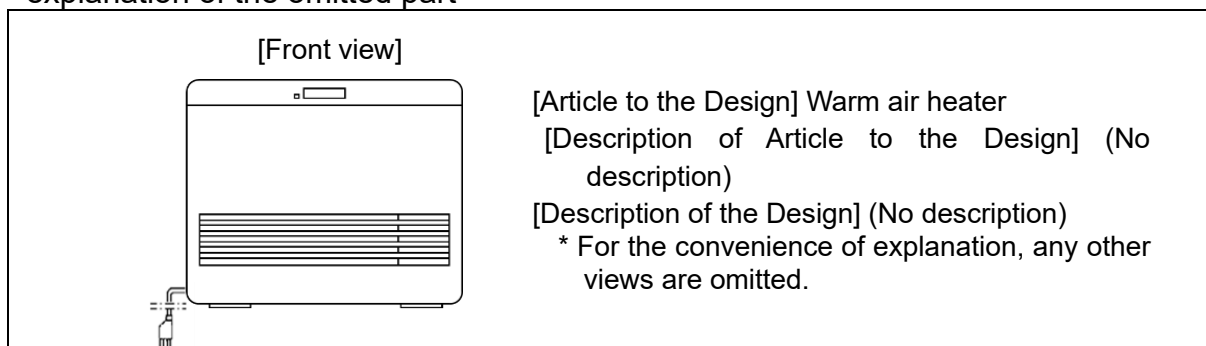
- (1) Where it is unclear as to which part is omitted
- (2) Where the component ratio of the entire design for which the design registration is requested cannot be identified and the position, size, and scope cannot be identified because the omitted part is inappropriate or there is no explanation as to how many centimeters of the omitted part have been omitted on the drawings, etc.

<Example of a case where the component ratio of the entire design cannot be identified and the position, size, and scope are unclear>



However, even if there is no explanation of the omitted part, in cases where the length of the omitted part can be identified from the nature of the article, or in cases where the omitted part, such as the middle section of a power supply cord, varies in length and such length does not constitute a design characteristic, the examiner should determine the contents of the design of the disclosed part to be identifiable even without such explanation of the omitted part.

<Example of a case where the contents of the design can be identified without an explanation of the omitted part>



3.2.14 Where six views or two views alone cannot sufficiently represent the design, and there are no other views

Where a design cannot be identified due to the absence of the following views, the examiner should determine that the design is not a specific design.

- (1) A development view, sectional view, enlarged view, perspective view, etc. as provided in Form No. 6 Note (15) of the Ordinance for Enforcement of the Design Act
- (2) In the case of a building block, structuring block or building, a perspective view as provided in Form No. 6 Note (20) of the Ordinance for Enforcement of the Design Act

3.2.15 Where there is a deficiency in indication of the cross section or the cut part, such as a sectional view

Where indication of the cross section or the cut part, such as a sectional view, falls under the following, and a design cannot be identified, the examiner should determine that the design is not a specific design.

- (1) Where the oblique parallel lines representing the cross section are incomplete or missing
- (2) Where the cut part is not clearly shown by indications (a cutting-plane chain line, codes and arrows)

However, this excludes cases where the cut part is clearly indicated by describing it as the central longitudinal section of a certain view or the central traverse section of a certain view (Form No. 6 Note (16) of the Ordinance for Enforcement of the Design Act).

3.2.16 Where an enlarged view of a part does not have indications of the enlarged part

Where a design cannot be identified due to the enlarged view of a part not having indications of the enlarged part (Form No. 6 Note (17) of the Ordinance for Enforcement of the Design Act), the examiner should determine that the design is not a specific design.

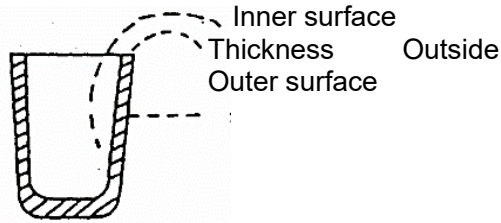
3.2.17 Where a separable article falls under the following

Where the article is separable, such as a cover and a main body, and the state of these constituent parts combined cannot sufficiently represent the design, and the design cannot be identified because the views of combined constituent parts and drawings for each constituent part are absent (Form No. 6 Note (19) of the Ordinance for Enforcement of the Design Act), the examiner should determine that the design is not a specific design.

3.2.18 Where there is a deficiency in drawings of a transparent design

Where a design cannot be identified due to drawings of a transparent design not being prepared according to the provisions of Form No. 6 Note (27) of the Ordinance for Enforcement of the Design Act, the examiner should determine that the design is not a specific design.

<Illustration of “outside” as prescribed in Note (27),
using the longitudinal section view of a cup>



- (1) Where the see-through part needs to be depicted as it is in order to sufficiently represent the design, such as in the case of a light bulb, the article shall be depicted according to Note (27) (a) (thickness, however, shall not be depicted).
- (2) In any other cases, the article shall be depicted like an opaque object, and where the shape or pattern overlaps, it shall be depicted according to Note (27) (b) or (c). The same also applies to cases where the rear part can be seen through and the shape or pattern overlaps, such as in the case of a bird cage (Article 6, paragraph (7) of the Design Act) (see [3.2.8 above](#)).

3.2.19 Where articles other than the design for which the design registration is requested are represented in the drawings (excluding reference views)

Where articles other than the design for which the design registration is requested are represented in the drawings (excluding reference views), the examiner should determine that the design is not a specific design. However, 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.

<Example where the design for which the design registration is requested and the subject matter other than the design can be clearly identified>

<p>[Front view]</p>	<p>[Article to the Design] Necklace [Description of Article to the Design] (No description) [Description of the Design] The torso represented in white is an article other than the design for which the design registration is requested. * For the convenience of explanation, any other views are omitted.</p>
---------------------	---

<Example where the design for which the design registration is requested and the subject matter other than the design can be identified, but the shape, etc. of the design for which the design registration is requested is unclear, and the subject matter is not a specific design >

[Front view]



[Article to the Design] Scarf

[Description of Article to the Design] (No description)

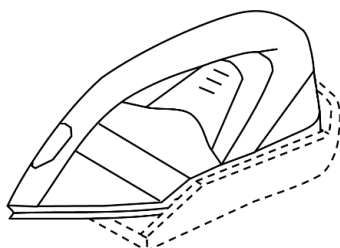
[Description of the Design] In the photograph, the display tool formed by black wire and the tablecloth are articles other than the design for which the design registration is requested.

* For the convenience of explanation, any other views are omitted.

3.2.20 Where the article, etc. to the design in the application for design registration is unclear

Where the article, etc. to the design in the application for design registration is unclear, the examiner should determine that the design is not a specific design.

[Perspective view]



[Article to the Design] Part of steam iron

[Description of Article to the Design] (No description)

[Description of the Design] (No description)

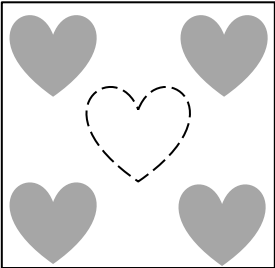
* For the convenience of explanation, any other views are omitted.


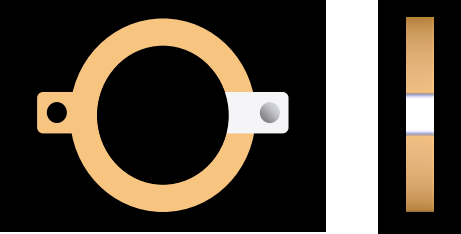
(Explanation) Where the statement in the column of “Article to the Design” is inappropriate and there is no statement in the column of Description of the Design, and it is unclear from the contents of the drawings whether the article to the design includes both the main body of the steam iron and the charging base, and design registration is requested for the main body of the steam iron as a part for which the design registration is requested, or whether the article to the design is only the main body part of the steam iron excluding the charging base, and the charging base is represented only for the purpose of showing that it is an article to be used together with the steam iron main body part, the subject matter is not found to be a specific design.

3.2.21 Cases where it is unclear which part is the one for which the design registration is requested

In cases where there is no statement on the way of specifying the “part for which the design registration is requested” in the column of “Description of the Design” in

the application as originally filed, and hence, even after making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, it is unclear whether the filed design is one for which the design registration is requested for a part of an article, etc. or one for which the design registration is requested for the entire article, etc., or it is unclear which part described in a distinguishing manner in the drawings, etc. is the “part for which the design registration is requested,” the examiner should determine that the design is not a specific design.

<p>[Surface view]</p> 	<p>[Article to the Design] Handkerchief [Description of Article to the Design] (No description) [Description of the Design] (No description) * For the convenience of explanation, any other views are omitted.</p>
<p>(Explanation) Since there is no statement made on the way of specifying the “part for which the design registration is requested” in the column of “Description of the Design,” it is unclear whether the application for design registration is one in which the broken line has been used to represent the parts other than the part for which the design registration is requested, or one for a whole design with a mark stitched at the center.</p>	

<p>[Top view]</p>  <p>[Front view] [Right side view]</p> 	<p>[Article to the Design] Flange [Description of Article to the Design] (No description) [Description of the Design] (No description) * For the convenience of explanation, any other views are omitted.</p>
<p>(Explanation) Unless there is a statement on the way of specifying the “part for which the design registration is requested” in the column of “Description of the Design,” it is unclear whether the “part for which the design registration is requested” is the part colored in orange or the part colored in white.</p>	

3.2.22 Where the specific usage and function of the “part for which the design registration is requested” are unclear

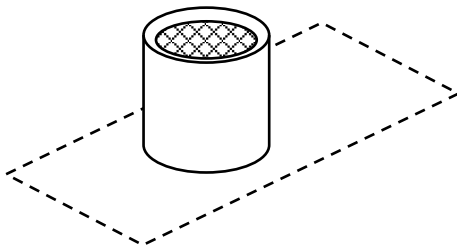
With regard to a design for which the design registration is requested for a part of an article, etc., where the specific usage and function of that part are unclear, the examiner should determine that the design is not a specific design.

3.2.23 Where the position, size, and scope of the “part for which the design registration is requested” cannot be specified

With regard to a design for which the design registration is requested for a part of an article, etc., where the position, size, and scope of that part are unclear, such as in the examples below, the examiner should determine that the design is not a specific design.

- (1) Where “other parts” are not disclosed, and the position, size, and scope of the part for which the design registration is requested cannot be derived even in light of the nature of the article

[Perspective view]



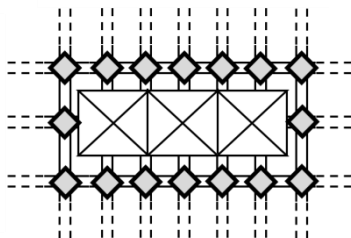
[Article to the Design] Humidifier
[Description of Article to the Design] (No description)

[Description of the Design] (No description)

* For the convenience of explanation, any other views are omitted.

(Explanation) In this example, only the area adjacent to the steam outlet is indicated, and the position, size, and scope of the part for which the design registration is requested cannot be specified.

[Front view]



[Article to the Design] Garden fence
[Description of Article to the Design] (No description)

[Description of the Design] (No description)

* For the convenience of explanation, any other views are omitted.

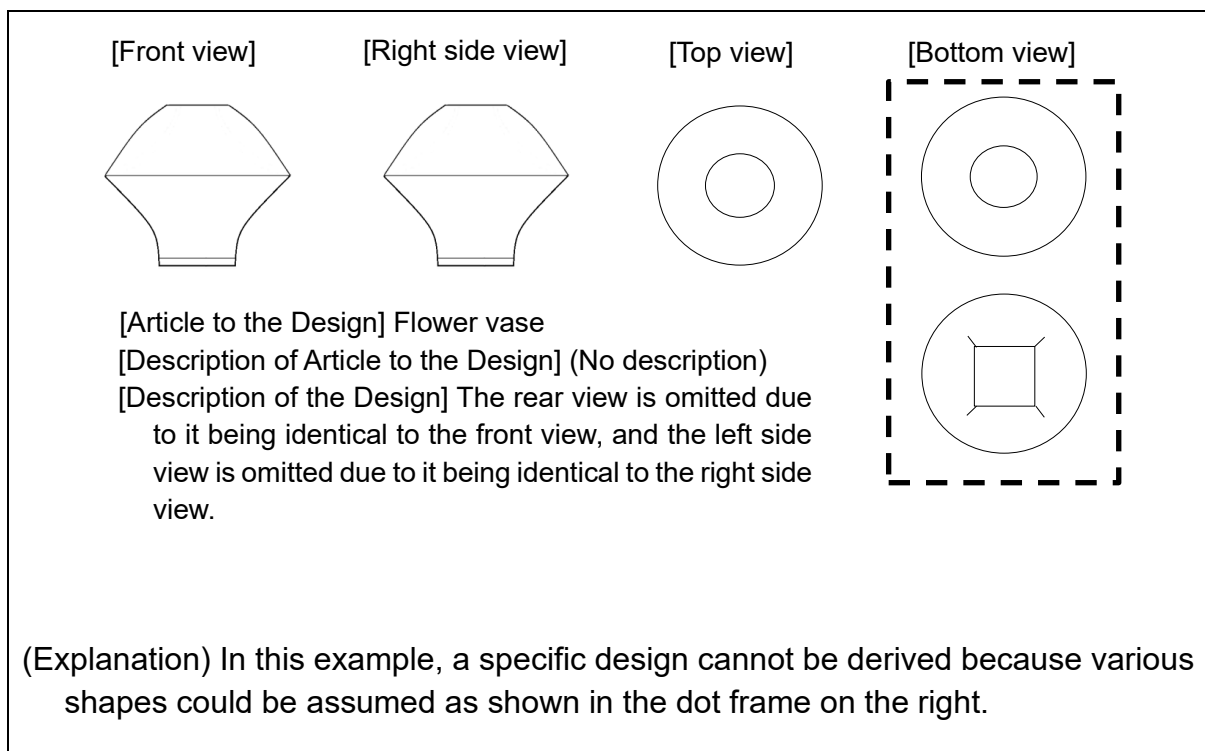
(Explanation) In this example, the position, size, and scope of the part for which the design registration is requested cannot be specified.

- (2) Where the shape, etc. of “other parts” represented by a broken line, etc. is not specific due to inconsistency between the views, and as a result, the position, size, and scope of the “part for which the design registration is requested” within the shape, etc. of the entire article, etc. are not made specific

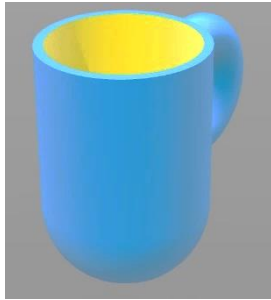
3.2.24 Where the shape, etc. of the “part for which the design registration is requested” is unclear

With regard to a design for which the design registration is requested for a part of an article, etc., where the shape, etc. is unclear, such as in the examples below, the examiner should determine that the design is not a specific design.

- (1) Where the shape, etc. of the “part for which the design registration is requested” is inconsistent in the respective views
- (2) Where the “part for which the design registration is requested” is not a closed area
- (3) Where the “part for which the design registration is requested” is specified only by reference views
- (4) Where the “part for which the design registration is requested” is specified only by text in the column of “Description of the Design” in the application, and the “part for which the design registration is requested” and “any other parts” are not described in a distinguishing manner as required in the drawings
- (5) Where multiple shapes, etc. could be assumed for the part for which the design registration is requested, so that a shape, etc. cannot be derived



[Perspective view]



[Article to the Design] Coffee cup

[Description of Article to the Design] (No description)

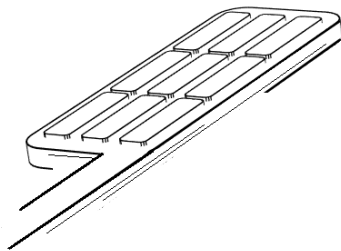
[Description of the Design] (No description)

(Explanation) In this example, a specific design cannot be derived because, even by examining only the disclosed parts, the shape, etc. of the handle and the shape, etc. near the bottom of the cup body are unclear just from this single view as shown above.

3.2.25 Where the boundary between the “part for which the design registration is requested” and “any other parts” is unclear

With regard to a design for which the design registration is requested for a part of an article, etc., where the boundary between that part and “any other parts” is unclear, the examiner should determine that the design is not a specific design.

[Perspective view]



[Article to the Design] Brake pedal

[Description of Article to the Design] (No description)

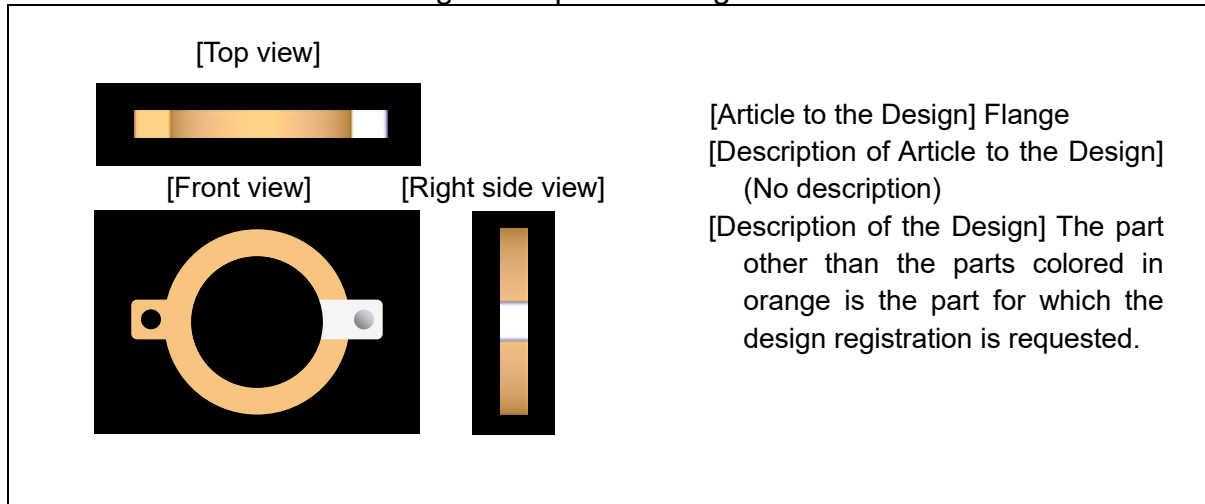
[Description of the Design] (No description)

3.3 Examples where the design for which the design registration is requested for a part of an article, etc. is determined to be a specific design

Where the contents of a specific single design can be directly derived upon making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, as in 3.3.1 through 3.3.5 below, the examiner should determine that the design for which the design registration is requested for a part of an article, etc. is a specific design.

3.3.1 Where it is clear from the “Description of the Design” and from drawings, etc., that the design is one for which the design registration is requested for a part of an article, etc.

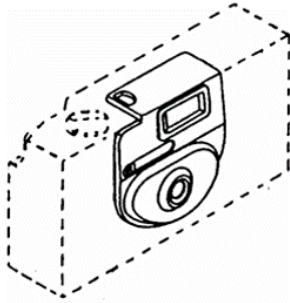
With regard to a design for which the design registration is requested for a part of an article, etc., where it is clear from statements in the column of “Description of the Design” of the application and from specific expressions in the drawings, etc. attached to the application that the application for design registration is one for which the design registration is requested for a part of an article, etc., as long as there are no other deficiencies in statements in the application or drawings, etc., the examiner should determine that the design is a specific design.



3.3.2 Where the “part for which the design registration is requested” is clear from drawings, etc., even without statement in the column of “Description of the Design”

With regard to a design for which the design registration is requested for a part of an article, etc., even if there is no statement on the way of specifying the part for which the design registration is requested in the column of “Description of the Design” in the application as originally filed, where the “part for which the design registration is requested” is clear from specific expressions in the drawings, etc. attached to the application, and it is clear that the application for design registration is one in which the design registration is requested for a part of an article, etc., the examiner should determine that the design is a specific design.

[Perspective view]



[Article to the Design] Digital camera

[Description of Article to the Design] (No description)

[Description of the Design] (No description)

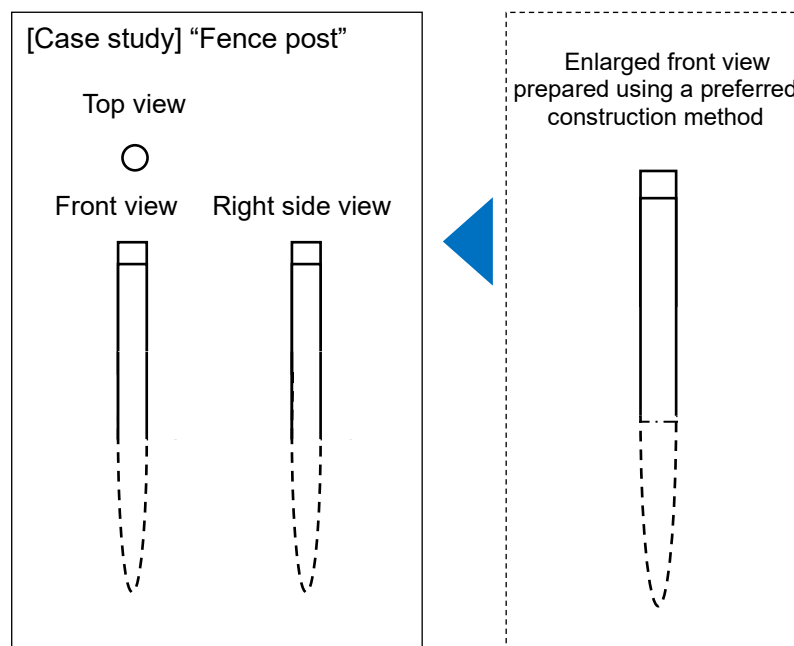
(Explanation) In this example, the respective views in the drawings attached to the application are described in a manner that clearly distinguishes a certain part by using solid lines and broken lines, and it can be inevitably derived that the design is one for which the design registration is requested for the part described in solid lines, even though there is no explanation on the way of specifying the part for which the design registration is requested in the Description of the Design.

3.3.3 Where the boundary between the “part for which the design registration is requested” and “any other parts” is clear, even without indication of a boundary line

Where a lack of indication of a boundary line is found to be an error in constructing drawings, and making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, the boundary of the “part for which the design registration is requested” can inevitably be derived, the examiner should determine that the design is a specific design.

The “part for which the design registration is requested” must be a part that occupies a certain scope of the shape, etc. of the entire article, etc. to the design, that is, a closed area that is included in the appearance of the design (see [2.5 “The subject matter constitutes a part that occupies a certain scope which may be subject to comparison with another design” above](#)).

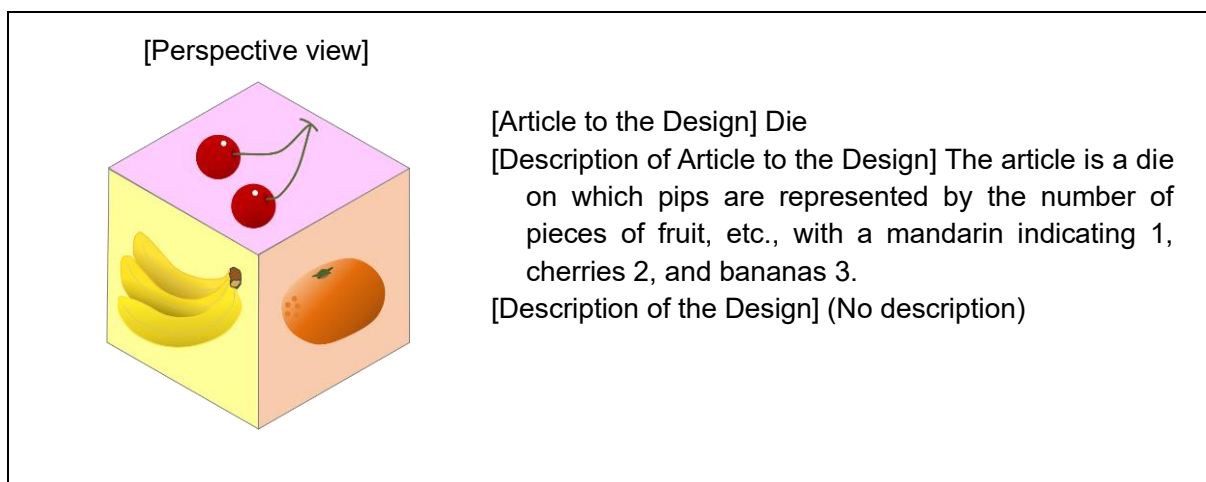
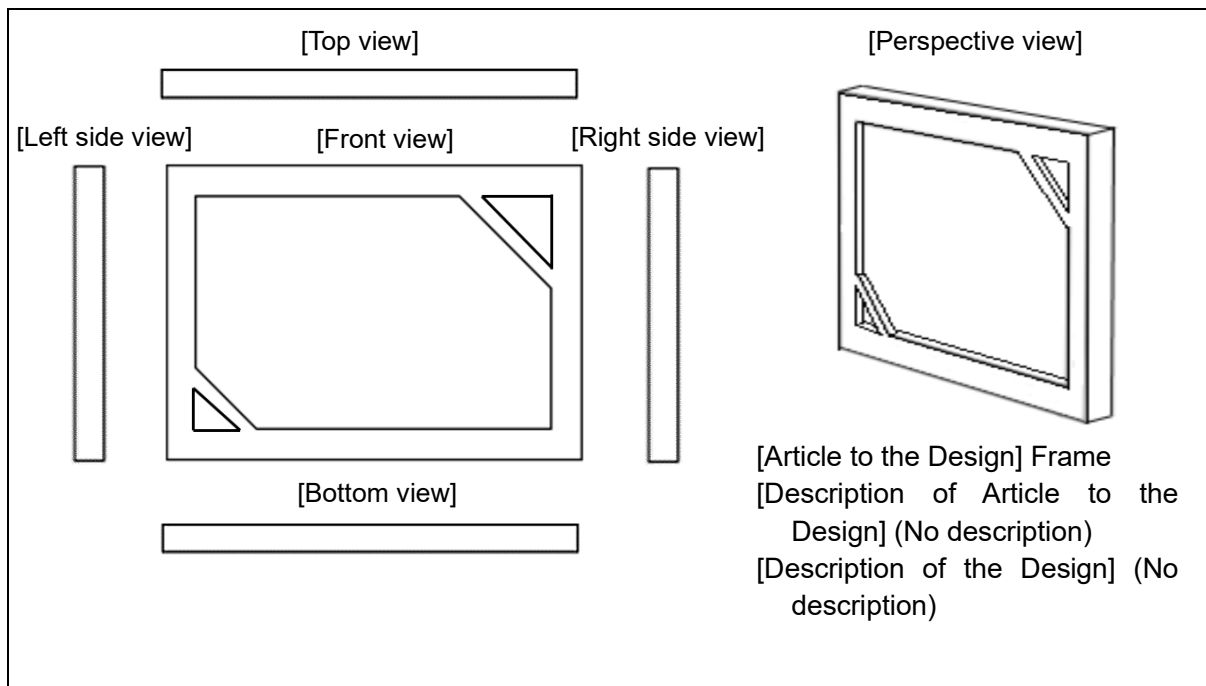
However, for example, where the subject matter is a wire rod or a rod, such as the “fence post” below, and by making comprehensive determination based on the statement in the application and drawings, etc. attached to the application, no problem is found in deeming that the position where the two ends of a solid line representing the outline of the “part for which the design registration is requested” are linked together by a straight line is the boundary, the examiner should treat the “part for which the design registration is requested” as occupying a certain scope.

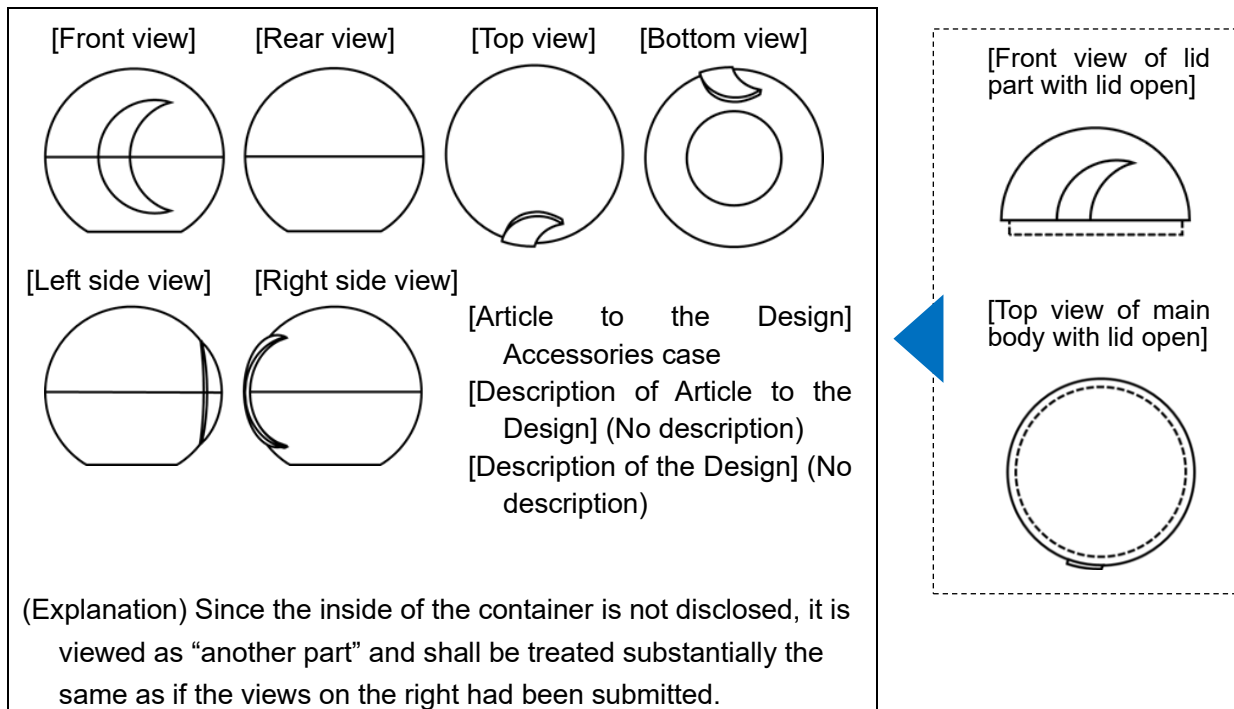


3.3.4 Where only a part of an article, etc. is shown, but there is no problem with the clarity of that part

Where the usage and function of the “part for which the design registration is requested,” the shape, etc. of the part for which the design registration is requested, the position, size, and scope occupied by the part for which the design registration is requested within the entire article, and the boundary between the “part for which the design registration is requested” and “any other parts” are clear even though only a part of the article, etc. for which the design registration is requested is represented in

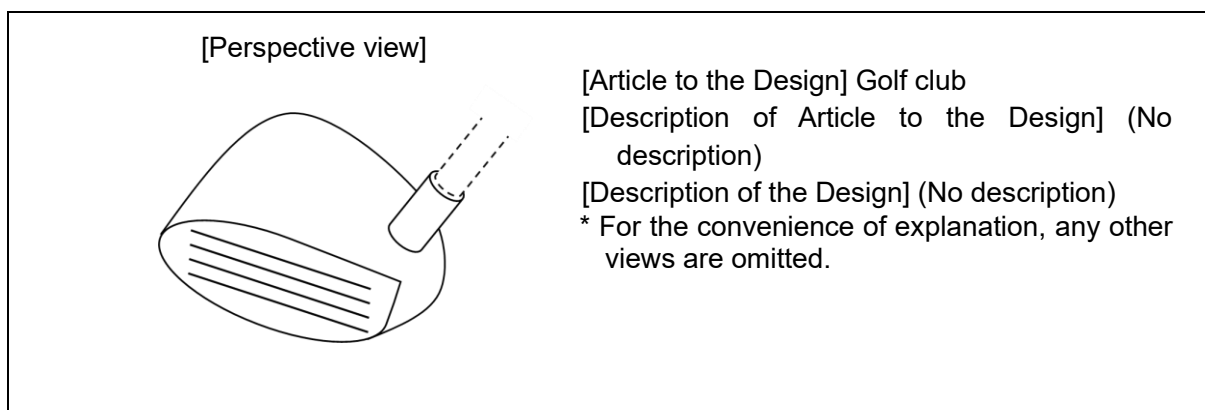
the drawings, etc. attached to the application and there is no statement that views are omitted due to them being identical or mirror images of other views, the examiner should determine that the design is a specific design.

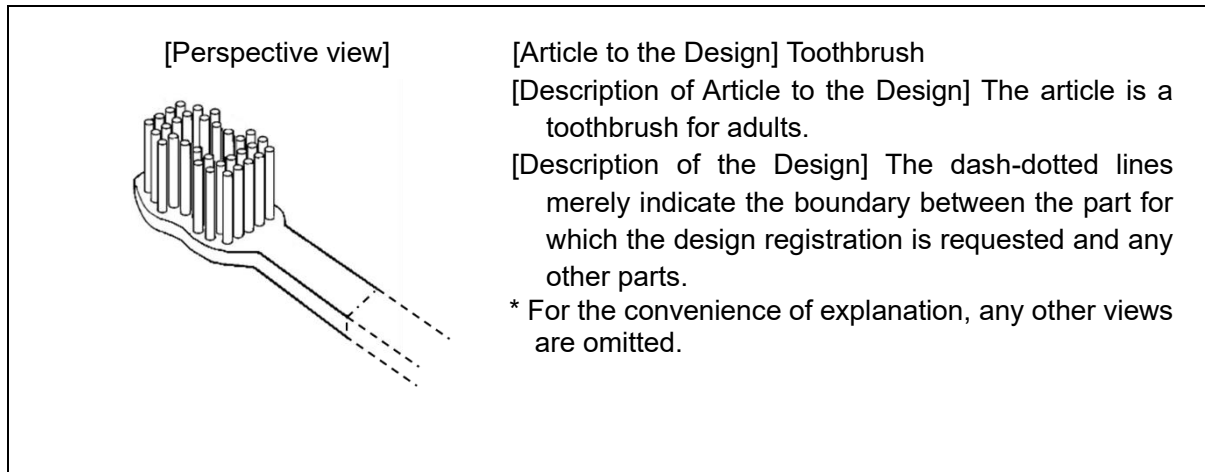




3.3.5 Where the position, size, and scope of the “part for which the design registration is requested” can be derived even though only some of the “other parts” are shown

Where the position, size, and scope of the “part for which the design registration is requested” can be derived in light of the nature of the article even if only some of the “other parts” are indicated, the examiner should determine that the design is a specific design.





4. The subject matter is industrially applicable

Designs protected under the Design Act are limited to designs based on which multiple identical objects can be manufactured, constructed or created.

For example, farm tools are used for farming, but since farm tools themselves can be manufactured in number using industrial technology, their design is categorized as an industrially applicable design.

Where the filed design is for a design registration for a part of an article, etc., rather than determining whether the part is industrially applicable, the examiner should determine whether the entire article, etc. to the design in the filed design satisfies this requirement.

(1) Industrially applicable

In the case of article design, “industrially applicable” means that multiple identical articles can be manufactured.

In the case of building design, “industrially applicable” means that multiple identical buildings can be constructed (corresponding to “manufactured” in the case of article design).

In the case of graphic image design, “industrially applicable” means that multiple identical graphic images can be created (corresponding to “manufactured” in the case of article design).

In addition, in all cases, the subject matter does not need to have been industrially applied in reality. Just having the potential is enough.

(2) Examples of subject matter not found to be industrially applicable

Subject matter that falls under the following is not found to be industrially applicable, and therefore may not be eligible for design registration under the main paragraph of Article 3, paragraph (1) of the Design Act.

(i) Subject matter that uses a natural object as the main element of design, and cannot be mass-produced

Subject matter that uses a natural object in its original form with hardly any processing, like an ornament that uses a natural stone as is—or in other words, subject matter that uses formative beauty created by nature as the main element of

design—is not categorized as industrially applicable, because the same object cannot be produced repeatedly in large volumes by using industrial technology.

(ii) Works that belong to the field of fine art

Works that belong to the field of fine art are not categorized as industrially applicable, because they are not created for the purpose of repeatedly producing the same object in large volumes by using industrial technology.

Chapter II Novelty & Creative Difficulty

Section 1 Novelty

1. Outline

Article 3, paragraph (1) of the Design Act provides that designs that were publicly known (item (i)), or designs that were described in a distributed publication or designs that were made publicly available through an electric telecommunication line (item (ii)), in Japan or a foreign country, prior to the filing of the application for design registration (hereinafter collectively referred to as “publicly known designs”), or designs similar to those publicly known designs (item (iii)) may not be obtained design registrations.

Since the purpose of the design system is to encourage the creation of designs thereby contributing to the development of industry, designs eligible for design registration must be new creations. The provisions of this paragraph were established for the purpose of acknowledging this requirement objectively.

This Section describes the determination of novelty for a filed design.

2. Determination of novelty

2.1 Basic concept in determining novelty

The examiner determines whether the filed design has novelty by comparing the filed design against publicly known designs (Note). If, as a result, the two designs are found to be identical, the examiner should determine that the filed design lacks novelty. In addition, even where there are points of difference between the two designs, if the two designs are found to be similar, likewise, the examiner should determine that the filed design lacks novelty.

Determining whether two designs are similar or not (hereinafter referred to as “determination of similarity”) is conducted as described in 2.2 “Determination of similarity” below.

Furthermore, for information that serves as the basis for determining novelty, see [2. “Information that serves as the basis for determination” in Section 3 “Points to Note when Examining Novelty & Creative Difficulty” in this Chapter.](#)

(Note) Not only a design for an article, etc. that has become publicly known as a result of being described in a publication, etc., but also a design for an article, etc. that is included in and not similar to the said article, etc. (for example, the design for a component of the said article, etc.) should be treated as information that serves as the basis for determination of novelty if the specific shape, etc. of the design itself can be identified. Furthermore, a design for which the specific shape, etc. of the article, etc. to the design can be identified in “any other part,” other than the “part for which the design registration is requested,” of a design for which the design registration is requested for part of an article, etc., which has been published in a design bulletin, should also be similarly treated as information that serves as the basis for determination of novelty, etc.

2.2 Determination of similarity

The approaches explained below for determining similarity between designs indicate the basic concept concerning the method of extracting and comparing the design characteristics, that is, the elements forming the aesthetic impression of the design, which are necessary for ensuring objective determination of similarity in design examination.

2.2.1 Determining entity

The determining entity in the determination of similarity is consumers (including traders).

There are no provisions in any of the articles of the Design Act regarding the entity that determines similarity in the determination of novelty. However, because Article 24, paragraph (2) of the Design Act, which provides for the scope of a registered design, states “whether a registered design is identical with or similar to another design shall be determined based upon the aesthetic impression that the designs would create through the eye of their consumers,” the entity that determines similarity in the determination of novelty shall also be consumers (including traders). Furthermore, since the term “consumers” as referred to in this provision is a concept that includes traders, they will be referred to as “consumers (including traders)” here, and shall be persons who are appropriate according to the actual status of trade and distribution of the article.

Although determination of similarity largely depends on the human senses, the determination should be made based on the objective impressions of consumers (including traders) as observed by them, while eliminating the subject perspective of the creator.

2.2.2 Approaches for determining similarity

Since the article, etc. and shape, etc. are inseparably integrated in a design, unless the articles, etc. to the design of the two designs being compared are identical or similar, the designs are not similar.

Accordingly, the examiner should determine that the two designs being compared are similar only where the two designs comply with all of the following.

Even between designs of articles, graphic images and buildings, where the two designs being compared comply with all of the following, the examiner should determine that the two designs are similar.

- (1) Where the filed design is one requesting design registration for the entire article, etc.
 - (i) The usage and function of the article, etc. to the design of the filed design and those of a publicly known design are identical or similar
 - (ii) The shape, etc. of the filed design and a publicly known design are identical or similarWhere the designs are identical with regard to both (i) and (ii) above, the examiner should determine that the two designs are identical.
- (2) Where the filed design is one requesting design registration for part of an article, etc.
 - (i) The usage and function of the article, etc. to the design of the filed design and those of a publicly known design are identical or similar

- (ii) The usage and function of the “part for which the design registration is requested” of the filed design and the part in the publicly known design that coincides with the “part for which the design registration is requested” are identical or similar
 - (iii) The position, size, and scope of the “part for which the design registration is requested” of the filed design in the shape, etc. of the entire article, etc. and those of the part in the publicly known design that coincides with the “part for which the design registration is requested” in the shape, etc. of the entire article, etc. are identical or within the scope of ordinary in the art of the design
 - (iv) The shape, etc. of the “part for which the design registration is requested” of the filed design and that of the part in the publicly known design that coincides with the “part for which the design registration is requested” are identical or similar
- (Note) The shape, etc. of “any other parts” alone is not subject to comparison.

Where the designs are identical with regard to all of (i) through (iv) above, the examiner should determine that the two designs are identical.

2.2.2.1 Viewpoints for determining similarity between designs

The examiner should determine similarity according to the viewpoints set forth in (a) through (g) below.

- (a) Finding of the usage and function of the articles, etc. to the design of the two designs being compared, and determination of similarity (→ see [2.2.2.2](#))
- (b) Finding of common points and different points in the usage and function of a part of an article etc., in the case of a design for which the design registration is requested for that part (→ see [2.2.2.3](#))
- (c) Finding of common points and different points in the position, size, and scope of a part of an article etc., in the case of a design for which the design registration is requested for that part (→ see [2.2.2.4](#))
- (d) Finding of the shape, etc. of the two designs being compared (→ see [2.2.2.5](#))
- (e) Finding of common points and different points in the shape, etc. of the two designs being compared (→ see [2.2.2.5](#))
- (f) Individual evaluation of common points and different points in the shape, etc. of the two designs being compared (→ see [2.2.2.6](#))
- (g) Comprehensive determination of similarity (→ see [2.2.2.7](#))

2.2.2.2 Finding of the usage and function of the articles, etc. to the design of the two designs being compared, and determination of similarity

The examiner should find the usage and function of the articles, etc. to the design based on the purpose of use, state of use, etc. of the articles, etc. to the design of the two designs being compared.

Similarity between designs assumes that the usage and function of the articles, etc. to the design of the two designs being compared are identical or similar.

The same is also true for designs for which the design registration is requested for part of an article, etc. For example, suppose an application for design registration is filed in which the design registration is requested for the grip part of a still camera. Given the article to the design, which is the object of the right, is the “still camera” that includes the grip part, the information that serves as the basis for determination of novelty should be designs for “still cameras” and for articles, etc. similar thereto.

Determining that the “usage and function of the articles, etc. to the design are identical or similar” above does not require judgment of similarity based on a comparison of the detailed usage and function of the articles, etc., and it is sufficient to determine that there is similarity in the usage and function of the articles, etc. 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.

Where there is no commonality in the usage (purpose of use, state of use, etc.) and function of the articles, etc. to the design, the designs are not similar.

2.2.2.3 Finding of common points and different points in the usage and function of a part of an article etc., in the case of a design for which the design registration is requested for that part

Where the filed design is one for which the design registration is requested for part of an article, etc., the examiner should find common points and different points in the usage and function of the “part for which the design registration is requested” and those of the part in the publicly known design that coincides with the “part for which the design registration is requested.”

2.2.2.4 Finding of common points and different points in the position, size, and scope of a part of an article etc., in the case of a design for which the design registration is requested for that part

Where the filed design is one for which the design registration is requested for part of an article, etc., the examiner should find common points and different points between the position, size, and scope of the “part for which the design registration is requested” in the shape, etc. of the entire article, etc. and the position, size, and scope of the part in the publicly known design that coincides with the “part for which the design registration is requested” in the shape, etc. of the entire article, etc.

Furthermore, a difference in position, size or scope has hardly any influence if it is within the scope of ordinary in the art of the design.

2.2.2.5 Finding of the shape, etc., and finding of common points and different points in the shape, etc. of the two designs being compared

(1) Observation by the naked eye

Observation is based on visual observation by the naked eye (however, even where the shape, etc. is not recognizable by the naked eye, it should be treated in the same way as a shape, etc. that is recognizable by the naked eye if it is normal to observe the article, etc. under magnification at the time of trading.)

This is because articles, etc. are normally observed by the naked eye, and the aesthetic impression made by the entire shape, etc. that can be recognized by the naked eye affects the selection and purchase of the article, etc. to the design. Where the shape, etc. of the entire article, etc. to the design can be recognized by the naked eye, but the shape, etc. of a part of the article, etc. is too fine to be recognized by the naked eye, in determining similarity, the examiner should find only the shape, etc. that is recognizable by the naked eye to be the shape, etc. of the design.

(2) Observation method

Determination of similarity between designs is made by an observation method that is normally used when observing the article, etc. to the design.

For example, in the case of the design of a writing tool that can be visually observed by actually holding it in the hand both at the time of purchase and at the time of use, the entire design is observed with the same weight, but in the case of the design of a television receiver whose rear surface and bottom surface are not seen in a normally installed state, the examiner should make observation by placing greater emphasis on the front surface, side surface and top surface directions.

(3) Finding of the shape, etc.

The examiner should find the shape, etc. of the entire article, etc. to the design (also referred to as the main structural shape, etc. or the basic constitution when taking a general overview of the design) of the two designs and the shape, etc. of each part.

(4) Finding of common points and different points in the shape, etc.

The examiner should find common points and different points in the shape, etc. of the entire article, etc. to the design of the two designs (basic constitution) and in the shape, etc. of each part.

Where the filed design is one for which the design registration is requested for part of an article, etc., the examiner should find common points and different points in the entire shape, etc. and the shape, etc. of each part of the “part for which the design registration is requested” and those of the part in the publicly known design that coincides with the “part for which the design registration is requested.” However, the examiner should not directly find common points and different points in the shape, etc. of “any other parts.”

2.2.2.6 Individual evaluation of common points and different points in the shape, etc. of the two designs being compared

With regard to the shape, etc. in the common points and different points of the two designs, the examiner should conduct the following: (1) finding of whether or not the shapes, etc. are parts that draw attention when comparatively observed and evaluation of the extent to which they draw attention; and (2) evaluation of the extent to which the shape, etc. draws attention in comparison to prior designs.

By considering the extent to which the shape, etc. in the common points and different points draws attention from the viewpoints of (1) and (2), the examiner should determine the degree of influence that each common point and different point has on the aesthetic impression of the entire design.

(1) Finding and evaluation of whether or not the shapes, etc. are parts that draw attention when comparatively observed

The examiner should find and evaluate whether or not the shape, etc. in each common point and different point of the two designs is a part that draws attention when comparatively observed and the extent to which they draw attention based on: (i) the relative size of the proportion of the part in the entire design; and (ii) whether the part has a large influence on the visual impression considering the characteristics of the article, etc. to the design.

While the specific evaluation method and evaluation results differ for individual designs, in general, they are as follows.

(a) Evaluation of the proportion of the part in the entire design

If a part pertaining to a common point or different point between the filed design and the publicly known design is large in proportion to the entire article, etc. to the design, the extent to which that part draws attention is larger than in the case where the part is small.

The shape, etc. of the entire article, etc. to the design (basic constitution) can be regarded as the main structure of the design, so it normally has the largest influence on the visual impression.

(b) Evaluation of the difference in the size of the articles

Even if the articles, etc. to the design of the two designs differ in size (including the ordinary scope of size that is found where there is no explanation of the size), the difference does not draw strong attention unless it affects the finding of the usage and function of the articles, etc.

(c) Evaluation of whether or not the part is easily observed based on the characteristics of the articles

There are parts of a design that are easily observed and parts that are not easily observed when making visual observation. If the shape, etc. of a common point or different point of the two designs is the shape, etc. of an easily observed part, it is likely to draw attention.

An easily observed part is extracted by finding (1) whether or not the part is easy to see when selecting or purchasing the article, etc. to the design, and (2) whether or not it is a part which consumers (including traders) observe with interest, based on the usage (purpose of use, state of use, etc.) and function, size, etc. of the article, etc. to the design.

However, even where the part is extracted in this way, it is not taken into consideration as a design characteristic if its shape, etc. is solely based on functional necessity.

(d) Evaluation of the internal shape, etc. of the article, etc.

Since designs should be compared mainly with regard to the shape, etc. of parts that are eye-catching when observing the articles, etc. to the design, during determination of similarity, their internal shape, etc. which is not visible under normal conditions of use is not taken into consideration as a design characteristic. On the other hand, if the internal shape, etc. can be observed under normal conditions of use, the shape, etc. that is eye-catching during use is the part that is likely to draw attention.

For example, in the case of the design of a refrigerator, the state of the door open is one of the shapes, etc. during use, but since the usage and function of a refrigerator are to cool and store food and other items inside with the door closed, it is normally visually observed with the door closed. Therefore, in such a case, the outer appearance with the door closed draws more attention than the internal shape, etc. On the other hand, in the case of the design of a bathroom, etc. which people go inside to use, the internal shape, etc. is the part that draws attention.

(e) Evaluation of a shape, etc. that is visually observed only during distribution

In the case of an article, etc., a part of which is no longer visible when used or installed (such as a fence a part of which is buried in the ground, or a lighting apparatus a part of which is hidden in a wall or ceiling), in principle, the part that

is visually observed only during distribution draws less attention than the other parts.

However, where the shape, etc. of such other parts have little influence on the aesthetic impression of the entire design, such as being ordinary shapes, etc., the part that is visually observed only during distribution may become relatively more important in the entire design, and may affect similarity when making the final determination of similarity of the entire designs.

(2) Evaluation based on comparison with prior designs

Evaluation is made on whether or not the shape, etc. of each common point or different point between the filed design and the publicly known design is likely to draw attention when compared with prior designs. Whether or not the shape, etc. is likely to draw attention depends on the number of publicly known designs having the same shape, etc., the extent to which the shape, etc. differs from other commonly seen shapes, etc., or the level of the creative value of the shape, etc.

(a) Evaluation of common points based on prior design searches

Where the shape, etc. of each common point between the filed design and the publicly known design is an ordinary mode that is regularly seen in other prior designs, the shape, etc. cannot be regarded as a distinctive shape, etc. Therefore, such shape, etc. draws less attention than a shape, etc. that is also seen in other prior designs but which is not an ordinary mode that is regularly seen.

In either case, an ordinary shape, etc. or a publicly known shape, etc. is not simply excluded from the basis of determination.

(b) Evaluation of different points based on prior design searches

Where the shape, etc. of each different point that is found through comparison between the filed design and the publicly known design is a novel shape, etc. that is not seen in other prior designs and is found to have a high creative value, that shape, etc. gives a strong impression of being different from conventional shapes, etc. and draws strong attention. Where the shape, etc. of each different point is an ordinary mode that is regularly seen in other prior designs, that shape, etc. cannot draw strong attention. However, in some cases, the mode of the combination of an ordinary shape, etc. and a publicly known shape, etc. could draw attention depending on the combination.

(3) Handling of shapes, etc. that have functional meaning and shapes, etc. derived from materials

Shapes, etc. that have functional meaning and shapes, etc. derived from materials are generally handled as follows.

(a) Evaluation of functional shape

Where there is formative freedom in meeting the functional demands and the shape is not inevitable, the formative characteristics of that shape should be taken into consideration. However, a design consisting solely of shapes that are indispensable for securing the functions of the article, etc. is not protected, because it would mean granting an exclusive right for the creation of a technical idea, which is not intended to be protected under the Design Act (Article 5, item (iii) of the Design Act).

Also, slight differences in shape that do not significantly influence the visual impression are not regarded as particularly important, even if the differences have a significant bearing upon function.

- (b) Evaluation of patterns that incorporate a consideration to meet the functional demands of the article, etc.

In addition to patterns simply for the purpose of decoration (such as the pattern applied to the surface of a table plate), it has become relatively common in recent years for the mode of the input/operating part to be configured as a flat figure, etc. that is not accompanied by a bumpy three-dimensional shape, such as sheet key and touch panel. The design characteristics of a pattern that has a certain function in relation to such an article, etc. to the design is evaluated after understanding the meaning of the pattern, that is, what is intended by the pattern and what kind of function the pattern plays in relation to the usage and function of the article, etc., and the pattern is evaluated in the same way as in the case of a shape.

- (c) Evaluation of patterns and colors arising from materials

The patterns and colors to be truly taken into consideration as constituent elements of a design are the patterns and colors that are represented based on the creative act of the creator. However, where the design represented by the drawings, etc. attached to the application is found to be represented by the natural patterns and colors of the materials that are normally used for manufacturing the article, etc. to the design, those patterns and colors are ordinary in the art of the design and have very little influence on the aesthetic impression of the entire design.

2.2.2.7 Comprehensive determination of similarity

Determination is made on whether or not the designs create different aesthetic impressions on consumers (including traders) when all common points and different points between the two designs are comprehensively observed as entire designs, based on the individual evaluation of each common point and different point in the shape, etc. of the two designs.

Since elements of an entire design are combined with organic linkage between them, similarity cannot be determined by merely individually evaluating each common point and different point. Evaluation must be made on what kind of influence the common points and different points have on the similarity of the aesthetic impressions of the entire designs, when comprehensively examining the common points and different points while also paying attention to the combination of the respective shapes, etc.

The basic concept is as follows.

- (1) Comprehensive determination on the common points and different points

Whether or not a certain common point or different point becomes the most important element in determining similarity is decided by its relative relationship with the other common points and different points. When considering the degree of influence that a certain common point or different point has on the determination of similarity, if the other common points and different points have little influence on the aesthetic impressions of the entire designs, the said common point or different point will have a relatively large influence on the determination of similarity. On the other

hand, if there is another common point or different point that has the same or larger degree of influence on the aesthetic impressions of the entire designs, the said common point or different point will have a relatively small influence on the determination of similarity.

(2) Shape, etc. of the entire article, etc. to the design (basic constitution)

The shape, etc. of the entire article, etc. to the design (basic constitution) can be regarded as the main structure of the design, and it has the largest influence on the aesthetic impression created through the eye. Therefore, in order for designs to be similar, in principle, there must be commonalities in the shapes, etc. of the entire articles, etc. to the designs (basic constitutions).

However, even if there are different points in the shapes, etc. of the entire articles, etc. to the designs (basic constitutions) between the filed design and the publicly known design, if both shapes, etc. are ordinary and the common points in the shape, etc. of each part are conspicuous, the two designs may be regarded as similar, in spite of the difference in the shapes, etc. of the entire articles, etc. to the designs (basic constitutions).

For example, where there are two designs of patterned rectangular parallelepiped packaging boxes with different length-width-height ratios, if they are both found to be ordinary as ratios of packaging boxes and do not draw attention, and their common patterns are found to be distinctive and draw strong attention, the two designs may be regarded as similar, surpassing the differences in the shapes, etc. of the entire articles, etc. to the designs (basic constitutions) (the length-width-height ratios of the entire boxes).

Also, where different points in the shape, etc. of each part have little influence on determination of similarity, the common shape, etc. of the entire articles, etc. to the designs (basic constitutions) will have the largest influence on the determination of similarity between the designs, even if it is ordinary, and the two designs could be determined to be similar in some cases.

In addition, even if a design is an aggregation of publicly known or well-known shapes, etc., if the mode of the combination is novel and the shape, etc. of the entire article, etc. to the design (basic constitution) is novel, the shape, etc. of the entire article, etc. to the design (basic constitution) employing such combination is evaluated as a novel shape, etc.

(3) Publicly known shape, etc. used within the design in the application

A publicly known shape, etc. used within the filed design generally has smaller influence on determination of similarity than a novel shape, etc., but since a design is composed of elements that are organically combined as a whole, even if the shape, etc. of a common point or a different point were a publicly known shape, etc., a determination will not be made only with regard to the other common points and different points by simply excluding such common point or different point.

Where a combination of publicly known shapes, etc. is novel, the mode of such combination will be evaluated.

(4) Relationship between constituent elements of the design

While it is not possible to generalize which of the constituent elements of a design (shape, pattern and color) has a large influence on the determination of similarity, it can be said that the element that has the most notable characteristic and most draws

attention in relation to prior publicly known designs has a large influence on the determination of similarity.

However, while the shape and pattern often require creation based on human knowledge, a color is more appropriately described as a selection rather than a creation, unless it constitutes a pattern, and a large product variation is normally provided with only a change in color, so color is less likely to draw attention than the shape and pattern. Therefore, generally, color has a smaller influence on the determination of similarity than the shape and pattern.

(5) Relationship with existing cases of determination of similarity in the same field of articles, etc.

In general, where evaluation on the degree to which common points and different points between two designs being compared influence the aesthetic impressions of the entire designs is similar to such evaluation made in existing cases of determination in the same field of articles, etc., the result will be equivalent to that in the existing cases of determination of similarity.

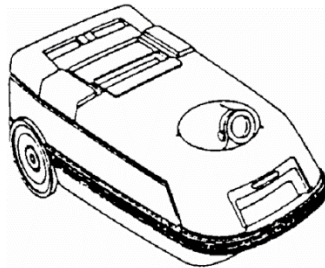
However, since determination of similarity between designs is made for the entire designs including the other parts, even if the two designs being compared have equivalent common points or different points to those in existing cases of determination, considering the characteristics of the articles, etc., the finding of whether or not they are common points or different points in a part that draws attention in the entire designs and the evaluation of the extent to which the part draws attention will not always be the same. Furthermore, prior publicly known designs are accumulated day by day, so the evaluation based on comparison to prior publicly known designs will not always be the same.

Thus, even if the designs have equivalent common points or different points, evaluation on the degree to which they influence the determination of similarity will not always be the same, so the conclusion made in an existing case of determination of similarity in the same field of articles, etc. is not simply applied to another case.

2.2.2.8 Examples of designs for which the design registration is requested for part
of an article, etc. that is similar to a publicly known design

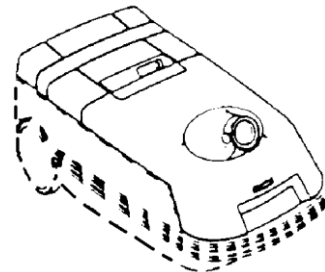
[Case example 1]

Publicly known design
“Main body of a vacuum cleaner”



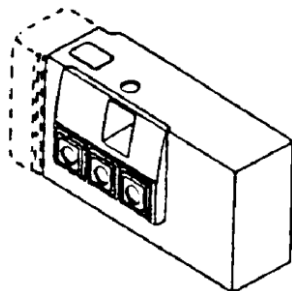
Filed design

“Main body of a vacuum cleaner”

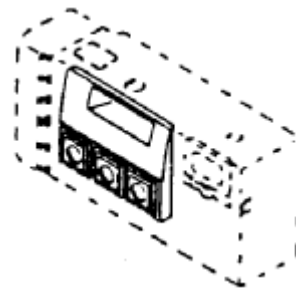


[Case example 2]

Publicly known design
“Still camera”
(Design (part) published in a
design bulletin)

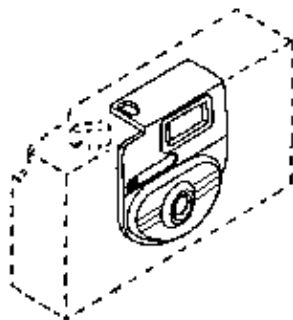


Filed design
“Still camera”



[Case example 3]

Publicly known design
“Still camera”
(Design (part) published in a
design bulletin)



Filed design
“Camera lens with a view finder”

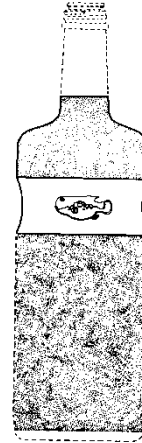


[Case example 4]

Publicly known design
“Packaging bottle”
(Design (part) published in a
design bulletin)

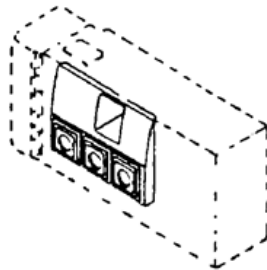


Filed design
“Packaging bottle”

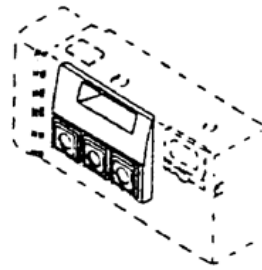


[Case example 5]

Publicly known design
“Still camera”
(Design (part) published in a
design bulletin)

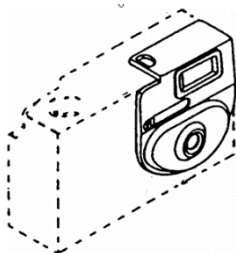


Filed design
“Still camera”

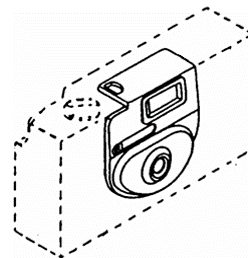


[Case example 6]

Publicly known design
“Digital camera”
(Design (part) published in a
design bulletin)



Filed design
“Digital camera”



Section 2 Creative Difficulty

1. Outline

Article 3, paragraph (2) of the Design Act provides that a design registration shall not be granted for a filed design where a person ordinarily skilled in the art of the design (hereinafter referred to as a “person skilled in the art”) would have been able to easily create the design.

This is because granting exclusive rights to designs that can be easily created by a person skilled in the art would not help the development of industry but rather prevent it.

The examiner should make a determination on this requirement only where no reason for refusal about novelty is found.

This Section describes how the examiner determines the creative difficulty of filed designs.

2. Entity for determining creative difficulty

The examiner should examine and determine the creative difficulty of the filed 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 designs in the industry in which the article to the design is manufactured or sold.

3. Basic concept in determining creative difficulty

Article 3, paragraph (2) of the Design Act provides that if, prior to the filing of the application for design registration, a person skilled in the art would have been able to easily create the design based on the shape, patterns, or colors, or any combination thereof (shape, etc.) or graphic images that were publicly known (Note), a design registration shall not be granted for such a design.

Therefore, where the filed design is based on constituent elements and specific modes that were publicly known prior to filing and was merely created using ordinary techniques, etc. in the art, such as simply aggregating or replacing these, for example, the examiner should determine that the filed design is one that would have been easily created.

Furthermore, with regard to the above determination, in addition to cases where constituent elements and specific modes that were publicly known prior to filing have been represented in the filed design almost as they are, where modifications have been made but they are only minor modifications in the art of the design, the examiner should still determine that the filed design is one that would have been

easily created (see [4.2 “Ordinary techniques and minor modifications” in this Section](#)).

However, where novelty or original design ideas from the viewpoint of a person skilled in the art are found, the examiner should also take this into consideration when making a determination (see [4.3 “Novelty and originality of design ideas from the viewpoint of a person skilled in the art” in this Section](#)).

Furthermore, in cases where the filed design is a design for which the design registration is requested for a part of an article, etc., in determining creative difficulty, in addition to taking into consideration the shape, patterns, or colors, or any combination thereof of the “part for which the design registration is requested” as well as its usage and function, the examiner should also take into consideration whether it is easy for a person skilled in the art to determine the position, size, and scope of the “part for which the design registration is requested” within the shape, patterns, or colors, or any combination thereof of the entire article, etc.

(Note) Here, “publicly known” means “publicly known, described in a distributed publication or made publicly available through an electric telecommunication line in Japan or a foreign country.”

(With regard to graphic image designs, see [Part IV, Chapter I “Design Including a Graphic Image,”](#) with regard to building designs, see [Part IV, Chapter II “Building Design,”](#) and with regard to interior designs, see [Part IV, Chapter IV “Interior Design.”](#))

4. Specific determination of creative difficulty

4.1 Information that serves as the basis for determination of creative difficulty

The examiner may determine creative difficulty based on the following information.

Shapes, patterns, or colors, or any combination thereof (shape, etc.) or graphic images that were publicly known, described in a distributed publication, or made publicly available through an electric telecommunication line in Japan or a foreign country

In cases where shapes, patterns, or colors, or any combination thereof are described in a publication, etc., they are often represented as an integrated part of an article, etc.; they are rarely represented by themselves. When determining creative difficulty, even in such cases, where the shape, etc. or the graphic image can be specifically identified, the examiner may determine creative difficulty based on these constituent elements.

The above information also includes designs where the shape, etc. or graphic image is integrated with the article, etc.

Furthermore, information that the examiner uses as the basis for determining creative difficulty is not limited to identical or similar fields as the filed design.

4.2 Ordinary techniques and minor modifications

4.2.1 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 articles, etc. 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 (→ see [6.1](#))
Refers to replacing some constituent elements of the design with those of other designs, etc.
- (b) Aggregation (→ see [6.2](#))
Refers to constituting a single design by combining multiple existing designs, etc.
- (c) Mere deletion of a constituent part (→ see [6.3](#))
Refers to simply deleting a part that is recognized as an individual unit of creation of a design.
- (d) Change of layout (→ see [6.4](#))
Refers to merely changing the layout of the constituent elements of a design.
- (e) Change of component ratio (→ see [6.5](#))
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 (→ see [6.6](#))
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. (→ see [6.7](#))
Refers to adopting a variety of existing elements as a motif, and using in or diverting to various articles without hardly changing their shape, etc.

4.2.2 Examples of minor modification

With regard to the determination described in 4.2.1 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” 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

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

When examining the creative difficulty of a filed design, where a visual feature of the design appears, such as the aesthetic impression presented by the entire design or the mode of each part, and where 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 also take this into consideration.

However, in making this determination, where statements in the feature statement or written opinion are taken into account, the examiner should only take them into consideration to the extent that they can be derived from the statement in the application and drawings, etc. as originally filed.

5. Presentation of information that serves as the basis for determination of creative difficulty

5.1 Presentation of constituent elements, specific modes, etc. that were publicly known prior to filing

Where using (1) a shape, etc., graphic image or design that is publicly known, or (2) a shape, etc., graphic image or design that is described in a distributed publication or was made publicly available through an electric telecommunication line, as information that serves as the basis for determining creative difficulty, the examiner must present the said design to the applicant for design registration by stating in the notification of reasons for refusal matters including the bibliographic matters concerning the publication in which the said design is described and the page number on which the said design is described.

However, when using widely known shapes, etc., graphic images or designs as information that serves as the basis for determination of creative difficulty, evidence does not need to be presented.

5.2 Presentation of the fact that the technique is an ordinary technique, etc. in the art

When notifying reasons for refusal pursuant to the provisions of Article 3, paragraph (2) of the Design Act, in principle, the examiner must present specific facts to the applicant showing that the technique of creation in the filed design is an ordinary technique in the art or nothing more than a minor modification, etc.

However, where the examiner finds it to be evident that the technique used is ordinary in the art or is nothing more than a minor modification, etc., such as the technique in the field of toys of transferring the shape, etc. of a real car to the design of a toy car almost as it is, the specific facts do not necessarily need to be presented.

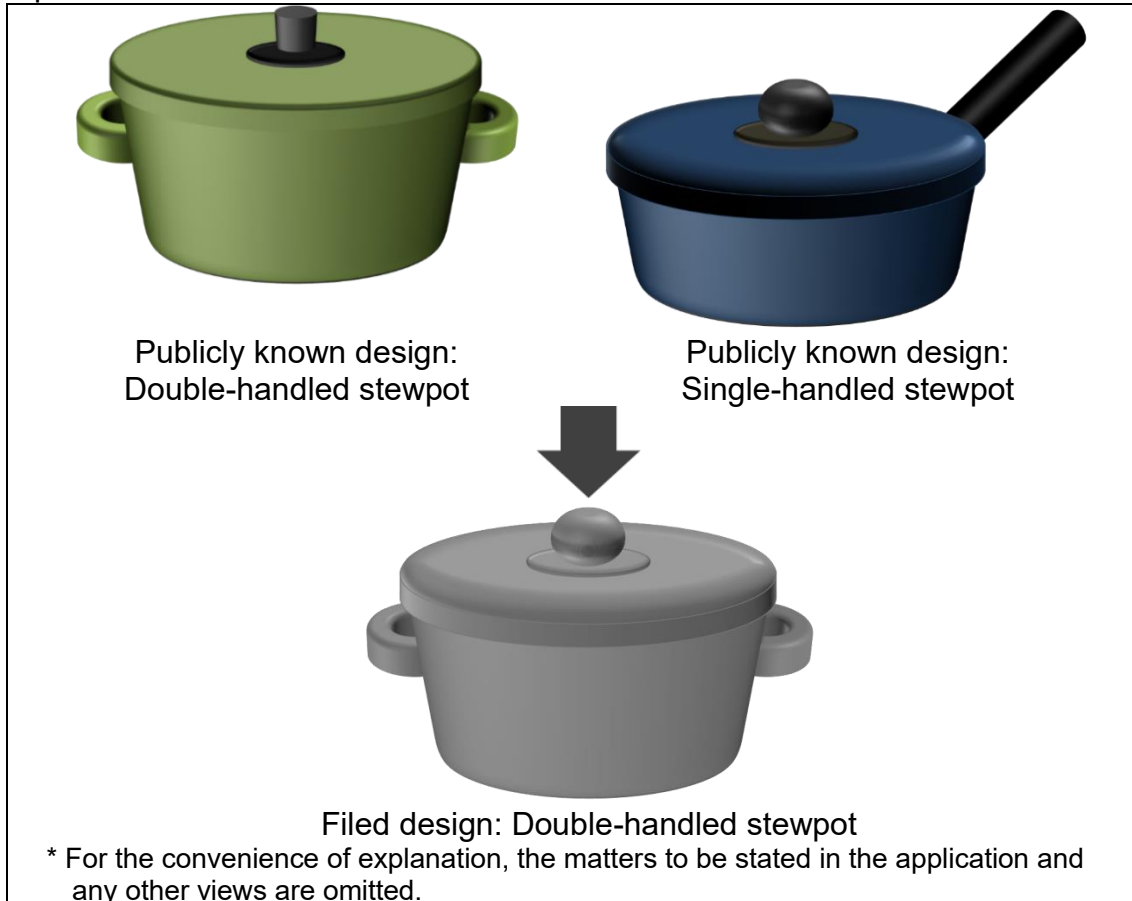
6. Examples of easily created designs

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.

6.1 Design through replacement

[Case example 1] “Stewpot”

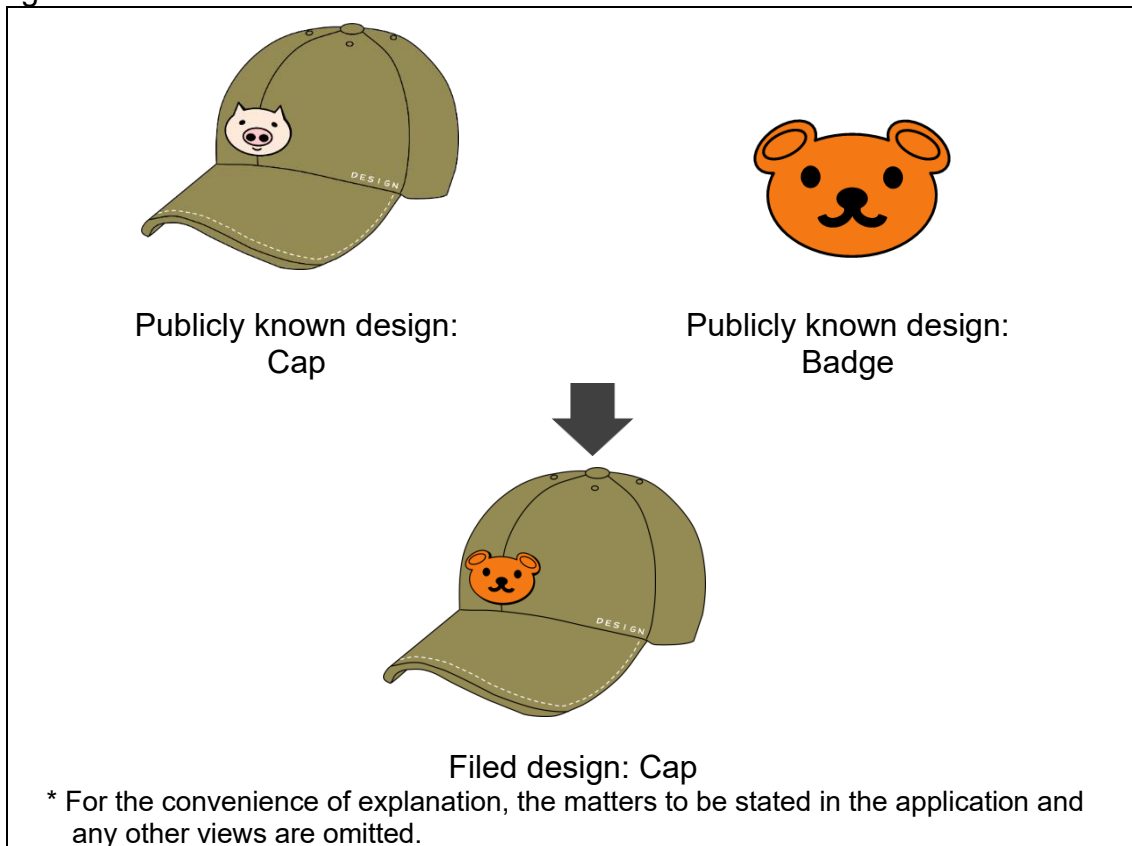
A design which merely replaced the lid of a publicly known stewpot with another stewpot lid almost as it is



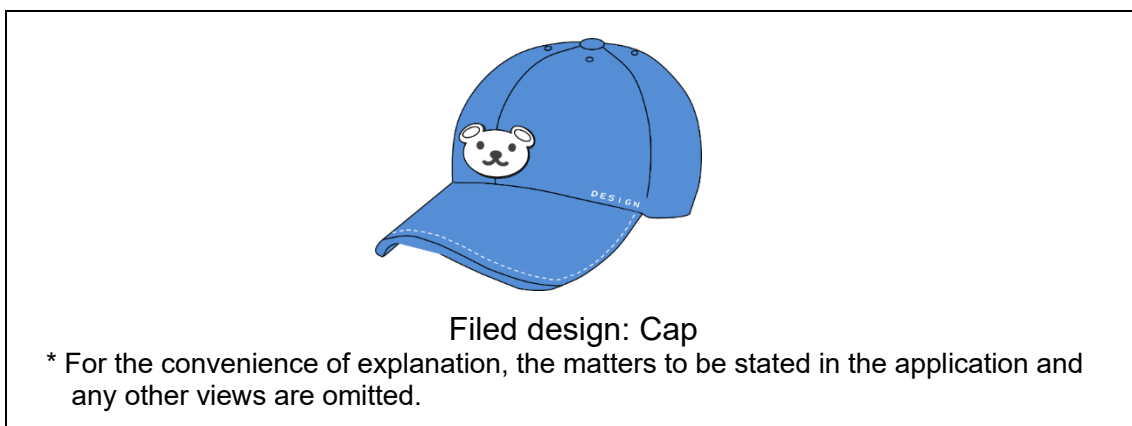
(Note) In this case example, it is assumed that replacing the lid part with another stewpot lid is an ordinary technique in the field of stewpot, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method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

[Case example 2] “Cap”

A design which merely replaced the badge part on a publicly known cap with another badge



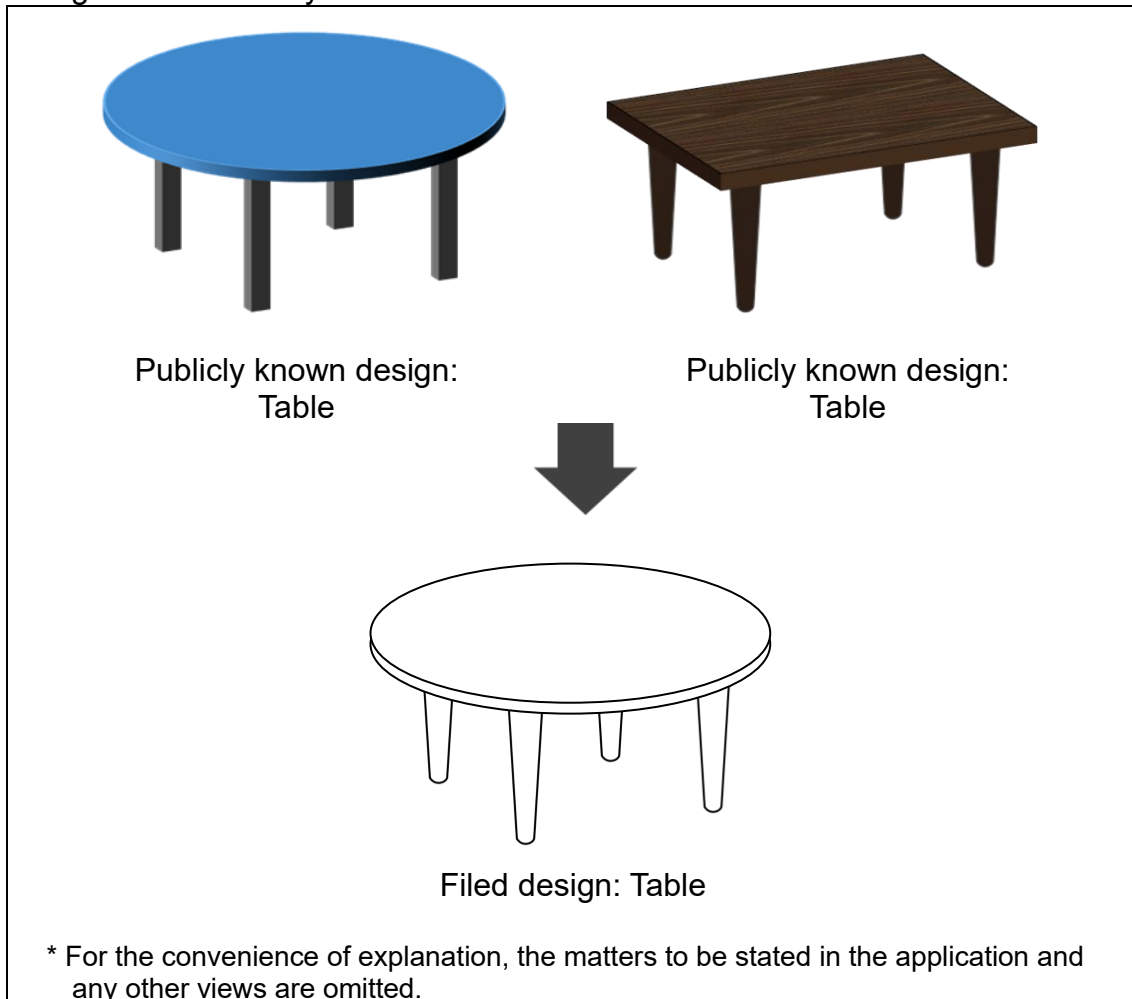
With regard to the case example above, as in the example below, even where the colors of the main part and badge of the cap are changed in the filed design, if the change is found to be a minor modification in the field of caps, the examiner should not evaluate the change of color in determining creative difficulty, and should determine that the filed design is one that would have been easily created.



(Note) In both of the case examples above, it is assumed that replacing the badge part with another badge is an ordinary technique in the field of caps, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 3] “Table”

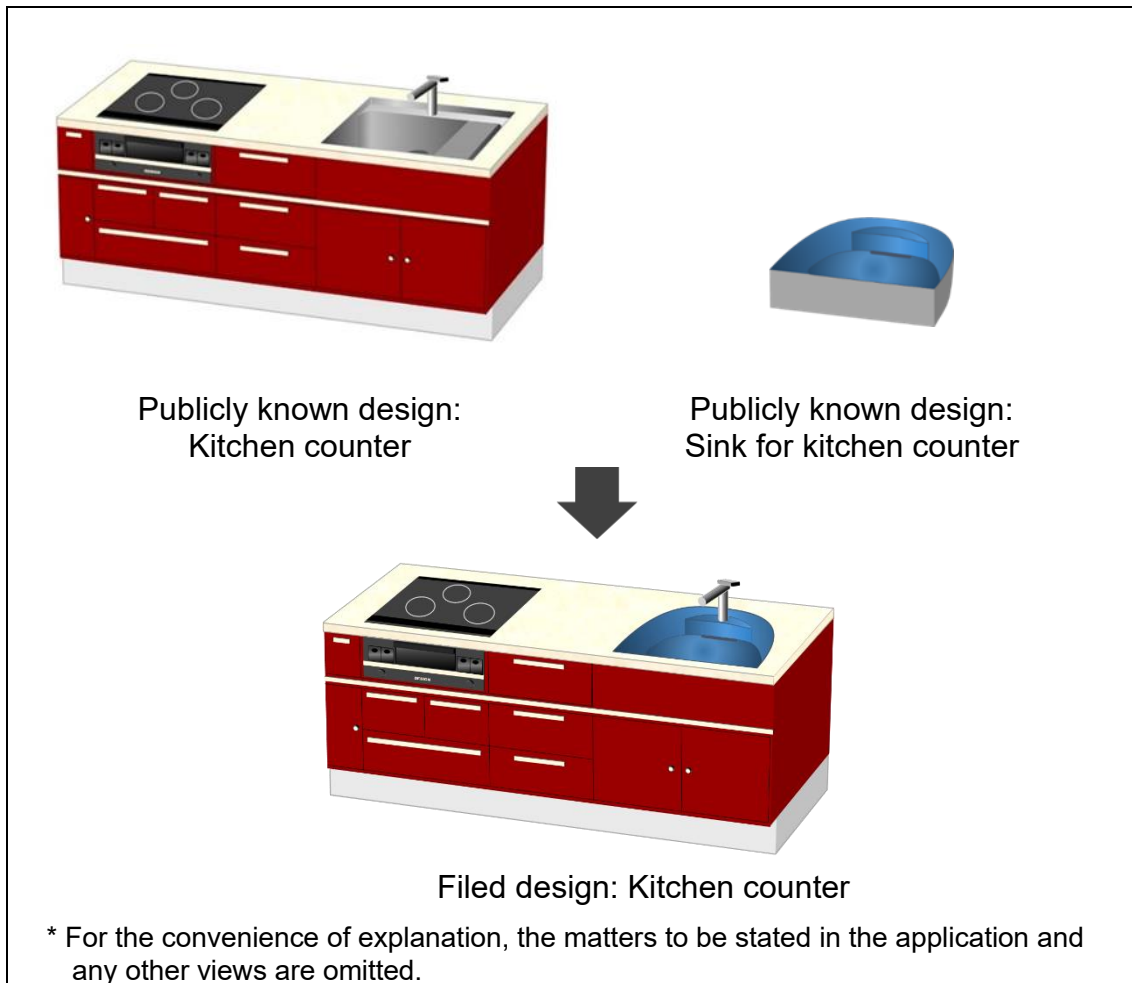
A design which merely replaced the leg parts of a publicly known table with other table legs almost as they are



(Note) In the case example above, it is assumed that replacing legs with other legs is an ordinary technique in the field of tables, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 4] “Kitchen counter”

A design which merely replaced the sink part of a publicly known kitchen counter with another sink



With regard to the case example above, as in the example below, even where the color of the door part is changed in the filed design, if the change in color is found to be a minor modification in the field of kitchen counters, the examiner should not evaluate the change of color in determining creative difficulty, and should determine that the filed design is one that would have been easily created.



Filed design: Kitchen counter

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

(Note) In both of the case examples above, it is assumed that replacing the sink part with another kitchen counter sink is an ordinary technique in the field of kitchen counters, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 5] “Packaging container”

A design which merely replaced the patterned part of a publicly known packaging container with another pattern



Publicly known design:
Packaging container



Publicly known pattern



Filed design: Packaging container

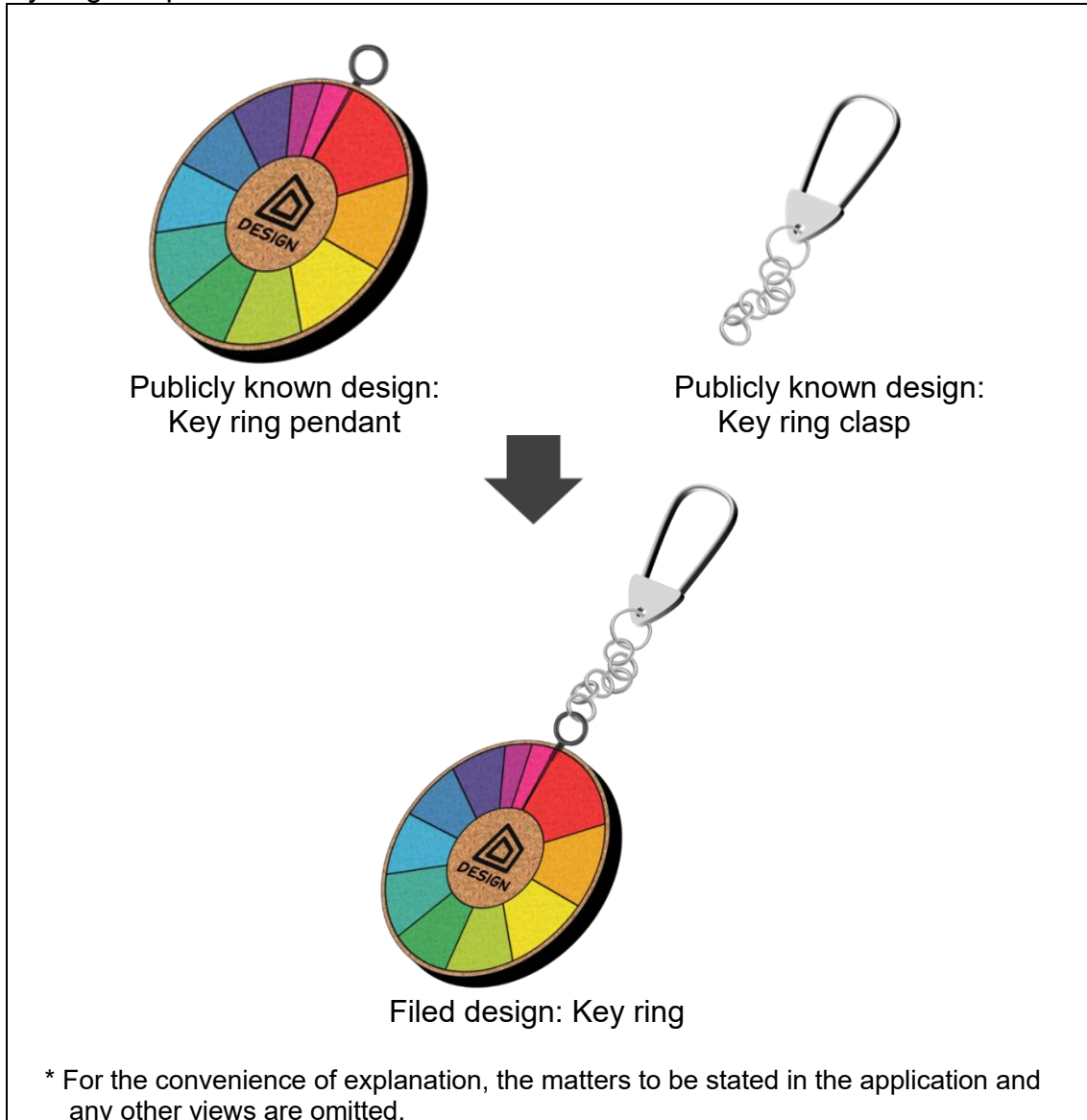
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(Note) In the case example above, it is assumed that replacing the patterned part on the front face with another pattern is an ordinary technique in the field of packaging containers, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

6.2 Design through aggregation

[Case example 1] “Key ring”

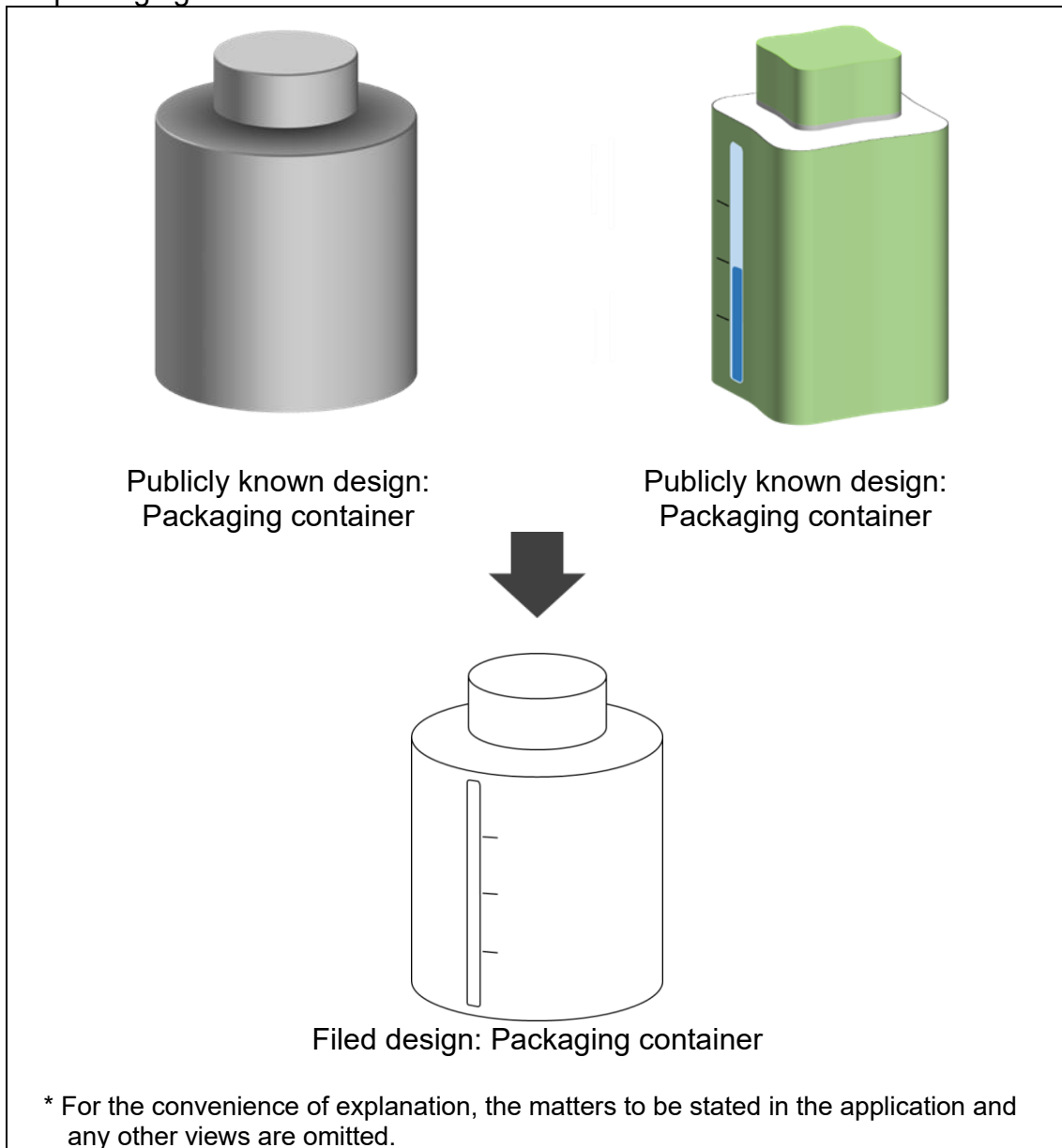
A design which merely aggregated publicly known designs for a key ring pendant and a key ring clasp



(Note) In the case example above, it is assumed that aggregating a key ring pendant and a key ring clasp is an ordinary technique in the field of key rings, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 2] “Packaging container”

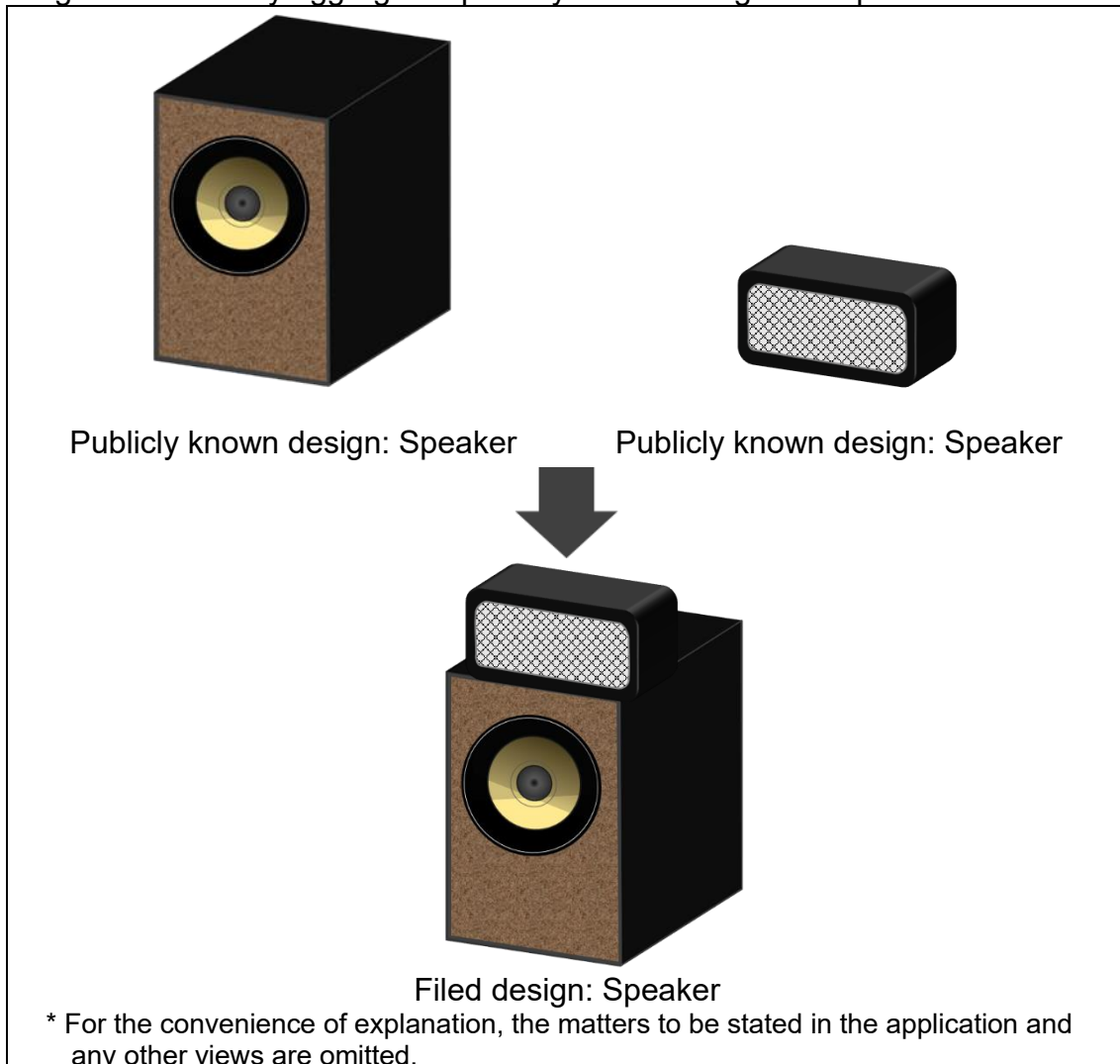
A design which merely aggregated publicly known designs for a packaging container and a packaging container visible window



(Note) In the case example above, it is assumed that aggregating a packaging container and a packaging container visible window is an ordinary technique in the field of packaging containers, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 3] "Speaker"

A design which merely aggregated publicly known designs for speakers

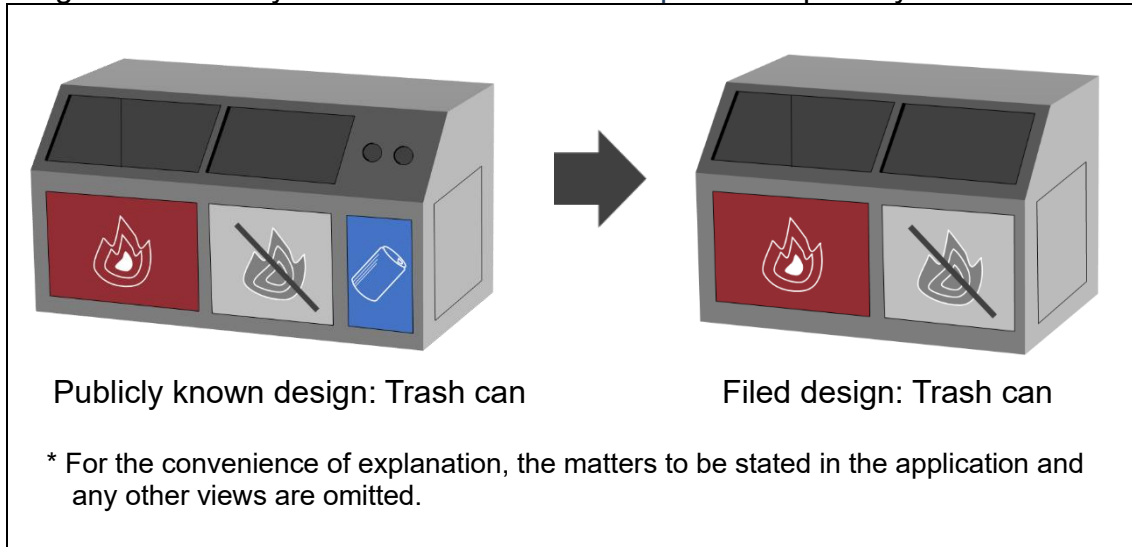


(Note) In the case example above, it is assumed that aggregating multiple speakers together to make a single speaker is an ordinary technique in the field of speakers; that placing speakers of the same width on top of each other near the front of the top of a substantially rectangular parallelepiped speaker is also commonly seen in the field of speakers; and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

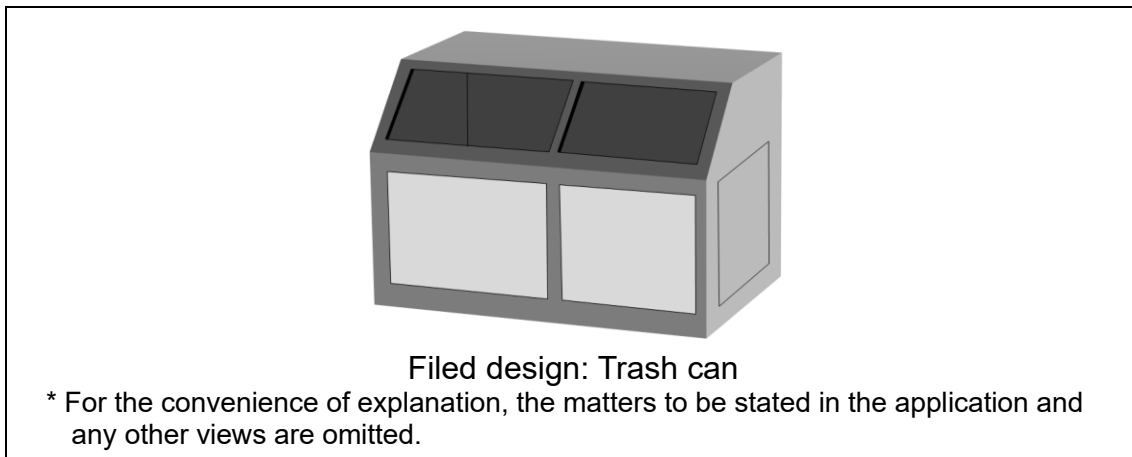
6.3 Design through mere deletion of a constituent part

[Case example] “Trash can”

A design which merely deleted some constituent parts of a publicly known trash can



With regard to the case example above, as in the example below, even where a pattern, etc. is deleted in the filed design, if the modification is found to be a minor modification in the field of trash cans, the examiner should not evaluate the modification in determining creative difficulty, and should determine that the filed design is one that would have been easily created.

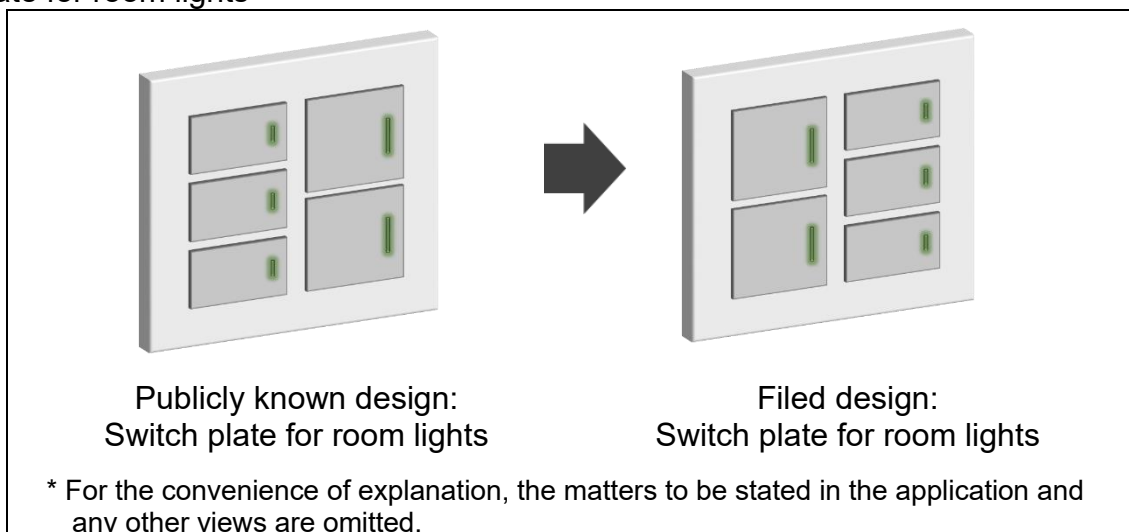


(Note) In both of the case examples above, it is assumed that deleting certain constituent parts is an ordinary technique in the field of trash cans, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

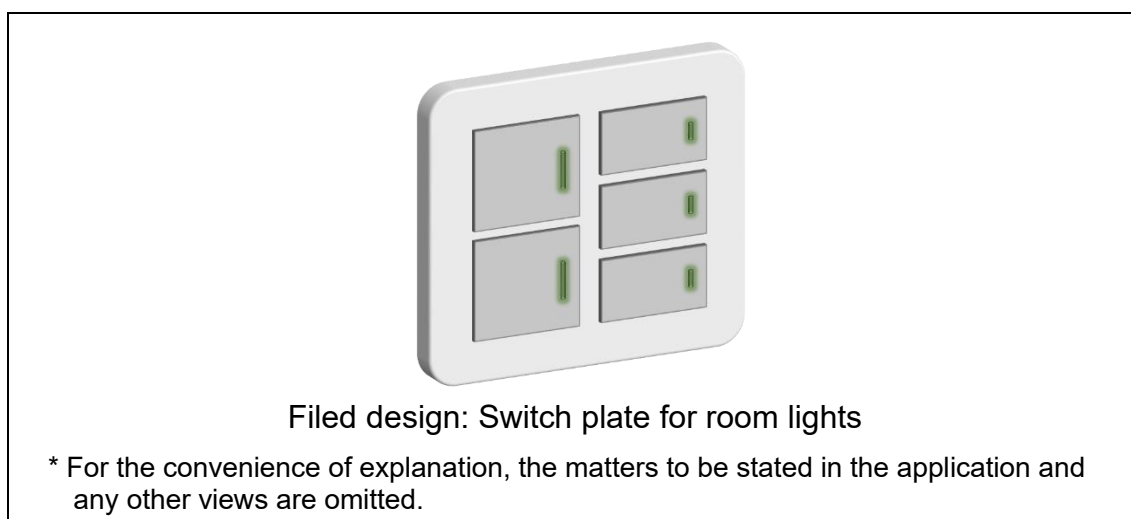
6.4 Design through change of layout

[Case example] “Switch plate for room lights”

A design which merely changed the layout of switches on a publicly known switch plate for room lights



With regard to the case example above, as in the example below, even where the corners have been rounded in the filed design, if the modification is found to be a minor modification in the field of switch plates for room lights, the examiner should not evaluate the modification in determining creative difficulty, and should determine that the filed design is one that would have been easily created.

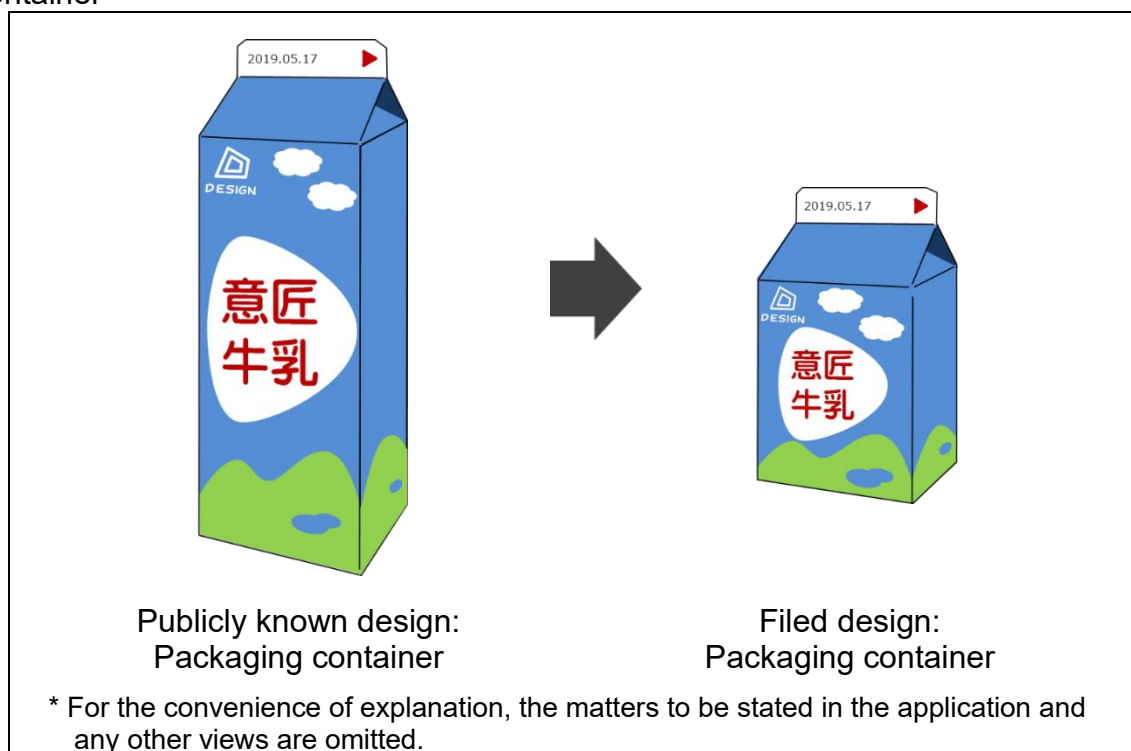


(Note) In both of the case examples above, it is assumed that changing the layout of switches is an ordinary technique in the field of switch plates for room lights, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

6.5 Design through change of component ratio

[Case example] “Packaging container”

A design which merely changed the component ratio of a publicly known packaging container



With regard to the case example above, as in the example below, even where the color of some sections are changed in the filed design, if the change is found to be a minor modification in the field of packaging containers, the examiner should not evaluate the modification in determining creative difficulty, and should determine that the filed design is one that would have been easily created.



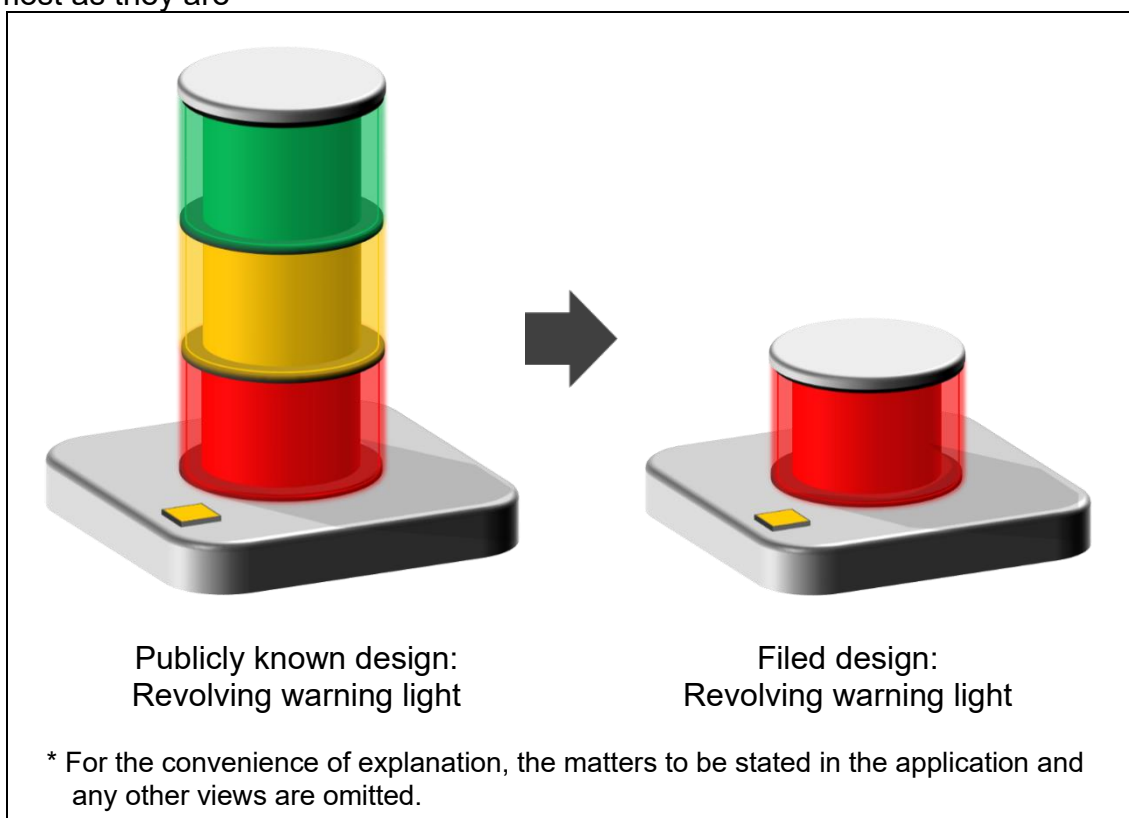
(Note) In both of the case examples above, it is assumed that changing the component ratio is an ordinary technique in the field of packaging containers, and that the

filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

6.6 Design through change in number of units of a continuous constituent element

[Case example] “Revolving warning light”

A design which merely reduced the layers of publicly known revolving warning lights, almost as they are

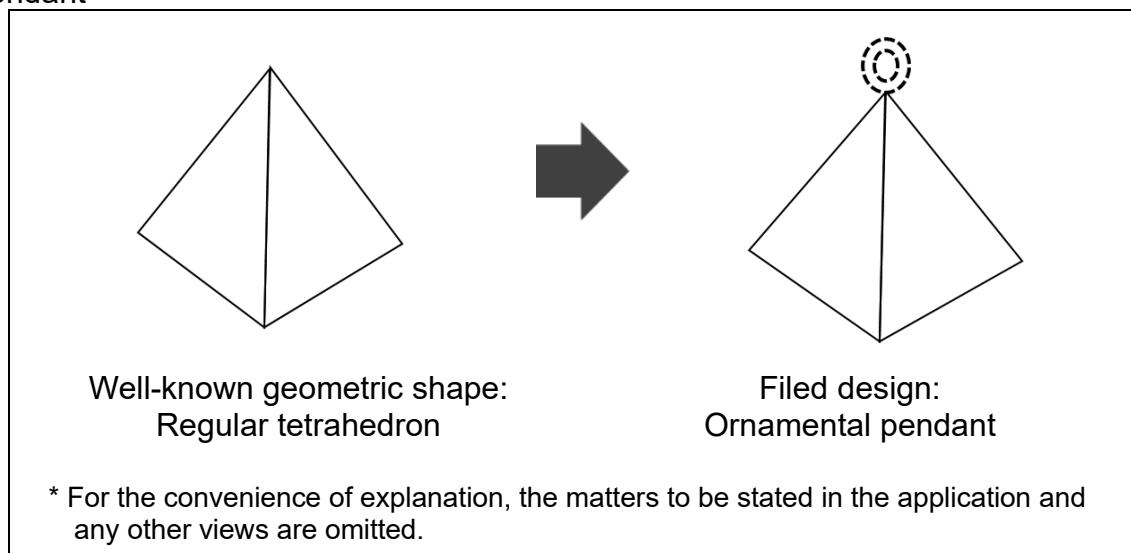


(Note) In the case example above, it is assumed that reducing the layers of lights to one is an ordinary technique in the field of revolving warning lights, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

6.7 Design through use or diversion of a constituent element beyond the framework of the article, etc.

[Case example 1] Example of a design based on a publicly known shape, etc.:
“Ornamental pendant”

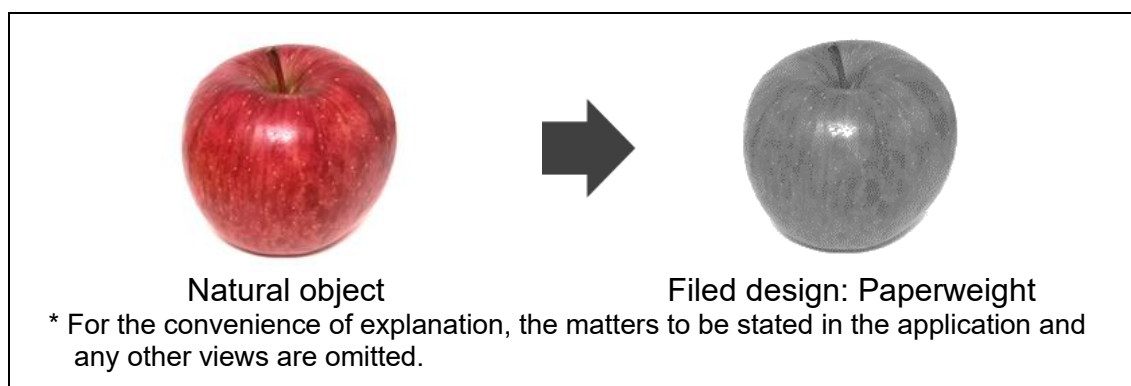
A design which merely represented a well-known geometric shape as an ornamental pendant



(Note) In the case example above, it is assumed that using a well-known geometric shape for the shape, etc. of the article, etc. is an ordinary technique in the field of ornamental pendants; that the arrangement of metal parts is also commonly seen in the field of ornamental pendants; and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 2] Example of a design based on a natural object, etc. (animal, plant, or mineral): “Paperweight”

A design which merely represented a natural object, etc. almost as it is as a paperweight



(Note) In the case example above, it is assumed that using the shape, etc. of a natural object, etc. for the shape, etc. of the article, etc. is an ordinary technique in the field of paperweights, and that the filed design shows no novelty or original

design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 3] Examples of a design based on copyright works

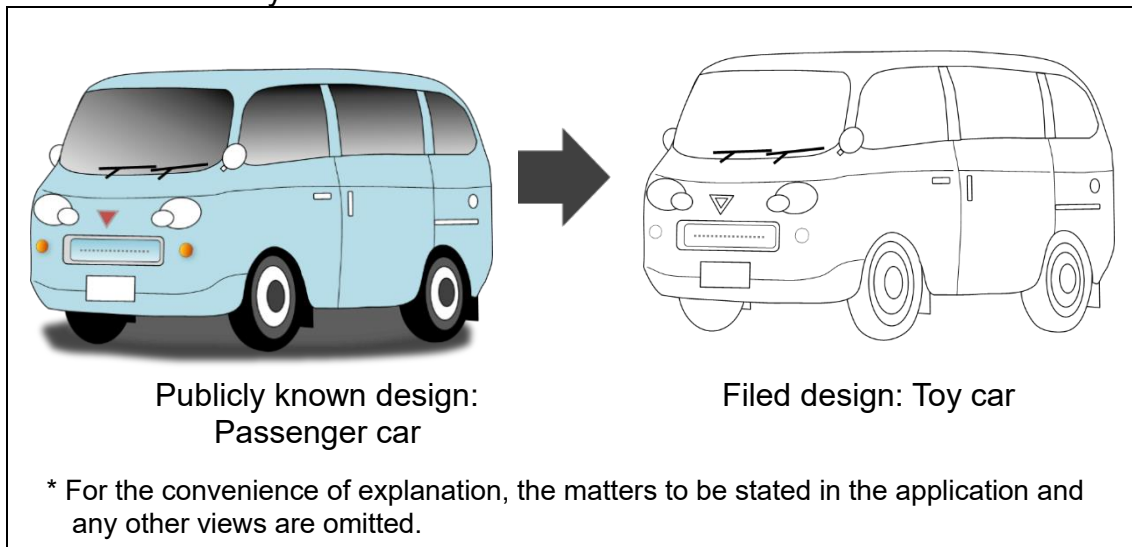
- A design which merely represented the shape of Rodin's "The Thinker" sculpture almost as it is as a figurine
- A design which merely represented Leonardo da Vinci's "Mona Lisa" painting almost as it is as wallpaper

[Case example 4] Examples of a design based on buildings

- A design which merely represented the shape of the "Eiffel Tower" almost as it is as an ornament
- A design which merely represents the shape of the "Phoenix Hall at the Byodoin Temple" almost as it is as an ornament

[Case example 5] "Toy cars"

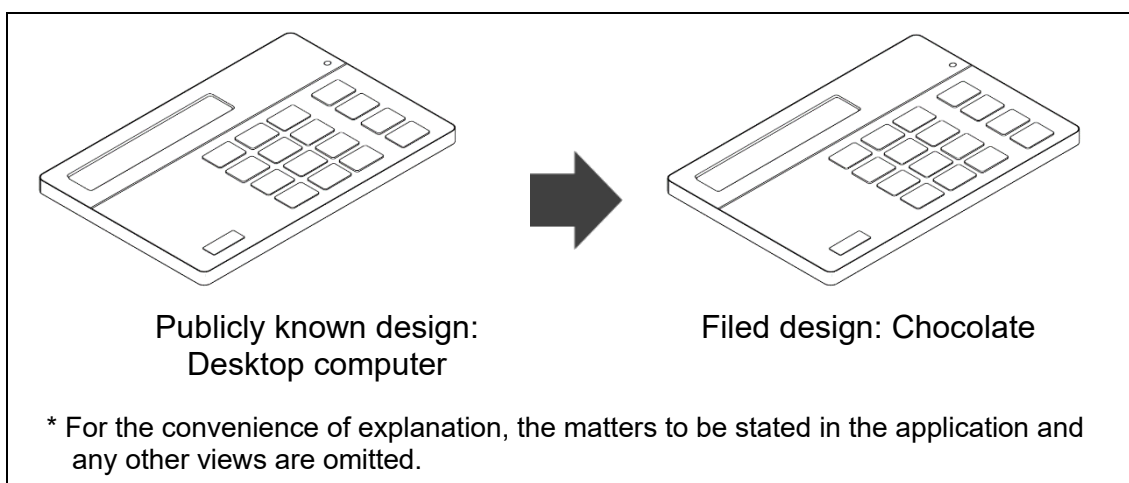
A design which merely represented the shape of a publicly known passenger car almost as it is as a toy car



(Note) In the case example above it is assumed that using the shape of a publicly known passenger car for the shape of the article, etc. is an ordinary technique in the field of toy cars, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

[Case example 6] “Chocolate”

A design which merely represents the shape of a publicly known desktop computer almost as it is as a chocolate



(Note) In the case example above, it is assumed that using the shape of a publicly known desktop computer for the shape of the article, etc. is an ordinary technique in the field of chocolates, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

Section 3 Points to Note when Examining Novelty & Creative Difficulty

1. Application of the provisions on novelty and creative difficulty

In examining the novelty and creative difficulty of a filed design, the examiner should first determine whether it complies with the requirements for novelty. The examiner should make a determination on creative difficulty only where no reason for refusal is found for novelty.

This is because Article 3, paragraph (2) of the Design Act provides that “except for designs prescribed in any of the items of the preceding paragraph” (Note).

(Note) “The items of the preceding paragraph” (the items of Article 3, paragraph (1) of the Design Act) prescribe the requirements for novelty.

2. Information that serves as the basis for determination

Information that serves as the basis for determination of novelty and creative difficulty is information that falls under any of the following 2.1 to 2.3, either in Japan or a foreign country, prior to the filing of the application for design registration.

In determining whether the information has become public prior to the filing of the application for design registration, the hours, minutes, and seconds should be taken into account. Where information has become publicly known in a foreign country, determination should be made based on a comparison of time converted into Japan time. (For international applications for design registration, see [1. “Novelty & Creative Difficulty” in Part IX, Chapter IV “Requirements for Design Registration of International Applications for Design Registration.”](#))

2.1 “Described in a distributed publication” (Article 3, paragraph (1), item (ii), Article 3, paragraph (2))

“Described in a distributed publication” means described in a publication (Note 1) which is made available for unspecified persons to view (Note 2).

(Note 1) “Publication” refers to a document, drawing or other similar medium for communicating information, which has been reproduced for the purpose of disclosing the contents through distribution to the general public.

(Note 2) The fact that someone has actually viewed the publication is not a requirement.

(1) Design described in a publication, etc.

“Design described in a publication” (including “shape, etc. or graphic image” in the case of determining creative difficulty; hereinafter the same shall apply in this paragraph) means a design that can be ascertained from matters described and matters equivalent to those described in a publication.

The examiner should find designs that can be ascertained from these matters as designs described in a publication.

The expression “matters equivalent to those described in a publication” means matters that a person skilled in the art could derive from matters described in the

Section 3 Points to Note when Examining Novelty & Creative Difficulty

publication based on the ordinary skill in the art of the design at the time of the filing of the application.

The examiner may not regard a design as a “cited design” if it cannot be ascertained by a person skilled in the art from matters described and matters equivalent to those described in a publication. This is because such a design is not a “design described in a publication.”

(2) Handling of the time of distribution

a. Inferring the time of publication distribution

Does the publication include a statement of when it was published?		Inferred distribution time
Yes (Note)	Where only the year of publication is stated	The end of the last day of that year
	Where the month and year of publication are stated	The end of the last day of that month in the year
	Where the day, month and year of publication are stated	The end of that day in the month and year
No	In the case of a foreign publication, where the timing of when it was received in Japan is known	The date backdated from when it was received in Japan by the period of time normally required from the country of publication to Japan
	Where there is another publication that contains a book review, excerpt or catalog, etc. about the publication	The date on which the other publication was distributed, estimated from when it was published
	Where the publication's reprinted or revised edition, it contains when the first edition was published	The date noted when the first edition was published
	Where there is other relevant information	The distribution date that can be inferred or recognized from that information

(Note) Where there is other relevant information besides the publication date stated in the publication, the examiner may assume that the distribution date which can be inferred or recognized from that information is the distribution time of the publication. For example, where there is a known date on which the publication was accepted (the date of acceptance seal) as examination materials by the Japan Patent Office.

b. Handling of cases where the filing date of the application for design registration and the publication date are the same

Where the filing date of an application for design registration and the publication date are the same, the examiner should not treat the distribution date as being prior to the filing of the application for design registration, unless it is clear that the publication was published before the application for design registration was filed.

2.2 “Made publicly available through an electric telecommunication line” (Article 3, paragraph (1), item (ii), Article 3, paragraph (2))

“Made publicly available through an electric telecommunication line” means posted on a webpage, etc. (Note 1) which is made available for unspecified persons to view (Note 2) via electric telecommunication lines (Note 3).

(Note 1) “Webpage, etc.” means those that post information on the Internet, etc.

“Internet, etc.” means the Internet, commercial databases, mailing lists and other means of providing information via electric telecommunication lines.

(Note 2) The fact that someone has actually accessed the webpage, etc. is not a requirement.

Specifically, a webpage, etc. can be described as having been made available to the public (made available for unspecified persons to view) if it satisfies both (i) and (ii) below.

(i) The webpage, etc. can be reached on the Internet through a link from another publicly known webpage, etc. and is registered with a search engine, or its address (URL) is listed in a means of communicating information to the public (for example, a widely-known newspaper or magazine).

(ii) Public access to the webpage, etc. is not restricted.

(Note 3) The term “line” means a transmission channel capable of two-way communication, generally consisting of a round-trip communication path. Broadcasting that can only transmit information one-way is not included under “line.” Cable television, etc. which transmits communication in both directions falls under the category of “line.”

(1) Designs posted on webpages, etc.

“Design posted on a webpage, etc.” (including “shape, etc. or graphic image” in the case of determining creative difficulty; hereinafter the same shall apply in this paragraph) means a design that can be ascertained from matters posted and matters equivalent to those posted on a webpage, etc.

The examiner should make findings on designs posted on webpages, etc. according to the descriptions in 2.1(1). However, in order to cite a design, matters posted on the webpage, etc. need to have been posted on that webpage, etc. with the same contents at the time of posting.

The examiner should determine whether or not a webpage, etc. was publicly available prior to the filing of the application based on the post date indicated on the webpage, etc. (Note 4).

(Note 4) Where the post date is not stated or only the year or month is stated and thus it is unclear whether the post date is prior to or after the filing date, the examiner may cite the posted information if proof regarding the post date can be obtained from an authorized person responsible for the posting, maintenance etc. of such information and the post date is prior to the filing date.

(2) Counterargument by an applicant regarding the date and content of posting (whether matters posted on the webpage, etc. were posted on that webpage, etc. with the same contents at the time of posting)

a. Cases where the applicant counterargues that the indicated date and content of posting are unreliable, saying only that it is not supported by evidence and is simply a disclosure on a webpage, etc.

In this case, because no specific evidence has been presented, the examiner should not accept that counterargument.

- b. Cases where the applicant makes a counterargument while presenting specific evidence, raising doubts about the date or content of posting

The examiner should contact the authorized person responsible for the posting, maintenance etc. of the information, and request that they confirm the date or content of the posting. At this time, the examiner should request the person issue a certificate about the date or content of posting on the webpage, etc.

Upon examining the counterargument etc. by the applicant, where the examiner's conviction about there being doubt remains unchanged, the examiner should not cite the shape, etc. posted on the webpage, etc.

2.3 "Publicly known" (Article 3, paragraph (1), item (i), Article 3, paragraph (2))

"Publicly known" means that the contents were known to unspecified persons as information that is not confidential (Note).

In particular, "publicly known" information that can be recalled just at the mention of its name, without having to produce evidence, is referred to as "widely known."

(Note) Information is "publicly known" if it became known to someone from a person with obligations of confidentiality as information that is not confidential. This is unrelated to whether the creator or applicant intended to keep it confidential.

Chapter III Exception to Lack of Novelty

1. Outline

Article 4 of the Design Act provides for an exception to lack of novelty, namely, where a created design has become a publicly known design against the will of the person having the right to obtain a design registration at the time of the disclosure or as a result of an act of the person having the right to obtain a design registration (hereinafter referred to as a “disclosed design”), and where the person having the right to obtain a design registration for the said disclosed design files an application for design registration within one year from the date on which the disclosed design was first disclosed and the prescribed requirements are complied with, only with regard to the said application for design registration, the said disclosed design shall be deemed not to be a publicly known design in determining the requirements of novelty (the items of Article 3, paragraph (1) of the Design Act) and creative difficulty (Article 3, paragraph (2) of the Design Act).

Since the provisions of Article 4, paragraphs (1) and (2) of the Design Act do not provide for any relationship between the disclosed design and the design in the application for design registration, regardless of the relationship between the two designs, such as whether or not the two designs are identical, similar or not similar, etc., the provisions of Article 4, paragraph (1) or (2) of the Design Act should apply to the disclosed design as long as the disclosed design and the said application for design registration comply with the prescribed requirements.

Furthermore, an application for design registration for a design for which the design registration is requested for part of an article, etc. may also be subject to application of the provisions of Article 4, paragraph (1) or (2) of the Design Act.

2. Requirements for applying the provisions of Article 4, paragraph (2)

The examiner should admit application of the provisions of Article 4, paragraph (2) of the Design Act to a disclosed design only where it is determined that the design complies with all of the following requirements (1) to (3).

- (1) The design has fallen under (i) or (ii) below as a result of an act of the person having the right to obtain a design registration (the creator of the design or their successor).
 - (i) A design that was publicly known in Japan or a foreign country, prior to the filing of the application for design registration.
 - (ii) A design that was described in a distributed publication, or a design that was made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the application for design registration.

However, this excludes the design that has fallen under (i) or (ii) above as a result of information being published in a gazette relating to an invention, utility model, design or trademark (Article 4, paragraph (2) of the Design Act).

- (2) The person having the right to obtain a design registration for the design in (1) above has filed the application for design registration.
- (3) The application for design registration has been filed within one year from the date on which the design in (1) above was disclosed for the first time.

In making a determination on the application of the provisions of Article 4, paragraph (2) of the Design Act, the examiner should determine whether or not the above requirements have been proven to have been met, based on the “proving document” submitted pursuant to the provisions of Article 4, paragraph (3) or (4) of the Design Act (hereinafter simply referred to as the “proving document”).

2.1 Person having the right to obtain a design registration

A “person having the right to obtain a design registration” as provided in Article 4, paragraph (2) of the Design Act means a person having the right to obtain a design registration for the disclosed design at the time of the disclosure.

Generally, the person having the right to obtain a design registration for the disclosed design at the time of the disclosure is the creator of the disclosed design, but where a third party had succeeded to the creator’s right to obtain a design registration prior to disclosure, it shall be the person who had the said right at the time of disclosure as a result of the succession. If the person having the right to obtain a design registration for the disclosed design at the time of disclosure is different from the creator, the fact of succession must be clearly indicated and proved.

2.2 Fact that the disclosed design was disclosed as a result of an act of the person having the right to obtain a design registration for the disclosed design at the time of the disclosure

The fact that the disclosed design has fallen under the category of a publicly known design as a result of an act of the person having the right to obtain a design registration for the disclosed design at the time of the disclosure needs to be clearly indicated and proved in the proving document.

3. Specific procedures for seeking application of the provisions of Article 4, paragraph (2) of the Design Act

- (1) A document stating a request for the application of the provisions of Article 4, paragraph (2) of the Design Act must be submitted to the Commissioner of the Patent Office concurrently upon filing the application for design registration (Article 4, paragraph (3) of the Design Act). However, in lieu of submitting the said document, submission of the document may be omitted by including a statement to that effect in the application for design registration (Article 27-4 of the Ordinance for Enforcement of the Patent Act applied mutatis mutandis pursuant to Article 19, paragraph (3) of the Ordinance for Enforcement of the Design Act).

If the procedure is followed by using an electronic data processing system, in lieu of submitting the said document, a statement to that effect must be recorded in the application for design registration (Article 12 of the Ordinance for Enforcement of the Act on Special Provisions of Procedures, etc. concerning Industrial Property Rights).

(2) A document proving that the disclosed design is a design that is subject to application of the provisions of Article 4, paragraph (2) of the Design Act must be submitted to the Commissioner of the Patent Office within 30 days from the filing date of the application for design registration (Article 4, paragraph (3) of the Design Act). However, in cases where there have been two or more acts of a person having the right to obtain a design registration which have resulted in it falling under items (i) or (ii) of Article 3, paragraph (1) of the Design Act in respect of the identical or similar design, it would be sufficient to submit the “proving document” with respect to one of the two or more acts conducted on the earliest date (Article 4, paragraph (3) of the Design Act).

In addition, with regard to submission of the proving document, according to the provisions of Article 1 of the Ordinance for Enforcement of the Design Act and Form No. 1 of the same Ordinance for Enforcement, the said document must be submitted together with a document of submission of a certificate for requesting the exception to lack of novelty.

4. Procedures for determining application of the provisions of Article 4, paragraph (2) of the Design Act based on a “proving document”

4.1 Cases where a “proving document” prepared according to the following format is submitted

In principle, the examiner should determine that the disclosed design has been proved to comply with the requirements stated in 2. “Requirements for applying the provisions of Article 4, paragraph (2)” in this Chapter, and should admit application of the provisions of Article 4, paragraph (2) of the Design Act.

However, if the examiner finds evidence which casts doubt on the fact that the “disclosed design” is a design that is subject to application of the provisions of Article 4, paragraph (2) of the Design Act, the examiner should not admit application of the provisions of Article 4, paragraph (2) of the Design Act.

Format of “proving document”

<p>Certificate for requesting application of the provisions on exception to lack of novelty of design</p>		<p>Photograph, etc. presenting disclosed design (separate sheet allowed)</p>
<p>1. Facts of disclosure</p> <ul style="list-style-type: none"> (i) Disclosure date (ii) Disclosure site (iii) Discloser (iv) Contents of disclosed design (attach photographs, etc. of the design) <p>2. Facts concerning succession to the right to obtain design registration, etc.</p> <ul style="list-style-type: none"> (i) Creator of disclosed design (ii) Person having the right to obtain a design registration at the time of the act leading to disclosure of design (the right holder at the time of the action) (iii) Applicant for design registration (the person stated in the application form) (iv) Discloser (v) About succession to the right to obtain a design registration (transfer of the right from the person in (i) through the person in (ii) to the person in (iii)) (vi) Relationship, etc. between the right holder at the time of the action and the discloser (e.g., state that the person in (iv) disclosed the design as a result of an act of the person in (ii)) <p>I hereby certify that the above statements are true.</p>		
		<p>YYYY/MM/DD Applicant name</p>

In this Chapter, the facts equivalent to the contents of “1. Facts of disclosure” and “2. Facts concerning succession to the right to obtain design registration, etc.” above are hereinafter referred to as “facts of disclosure” and “facts concerning succession to the right to obtain design registration, etc.,” respectively.

4.2 Cases where the “proving document” is submitted in a format different from that indicated in 4.1 above

If the content of the submitted “proving document” is equivalent to the format indicated in 4.1 above, in principle, the examiner should determine that the disclosed design has been proved to comply with the requirements stated in 2., and should admit application of the provisions of Article 4, paragraph (2) of the Design Act.

However, even if a “proving document” is submitted with content equivalent to the format indicated in 4.1, if the examiner finds evidence which casts doubt on the fact that the “disclosed design” is a design that is subject to application of the provisions of Article 4, paragraph (2) of the Design Act, the examiner should not admit application of the provisions of Article 4, paragraph (2) of the Design Act.

4.3 Specific determination in regard to the contents stated in the “proving document”

The examiner shall make a determination in regard to the contents stated in the “proving document” as follows.

4.3.1 “Disclosure date” of disclosed design

The date on which the disclosed design was publicly known, that is the date on which the contents were known to unspecified persons as not being secret, and the date on which the design was described in a distributed publication or the date on

which the design was made publicly available through an electric telecommunication line in Japan or a foreign country, shall be the disclosure date of the said design.

In cases where the design has been publicly known in a foreign country, it shall be determined with the date converted to Japan time. For example, if the design is disclosed in Japan at 10am on January 1st and simultaneously disclosed in the eastern United States (9pm on December 31st local time), January 1st Japan time shall be the earliest date.

4.3.2 “The earliest date” (the proviso to Article 4, paragraph (3) of the Design Act)

In cases where there are multiple identical or similar disclosed designs which have fallen under a publicly known design as a result of the acts of a person having the right to obtain a design registration, it would be sufficient to state in the “proving document” any one act conducted on the earliest date, without having to prove each of the “facts of disclosure.”

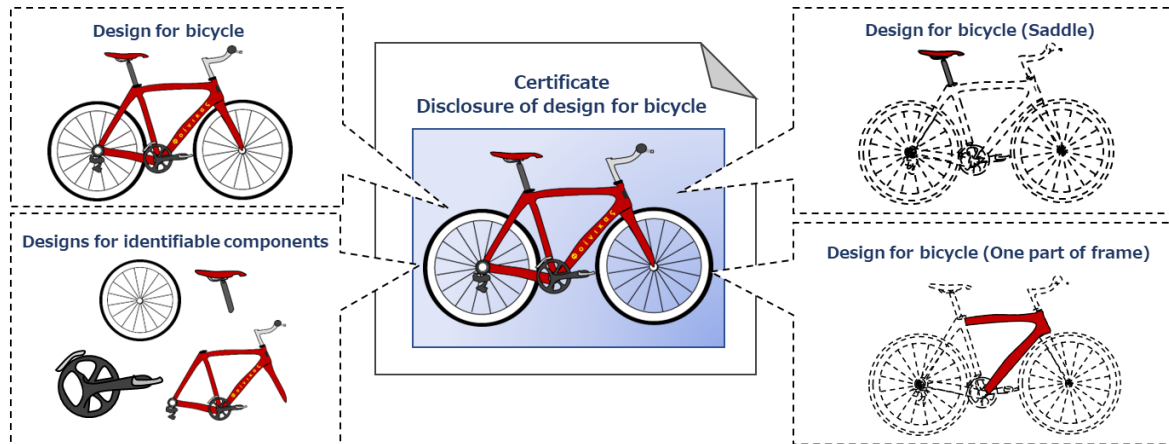
In addition, in cases where there are multiple acts disclosing the identical or similar design conducted on the earliest disclosure date, it is irrelevant whether the disclosure time on the date is earlier or later.

4.3.3 Finding the disclosed design stated in the “proving document”

With regard to a “disclosed design” for which the “facts of disclosure” are explicitly stated in the “proving document,” in principle, the examiner should admit the application of the provisions of Article 4, paragraph (2) of the Design Act.

If the article, etc. to the disclosed design stated in the “proving document” contains separately identifiable components or accessories, etc. and those components or accessories are the disclosed design, those components or accessories should also be treated as being proved (if some parts are hidden inside the article or building, only the parts that appear externally should be treated as a publicly known design), also each part of the article, etc. to the disclosed design stated in the “proving document,” i.e. the position, size, and scope indicated within the article, etc., should also be treated as being proved.

For example, if the disclosed design stated in the “proving document” is a bicycle assembled from components such as a frame, tires, and saddle, as in the case below, the design to which the provisions of Article 4, paragraph (2) of the Design Act apply includes not only the design for the bicycle, but also designs for components such as a frame, tires, and saddle which are identifiable as components of the bicycle, or designs for parts constituting the saddle part of the bicycle or a part of the bicycle frame, which are considered to be a design for which design registration is requested.

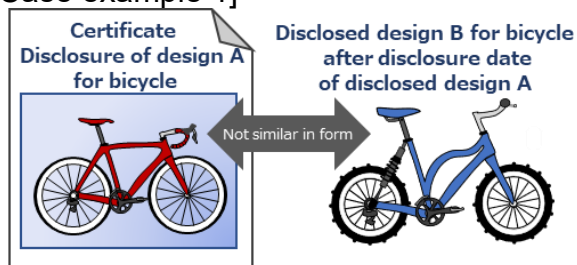


4.4 “Identical or similar design” to the disclosed design stated in the “proving document”

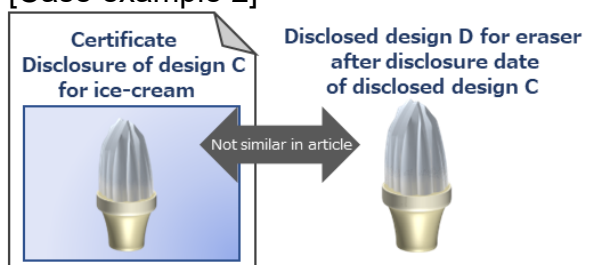
An identical or similar disclosed design that has been disclosed after the disclosure date of the disclosed design stated in the “proving document,” shall be deemed not to have fallen under a publicly known design, in determining the registration requirements of novelty (the items of Article 3, paragraph (1) of the Design Act) and creative difficulty (Article 3, paragraph (2) of the Design Act). On the other hand, for a disclosed design which is not similar to the disclosed design stated in the “proving document,” the application of the provisions of Article 4, paragraph (2) of the Design Act based on the said “proving document” shall not be admitted. For standards for determining the similarity between the disclosed design stated in the “proving document” and other disclosed designs, see Part III, Chapter II, Section 1 “Novelty,” 2.2 “Determination of similarity,” etc.

Examples where the application of the provisions of Article 4, paragraph (2) of the Design Act is not admitted, as the disclosed design is not similar to the disclosed design stated in the “proving document”

[Case example 1]



[Case example 2]

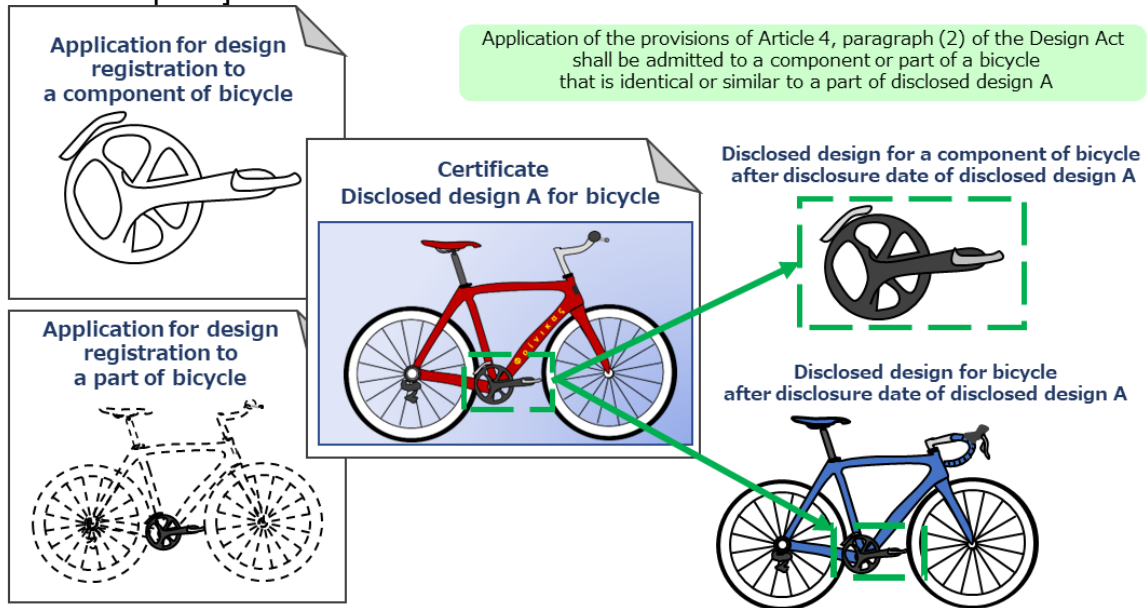


4.5 Determining application of the provisions of Article 4, paragraph (2) of the Design Act for a disclosed design after the disclosure date of the disclosed design stated in the “proving document”

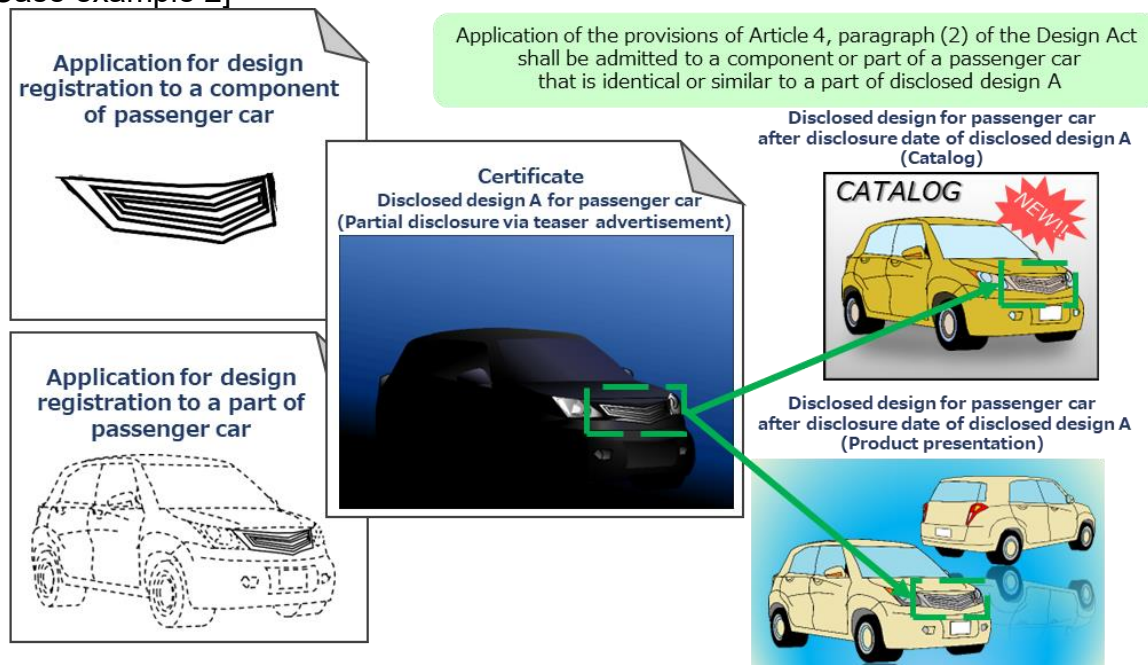
A determination on the application of the provisions of Article 4, paragraph (2) of the Design Act to a disclosed design after the disclosure date of the disclosed design stated in the “proving document” shall be made based on the parts of the disclosed design stated in the “proving document” that are subject to comparison with the design in the application for design registration.

For example, in cases where the design in the application for design registration is a design for which the design registration is requested for a component or part of an article, etc., even if the disclosed design stated in the “proving document” is to the entire article, etc., the similarity between the disclosed design stated in the “proving document” and the subsequent designs should be determined based on the component corresponding to the said design in the application for design registration or the part for which the design registration is requested.

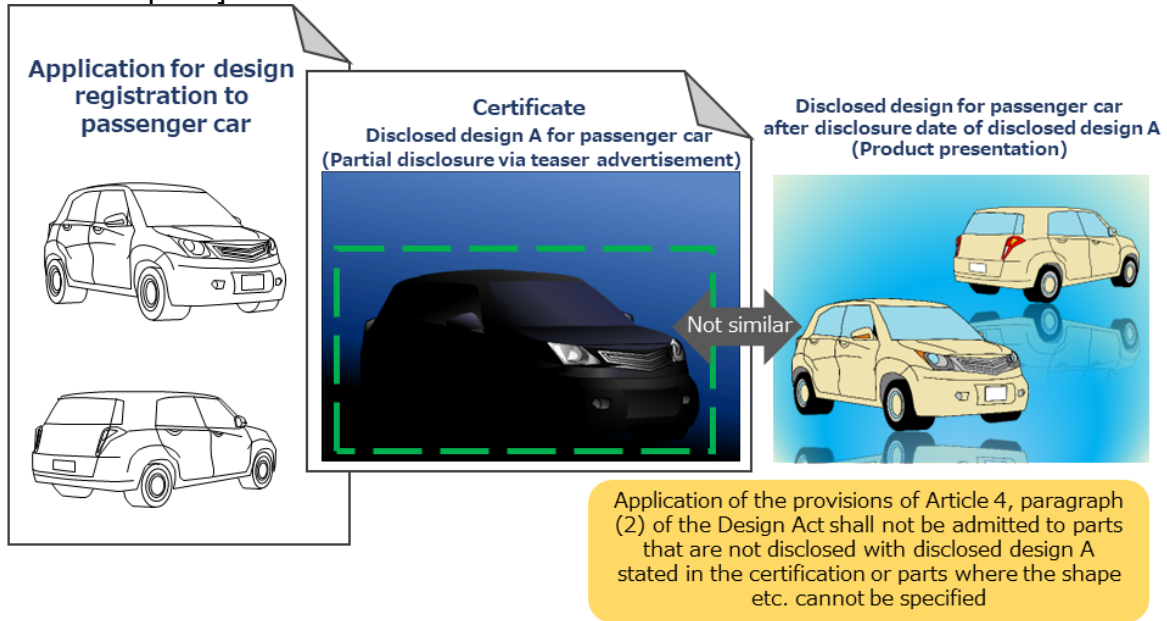
[Case example 1]



[Case example 2]



[Case example 3]



4.6 Determination procedures of cases where a notice of reasons for refusal is given without admission of the application of the provisions of Article 4, paragraph (2) of the Design Act

With regard to a disclosed design, after the examiner has given a notice of reason for refusal without admitting the application of the provisions of Article 4, paragraph (2) of the Design Act, the applicant may assert in a written opinion, a written statement, or other such documents that the application of the provisions of Article 4, paragraph (2) of the Design Act should be admitted. In this case, the examiner shall determine again whether it has been proved that the design complies with the requirements stated in 2., in consideration of the assertion of the applicant together with the matters stated in the “proving document.”

5. Points to note in relation to determining application of the provisions of Article 4, paragraph (2) of the Design Act

5.1 Handling of cases where an identical or similar design to the disclosed design stated in the “proving document” has been disclosed by a third party, between the “date on which a design fell under the provisions” of Article 4, paragraph (2) of the Design Act and the date on which the application for design registration was filed.

In cases where a third party has disclosed a design that is identical or similar to the “design which has fallen under Article 4, paragraph (2) of the Design Act” between “the date on which the design fell under that paragraph” and the date on which the application for design registration was filed, in principle, the design shall be deemed to fall under a publicly known design as a result of disclosure by the third party.

However, if it is clear that the disclosure by the third party was based on the disclosure of “the design which has fallen under Article 4, paragraph (2) of the

Design Act” (note), the design shall be deemed not to have fallen under a publicly known design in spite of that disclosure.

(Note) “If it is clear that the disclosure by the third party was based on the disclosure of ‘the design which has fallen under Article 4, paragraph (2) of the Design Act’” means, for example, the following.

Example 1: A design disclosed as the result of a product being sold by the person having the right to obtain a design registration, and the design disclosed as the result of the product being published on a website by the third party who purchased it

Example 2: A design disclosed as the result of a person having the right to obtain a design registration exhibiting in a trade fair, and the design disclosed as a result of information on that exhibition being published in a newspaper

Example 3: A design disclosed as the result of a product being delivered to a distributor by a person having the right to obtain a design registration, and the design disclosed as the result of the product being sold by a retailer via the distributor

Example 4: A design disclosed as the result of a product being published on a website by a person having the right to obtain a design registration, and the design disclosed as the result of the product being posted on SNS by the third party who viewed it

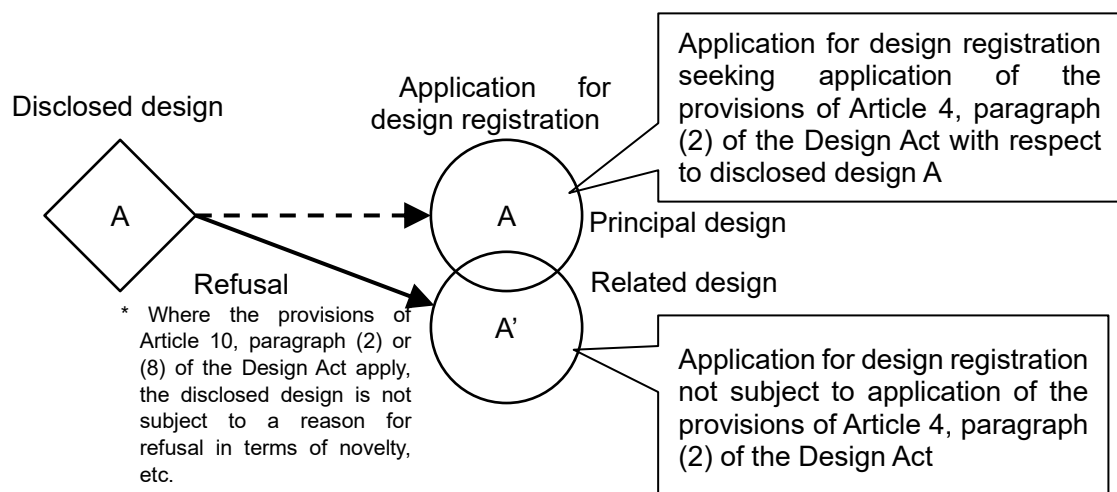
5.2 Handling of disclosed design A with respect to application A' for design registration in cases where, in order to seek application of the provisions of Article 4, paragraph (2) of the Design Act with respect to application A for design registration of a principal design, disclosed design A, which was disclosed prior to the filing of the application for design registration, is stated in the “proving document,” but with respect to application A' for design registration of a design subsequently filed as a related design, required procedures for seeking application of the provisions of Article 4, paragraph (2) of the Design Act were not conducted

With respect to application A' for design registration of a related design, since required procedures for seeking application of the provisions of Article 4, paragraph (2) of the Design Act are not conducted, disclosed design A may not be deemed to have not fallen under a publicly known design.

Thus, a design in application A' for design registration that is similar to disclosed design A, which has fallen under a publicly known design prior to the filing of the application thereof, falls under Article 3, paragraph (1), item (iii) of the Design Act and may not be registered as a design.

On the other hand, in cases where procedures for seeking application of the provisions of Article 4, paragraph (2) of the Design Act are conducted with respect to application A' for design registration of a related design and disclosed design A is stated in the “proving document” so as to comply with the prescribed requirements, the provisions of Article 4, paragraph (2) of the Design Act apply and disclosed design A shall be deemed not to have fallen under a publicly known design.

In addition, in cases where the provisions of Article 10, paragraph (2) or paragraph (8) of the Design Act apply to disclosed design A, it is excluded from information that serves as the basis for determination of novelty and creative difficulty with respect to application A' for design registration (see [3.7 “Application of the provisions concerning novelty and creative difficulty” in Part V “Related Design”](#)).



6. Requirements for applying the provisions of Article 4, paragraph (1) of the Design Act

The examiner should admit application of the provisions of Article 4, paragraph (1) of the Design Act to a disclosed design only where it is determined that the design complies with all of the following requirements (1) to (3).

- (1) The design has fallen under (i) or (ii) below against the will of the person having the right to obtain a design registration (the creator of the design or their successor).
 - (i) A design that was publicly known in Japan or a foreign country, prior to the filing of the application for design registration.
 - (ii) A design that was described in a distributed publication, or a design that was made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the application for design registration.
- (2) The person having the right to obtain a design registration for the design in (1) above has filed the application for design registration.
- (3) The application for design registration has been filed within one year from the date on which the design in (1) above was disclosed for the first time.

6.1 Person having the right to obtain a design registration for the disclosed design

A “person having the right to obtain a design registration” as provided in Article 4, paragraph (1) of the Design Act means a person having the right to obtain a design registration for the disclosed design at the time of the disclosure.

Generally, the person having the right to obtain a design registration for the disclosed design at the time of the disclosure is the creator of the disclosed design, but where a third party had succeeded to the creator’s right to obtain a design registration prior to disclosure, it shall be the person who had the right at the time of disclosure as a result of the succession. If the person having the right to obtain a design registration for the disclosed design at the time of disclosure is different from the creator, the fact of succession must be clearly indicated and proved.

6.2 Fact that the disclosure was against the will of the person having the right to obtain a design registration

Cases where a design is disclosed against the will of the person having the right to obtain a design registration correspond to, for example, the case where a design created by a creator is disclosed by a third party through theft or misappropriation.

The fact of the developments that led to the disclosure against the will of the person having the right to obtain a design registration for the disclosed design at the time of the disclosure need to be clearly indicated and proved.

6.3 Procedures for seeking application of the provisions of Article 4, paragraph (1) of the Design Act

The procedures for seeking application of the provisions of Article 4, paragraph (1) of the Design Act (time limitations, etc. with respect to submission of a document stating a request for the application of the provisions of Article 4, paragraph (1) of the

Design Act, making of a statement in the filed application requesting application of the said provisions, or submission of a document proving the fact that the disclosure was against the will of the person having the right to obtain a design registration) are not provided in Article 4, paragraph (3) of the Design Act.

Therefore, it is sufficient for an applicant for design registration to clearly indicate and prove in a written opinion, a written statement, or other such documents the fact that the design complies with the requirements set forth in 6. above, at the time when the fact becomes clear that the disclosure was against the will of the person having the right to obtain a design registration, for example, when the reason for refusal regarding the said application for design registration was notified pursuant to the provisions of the items in Article 3, paragraph (1) or Article 3, paragraph (2) of the Design Act.

In addition, where it becomes clear prior to the filing of the application for design registration that a disclosed design complying with the requirements set forth in 6. above exists, the applicant for design registration may submit a document proving such fact at the time of filing the application for design registration.

6.4 Determining application of the provisions of Article 4, paragraph (1) of the Design Act

The examiner should determine whether or not it has been reasonably explained that the disclosed design complies with the requirements set forth in 6 above, based on any written opinion, written statement or other such documents submitted by the applicant indicating that the disclosed design may be subject to application of the provisions of Article 4, paragraph (1) of the Design Act.

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

1. Outline

Article 3-2 of the Design Act provides that, where no creation of a new design can be found in the design in a later application, such as when part of the design in a prior application is filed as the design in a later application almost as it is, the design in the later application may not be registered.

However, the reason for refusal under this provision does not apply where an application for design registration was filed by the same applicant as that for the prior application before the date of publication of the design bulletin pertaining to the prior design registration (excluding a design bulletin pertaining to a design which was requested to be kept secret and in which the statement in the application and drawings, etc. attached to the application were published) (proviso to Article 3-2 of the Design Act). In addition, this provision shall also not apply to cases where the application for design registration filed by the same person is an application for design registration of a related design (Article 10, paragraph (3) of the Design Act) (see [3.6 “Application of the provisions 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” in Part V “Related Design”](#)).

This Chapter deals with exclusion from protection of a design in a later application that is identical or similar to part of a design in a prior application which pertains to the application for design registration that is under examination (hereinafter referred to as the “Application” in this Chapter).

2. Design bulletins that serve as the basis for application of the provisions of the main clause of Article 3-2 of the Design Act

The design bulletin that serves as the basis for application of the provisions of the main clause of Article 3-2 of the Design Act is either of the following design bulletins for a design filed prior to the filing date of the application for design registration subject to the application of Article 3-2 of the Design Act which was published after the filing of the application for design registration.

- (1) A design bulletin based on the provisions of Article 20, paragraph (3) of the Design Act
(Registered Design Bulletin)
- (2) A design bulletin based on the provisions of Article 66, paragraph (3) of the Design Act
(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)

3. Design described in the statement in the application and drawing, photograph, model or specimen attached to the application

A “design described in the statement in the application and drawing, photograph, model or specimen attached to the application in the design bulletin” as provided in Article 3-2 of the Design Act specifically refers to a design which has been published in a design bulletin and which has been created by the applicant for design registration who filed the prior application, in other words, which has been disclosed by the applicant for design registration who filed the prior application as the shape, etc. of an article, etc. to the design described in the column of “Article to the Design” of the application (hereinafter referred to as the “design disclosed in a prior application”).

Therefore, information other than the design disclosed in the prior application which is described in a view showing the state of use or any other reference view to be added where it is necessary to help in understanding the design cannot be used as information that serves as the basis for application of the provisions of Article 3-2 of the Design Act.

This is because if, in a view showing the state of use or any other reference view to be added where it is necessary to help in understanding the design, amendment is made to a design other than the design disclosed in the prior application to the extent that it does not change the gist of such design the contents of descriptions other than those of the design disclosed in the prior application may change while examination, trial or retrial of the application is pending, and excluding a later application based on such unstable information will be disadvantageous for the applicant for design registration who files the later application, or for the reason that it runs contrary to the purport of the provisions of Article 3-2 of the Design Act to exclude a later application by finding a value of creation in information that has merely been added for an explanatory purpose to help in understanding the design disclosed in the prior application.

4. Drawings for specifying the design disclosed in a prior application

4.1 In the case of an application for design registration for a whole design

In the case of a three-dimensional article, the front view, rear view, left side view, right side view, top view and bottom view that represent the design for which the design registration is requested, or drawings that are replaceable therewith (hereinafter referred to as “a set of drawings”) are regarded as drawings for specifying the design disclosed in a prior application.

In the case of a flat and thin article, the surface view and back side view (as in the case of a design for a three-dimensional article, hereinafter referred to as “a set of drawings”) are regarded as drawings for specifying the design disclosed in a prior application.

In addition, a development view, sectional view, end elevational view of the cut part, enlarged view, perspective view, graphic image view or other necessary drawings, but not a reference view, to be added where a set of drawings alone

cannot sufficiently represent the design in an application for design registration (hereinafter referred to as “other necessary drawings”) are also regarded as drawings for specifying the design disclosed in a prior application.

4.2 In the case of an application for design registration for a design for which the design registration is requested for part of an article, etc.

In the case of an application for design registration for a design for which the design registration is requested for part of an article, etc., a set of drawings representing the shape, etc. of the entire article, etc. to the design of the design for which the design registration is requested for part of an article, etc., including the “part for which the design registration is requested” and “any other parts,” and other necessary drawings are regarded as drawings for specifying the design disclosed in a prior application.

4.3 In the case of an application for design registration for a design for a set of articles or for an interior design

In the case of an application for design registration for a design for a set of articles or for an interior design, sets of drawings for the respective designs pertaining to the articles, etc. constituting the design for a set of articles or the interior design (hereinafter referred to as “constituent articles, etc.”), or a set of drawings in the state where the constituent articles, etc. are combined, and other necessary drawings are also regarded as drawings for specifying the design disclosed in a prior application.

5. Part of a design

Part of a design means a closed area that is included in the appearance of the design disclosed in a prior application. Therefore, the examiner should not treat a shape, pattern or color which is a constituent element of a design and which has been conceptually separated from the design as being part of the design. For example, where the design disclosed in a prior application consists of a combination of a shape and pattern of an article, etc., part of a design refers to part of the entire design in the combined state, and the examiner should not treat merely the shape of the article without the pattern as being part of a design.

Where the design for which the design registration is requested in the later application represents the shape, etc. of the entire article, etc. to the design of a design for which the design registration is requested for part of an article, etc. in the prior application, including the “part for which the design registration is requested” and “any other parts” of the design for which the design registration is requested for part of an article, etc., the design in the later application should not be treated as being part of the design in the prior application.

6. Determination of similarity between part of a design disclosed in a prior application and a whole design in a later application

In applying the provisions of Article 3-2 of the Design Act, in principle, it is necessary that the entire shape, etc. of the whole design in the later application,

which is subject to the provisions of Article 3-2 of the Design Act, is disclosed in the design disclosed in the prior application (including cases where the entire shape, etc. of the whole design in the later application, which is subject to the provisions of Article 3-2 of the Design Act, is not disclosed in the design disclosed in the prior application, but is sufficiently represented to a comparable level).

Regarding a design disclosed in a prior application and a whole design in a later application, regardless of (i) whether the design disclosed in the prior application is a whole design or a design for which design registration is requested for part of an article, etc., and (ii) whether the article, etc. to the design of the design disclosed in the prior application and that of the whole design in the later application are identical, similar or not similar, where the part of the design disclosed in the prior application that coincides with the whole design in the later application and the article, etc. to the design of the whole design in the later application have an identical or similar usage and function and their respective shapes, etc. are identical or similar, the examiner should determine that the whole design in the later application and the part of the design disclosed in the prior application that coincides with the whole design in the later application are similar.

7. Design in a later application that is identical or similar to part of a design in a prior application

The provisions of Article 3-2 of the Design Act also apply to cases where a design for which the design registration is requested for part of an article, etc. in a later application is not found to be a creation of a new design, such as where an application for design registration is filed while adopting a part of the design in a prior application almost as it is as the “part for which the design registration is requested” of a design for which the design registration is requested for part of an article, etc. in a later application.

7.1 Determination of similarity between part of a design disclosed in a prior application and a design for which the design registration is requested for part of an article, etc. in a later application

In applying the provisions of Article 3-2 of the Design Act, in principle, it is necessary that the entire shape, etc. of the “part for which the design registration is requested” of the design for which the design registration is requested for part of an article, etc. in the later application, which is subject to the provisions of Article 3-2 of the Design Act, is disclosed in the design disclosed in the prior application. However, even where the entire shape, etc. of the “part for which the design registration is requested” of the design for which the design registration is requested for part of an article, etc. in the later application, which is subject to the provisions of Article 3-2 of the Design Act, has not been disclosed in the design disclosed in the prior application, if it is sufficiently represented to a comparable level, the examiner may apply the said provisions.

In determining similarity between the design disclosed in a prior application and the design for which design registration is requested for part of an article, etc. in a later application, it does not matter (i) whether the design disclosed in the prior application is a whole design or a design for which design registration is requested for part of an article, etc., and (ii) whether the article, etc. to the design of the design

disclosed in the prior application and the article, etc. to the design of the design for which design registration is requested for part of an article, etc. in the later application are identical, similar or not similar. Furthermore, where the part of the design disclosed in a prior application that coincides with the “part for which the design registration is requested” of a design for which design registration is requested for part of an article, etc. in a later application and the “part for which the design registration is requested” of the design for which design registration is requested for part of an article, etc. in the later application have an identical or similar usage and function and their respective shapes, etc. are identical or similar, the examiner should determine that the part of the design disclosed in the prior application and the design for which design registration is requested for part of an article, etc. in the later application are similar.

7.2 Examples of applications for design registration for a design for which the design registration is requested for part of an article, etc. that fall under the provisions of Article 3-2 of the Design Act

With regard to case examples of applications for design registration for a design for which the design registration is requested for part of an article, etc. that fall under the provisions of Article 3-2 of the Design Act, see case examples 1 through 6 in [2.2.2.8 “Examples of designs for which the design registration is requested for part of an article, etc. that is similar to a publicly known design” in 2.2 “Determination of similarity” in Part III, Chapter II, Section 1 “Novelty.”](#) by replacing the term “publicly known design” with “design disclosed in a prior application.”

8. Determining application of the provisions of the proviso to Article 3-2 of the Design Act

According to the provisions of the proviso to Article 3-2 of the Design Act, an application that is ineligible for design registration under the main clause of Article 3-2 of the Design Act does not fall under a reason for refusal if it complies with all of the following requirements.

8.1 The applicant of the application for design registration and the applicant of the earlier application are the same person

The determination as to whether the applicant of the application for design registration and the applicant of the earlier application are the same person is made based on the statement of the applicant for design registration in the respective applications at the time of making determination on application of the provisions, that is, the time when a certified copy of the examiner’s decision or a notification of reasons for refusal is served. Therefore, even if the applicants are different at a time other than the time of making determination on application of the provisions or the applicant of the application for design registration and the holder of the design right pertaining to the earlier application are different, that is not taken into consideration in the determination on application of the provisions.

In the case of a joint application, the “same person” means that all applicants are the same.

8.2 The application for design registration was filed before the publication date of the design bulletin in which the earlier application was published under Article 20, paragraph (3) (except for a design bulletin in which the matters listed in Article 20, paragraph (3), item (iv) was published under Article 20, paragraph (4))

The application for design registration needs to have been filed before the publication date of the design bulletin pertaining to design registration of the earlier application (excluding a design bulletin pertaining to a design which was requested to be kept secret and in which the statement in the application and drawings, etc. attached to the application were published).

In addition, the provisions of this Article shall not apply to cases where the applicant of the prior application for design registration and the applicant for design registration for a related design are the same person (Article 10, paragraph (3) of the Design Act) (see [3.6 “Application of the provisions 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” in Part V “Related Design”](#)).

* Please note that, although design bulletins here do not include the International Designs Bulletin, an international publication (Note) in the case of international applications for design registration (Note), a design that is listed in the International Designs Bulletin which has been published internationally shall fall under a design as provided in Article 3, paragraph (1), item (ii) of the Design Act (designs that were described in a distributed publication, or designs that were made publicly available through an electric telecommunication line in Japan or a foreign country).

(Note) With regard to “international applications for design registration” and “international publication,” see [Part IX “International Application for Design Registration”](#); the same shall apply hereinafter.

9. Time requirement concerning application of the provisions of Article 3-2 of the Design Act

The provisions of Article 3-2 of the Design Act apply to an application for design registration (excluding an application to which the provisions of the proviso apply) 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).

In addition, Article 3, paragraph (1), item (ii) or (iii) of the Design Act applies to an application for design registration that was obviously filed after the time of publication of the design bulletin for the prior application for design registration.

9.1 Reference date for determination on application of the provisions of Article 3-2 of the Design Act with regard to division of an application for design registration, conversion of an application, or filing of a new application for an amended design

In the case of division of an application for design registration under Article 10-2, paragraph (1) of the Design Act, conversion of a patent application or an application for utility model registration into an application for design registration under Article 13, paragraph (1) or (2) of the Design Act, or filing of a new application for design registration for an amended design for which a ruling dismissing an amendment has been made under Article 17-3 of the Design Act, if the procedures are conducted legitimately, such application for design registration is deemed to have been filed at the time of filing the original application or at the time of submitting the written amendment of proceedings.

However, since determination on application of the provisions of Article 3-2 of the Design Act is made on the basis of the filing date of the application for design registration, with regard to a new application for design registration resulting from division, a new application for design registration resulting from conversion, or a new application for design registration for an amended design for which a ruling dismissing an amendment has been made, the filing date of the original application or the date of submission of the written amendment of proceedings for which a retroactive effect was recognized will be the reference date for the determination.

9.2 Reference date for determination on the provisions of Article 3-2 of the Design Act with regard to an application for design registration claiming priority under the Paris Convention, etc.

In applying the provisions of Article 3-2 of the Design Act, if the claim is legitimate, the filing date of the first application will be the reference date for determination.

9.3 Time for giving notice of the reasons for refusal under Article 3-2 of the Design Act

A notice of the reasons for refusal under Article 3-2 of the Design Act is given after the date of publication of the design bulletin pertaining to the design in the prior application (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).

In the case of a design bulletin pertaining to the design which was requested to be kept secret, the notice of the reasons for refusal will be given after the designated period for which secrecy was requested has elapsed and after the date of publication of the design bulletin in which all matters to be published with regard to the application for design registration are published. With respect to the intervening period, the examiner should issue a wait notice.

9.4 Reference date for determination on the provisions of Article 3-2 of the Design Act with regard to an international application for design registration

In applying the provisions of Article 3-2 of the Design Act to an international application for design registration, the date of the international registration on which an application for design registration was deemed to have been filed under Article 60-6, paragraph (1) of the Design Act (Note) will be the reference date for

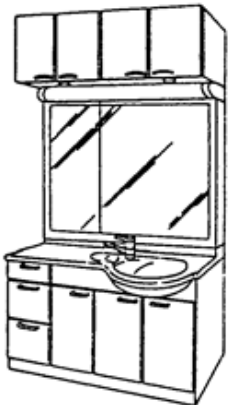
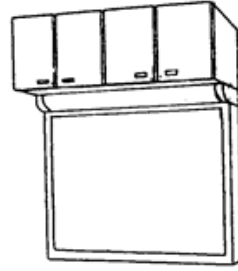
Part III Requirements for Design Registration
Chapter IV Exclusion from Protection of a Design in a Later Application that is Identical or
Similar to Part of a Design in a Prior Application
determination (however, this excludes cases where a priority claim under the Paris
Convention, etc. has been legitimately made).

(Note) With regard to “international registration” and the “date of the international registration,”
see [Part IX “International Application for Design Registration”](#); the same shall apply
hereinafter.



10. Examples of applications for design registration for a whole design that fall under the provisions of Article 3-2 of the Design Act

- (1) Where the prior application is an application for design registration for a whole design, and part of the design disclosed in the prior application and the whole design in the later application are identical or similar

[Applicable case example 1]

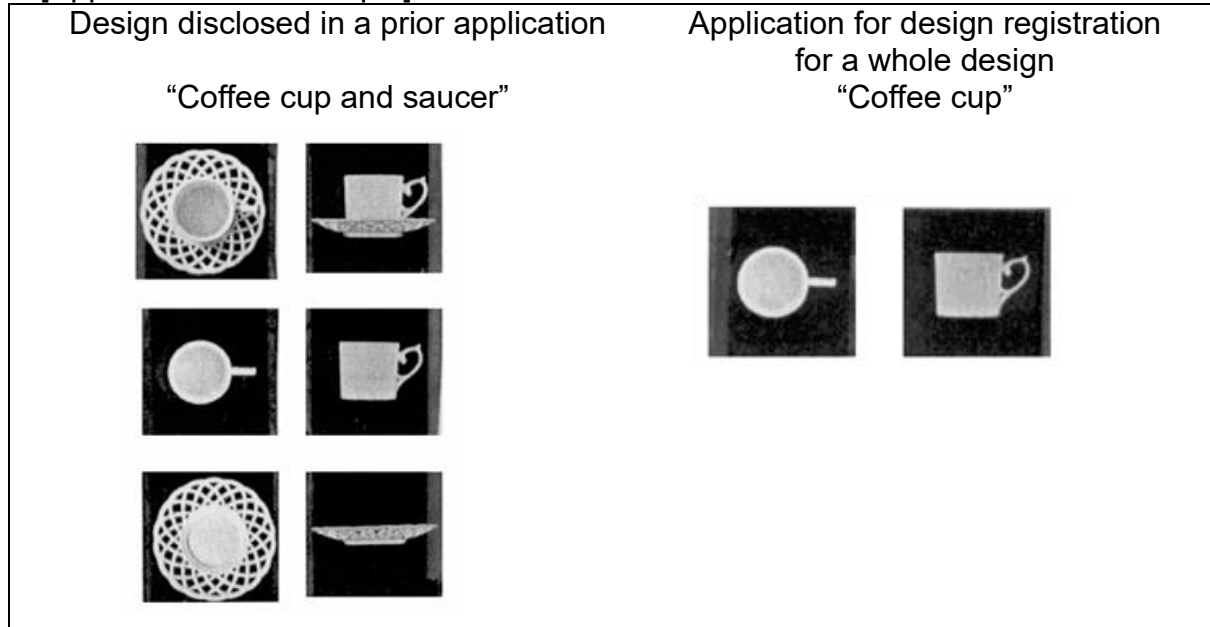
Design disclosed in a prior application	Application for design registration for a whole design
<p>“Bathroom vanity”</p> 	<p>“Bathroom vanity cabinet”</p> 

[Applicable case example 2]

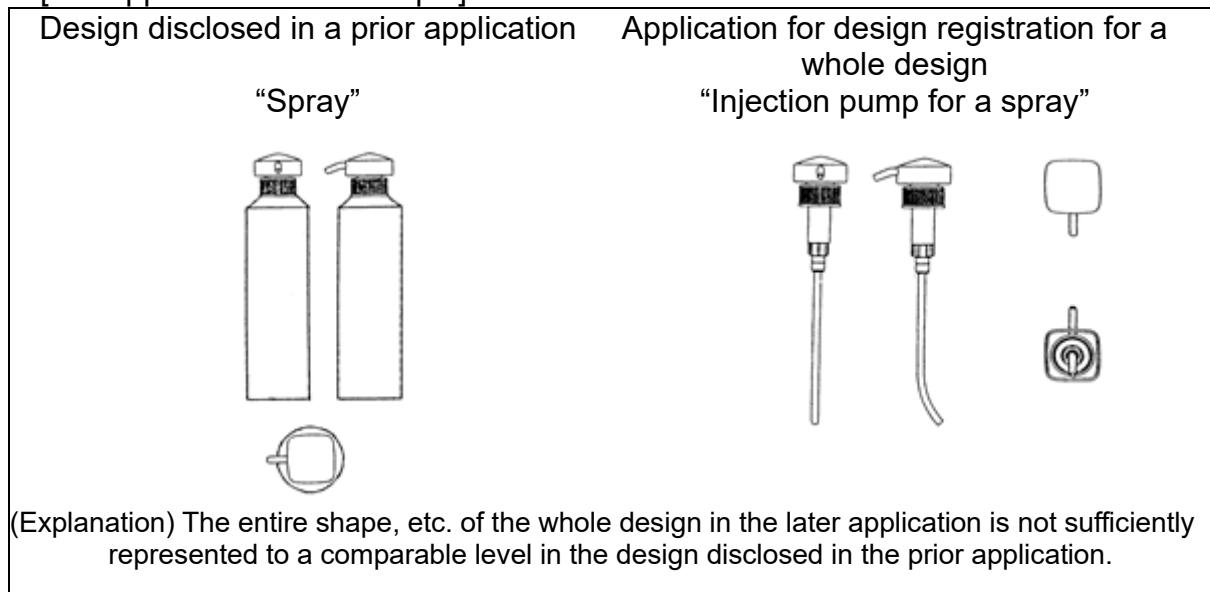
Design disclosed in a prior application	Application for design registration for a whole design
<p>“Handsaw”</p> 	<p>“Handsaw handle”</p> 

- (2) Where the prior application is an application for design registration pertaining to a separable article, etc., and the separated design which is part of the design disclosed in the prior application and the whole design in the later application are identical or similar

[Applicable case example]

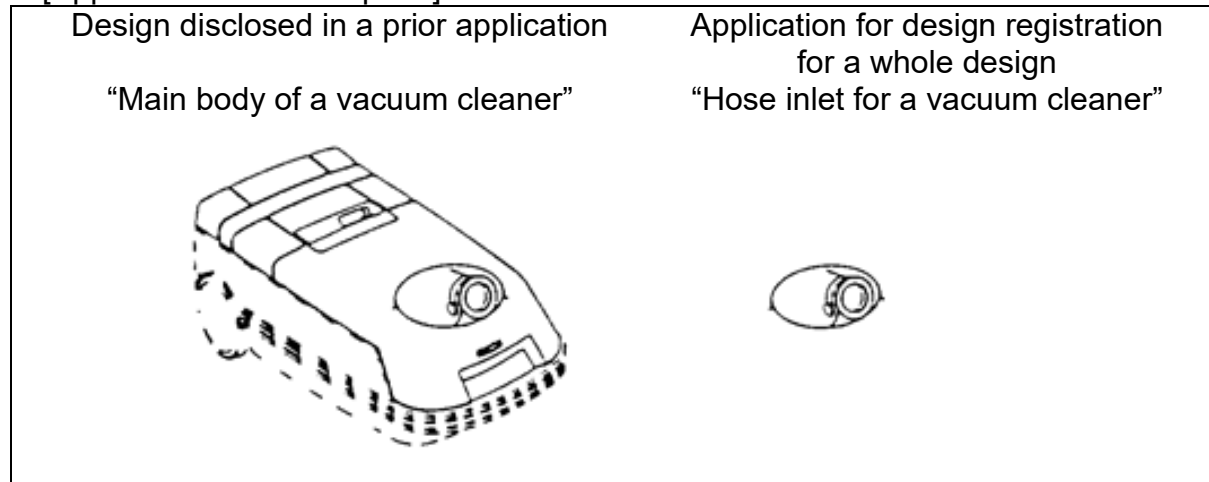


[Not applicable case example]

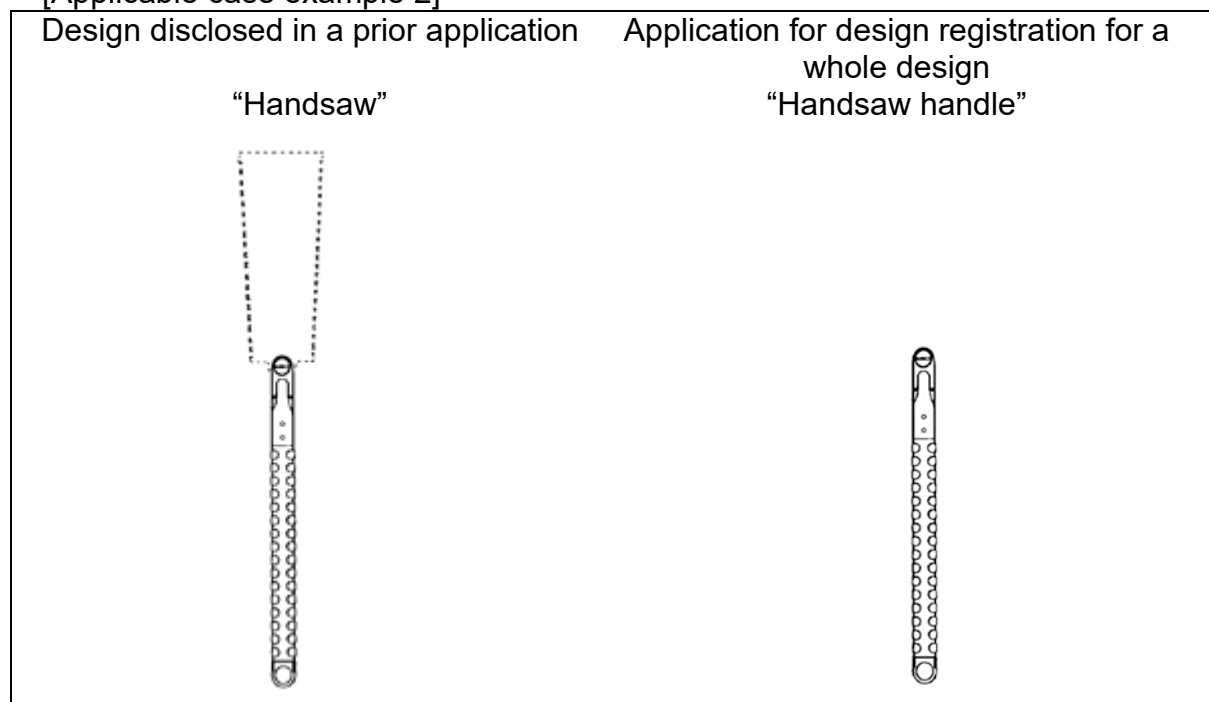


- (3) Where the prior application is an application for design registration for a design for which the design registration is requested for part of an article, etc., and part of the design disclosed in the prior application and the whole design in the later application are identical or similar

[Applicable case example 1]

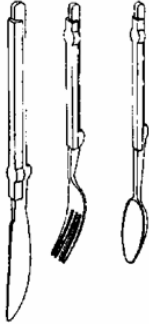



[Applicable case example 2]



- (4) Where the prior application is an application for design registration for a design for a set of articles, and the design pertaining to a constituent article, etc. which is part of the design disclosed in the prior application and the whole design in the later application are identical or similar

[Applicable case example]

Design disclosed in a prior application	Application for design registration for a whole design
<p>"A set of Cutlery"</p> 	<p>"Dining spoon"</p> 

Chapter V Prior Application

1. Outline

The design system grants an exclusive right for creation of a new design for a specified period. Therefore, two or more rights should not be granted for a single creation.

For the purpose of preventing such overlapping rights, Article 9 of the Design Act provides that, where two or more applications for design registration have been filed for identical or similar designs, only the applicant who filed the application for design registration on the earliest date may obtain a design registration.

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

Where two or more applications for design registration have been filed for identical or similar designs on the same date, only one applicant determined through consultation among the applicants may obtain a design registration (first sentence of Article 9, paragraph (2)).

Where no agreement is reached or consultation is not possible, none of the applicants may obtain a design registration for that design (second sentence of Article 9, paragraph (2)).

Where two or more applications for design registration have been filed for identical or similar designs on the same date, the Commissioner of the Patent Office shall order the applicants to consult with each other and to report the results thereof within a designated period of time (Article 9, paragraph (4)).

Where no report on the results of consultation is received, the Commissioner of the Patent Office may deem that no agreement was reached by consultation (Article 9, paragraph (5)).

This Chapter describes the determination of the requirements for a prior application.

2. Determination of the requirements for prior application

2.1 Basic concept in determining the requirements for prior application

Where the application for design registration that is the subject of examination (hereinafter referred to as the “Application” in this Chapter) and another application comply with all of the following, the examiner should apply the provisions of prior application as prescribed in Article 9 of the Design Act.

- (1) The other application falls under both (i) and (ii) below
 - (i) The other application was filed earlier or on the same date as the Application (→ see [5.](#) through [7.](#))

- (ii) The other application is an application for design registration that is treated as a prior application (→ see [2.3](#) and [2.4](#))
- (2) The design in the Application and the design in the other application are identical or similar to each other (→ see [3.](#))

2.2 Categories of applications for design registration that are treated as prior applications

An application for design registration that falls under either of the following should be treated as a prior application for design registration with regard to applying the provisions of Article 9, paragraph (1) of the Design Act.

- (1) An application for design registration for which establishment of a design right has been registered
- (2) An application for design registration for which the examiner's decision or trial decision to the effect that the application is to be refused has become final and binding on the basis that no agreement was reached by consultations under Article 9, paragraph (2) of the Design Act, or such consultations were unable to be held for identical or similar designs for which applications were filed on the same date

2.3 Categories of applications for design registration that are not treated as prior applications or applications filed on the same date

An application for design registration that falls under any of the following (1) to (4) is deemed never to have been filed with regard to applying the provisions of Article 9, paragraph (1) and paragraph (2) of the Design Act.

- (1) A waived application for design registration
 - (2) A withdrawn application for design registration (Note)
 - (3) A dismissed application for design registration
 - (4) An application for design registration for which the examiner's decision or trial decision to the effect that the application is to be refused has become final and binding
- However, this excludes applications for design registration described in 2.2 (2).

(Note) This includes an application for design registration which was deemed to have been withdrawn under the provisions of Article 60-14, paragraph (1) of the Design Act, that is, an international application for design registration whose basic international registration extinguished because the international registration was waived under the provisions of Article 16(1)(iv) of the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs or limited under the provisions of Article (1)(v) of the same Article or the international registration was not renewed under the provisions of Article 17(2) of the same Agreement (limited to cases where establishment for a design right for the said international application for design registration has not been registered).

2.4 Applications for design registration that are subject to the provisions of Article 9, paragraph (1) or (2) of the Design Act

Determination for applying the provisions of Article 9, paragraph (1) or (2) of the Design Act is made not only with regard to two applications for design registration for whole designs or two applications for design registration for "designs for which the design registration is requested for part of an article, etc.," but also between a whole

design and a “design for which the design registration is requested for part of an article, etc.”

3. Determination of similarity

3.1 Determination of similarity between two whole designs

With regard to determination of similarity between two whole designs under Article 9, paragraph (1) or (2) of the Design Act, since the determination of similarity is made in the same way as that between a publicly known design and a whole design, see [2.2 “Determination of similarity” in Part III, Chapter II, Section 1 “Novelty.”](#)

In addition, when applying the provisions of Article 9, paragraph (1) or (2) of the Design Act to an application for design registration for a whole design, determination is made as to whether the designs represented as the designs for which the design registration is requested (Note) in the respective statements in the applications and drawings, etc. attached to the applications are identical or similar.

(Note) In determining the requirements for novelty, in addition to a design for an article, etc. that has become publicly known as a result of being described in a publication, etc., since it is also considered to have become publicly known, a design for an article, etc. that is included in and not similar to the said article, etc. (for example, the design for a component of the said article, etc.) should be treated as information that serves as the basis for determination of novelty if the specific shape, etc. of the design itself can be identified; on the other hand, in determining the requirements for a prior application, since the provisions of prior application are not applied to such designs included in other designs, they should not be treated as information that serves as the basis for determination.

Furthermore, in determining the requirements for novelty, a design for which the specific shape, etc. of the article, etc. to the design can be identified in “any other parts,” other than the “part for which the design registration is requested,” of a “design for which the design registration is requested for part of an article, etc.,” which has been published in a design bulletin, should also be similarly treated as information that serves as the basis for determination of novelty, etc.; on the other hand, in determining the requirements for a prior application, since the provisions of prior application are not applied to such “any other parts,” they should not be treated as information that serves as the basis for determination (see the (Note) in [2.1 “Basic concept in determining novelty” in Part III, Chapter II, Section 1 “Novelty”](#)).

3.2 Determination of similarity between two “designs for which the design registration is requested for part of an article, etc.”

In determining similarity between two “designs for which the design registration is requested for part of an article, etc.” under Article 9, paragraph (1) or (2) of the Design Act, the examiner should determine that the two “designs for which the design registration is requested for part of an article, etc.” are similar if both designs comply with all of the following.

- (i) The usage and function of the article, etc. to the design of the design in the Application and the design in the other application are identical or similar
- (ii) The usage and function of the “part for which the design registration is requested” of the design in the Application and the design in the other application are identical or similar
- (iii) The position, size and scope of the “part for which the design registration is requested” within the shape, etc. of the entire article, etc. of the design in the

Application and the design in the other application are identical or within the scope of ordinary in the art of the design

- (iv) The shape, etc. of the “part for which the design registration is requested” of the design in the Application and the design in the other application are identical or similar

(Note) The shape, etc. of “any other parts” alone is not subject to comparison.

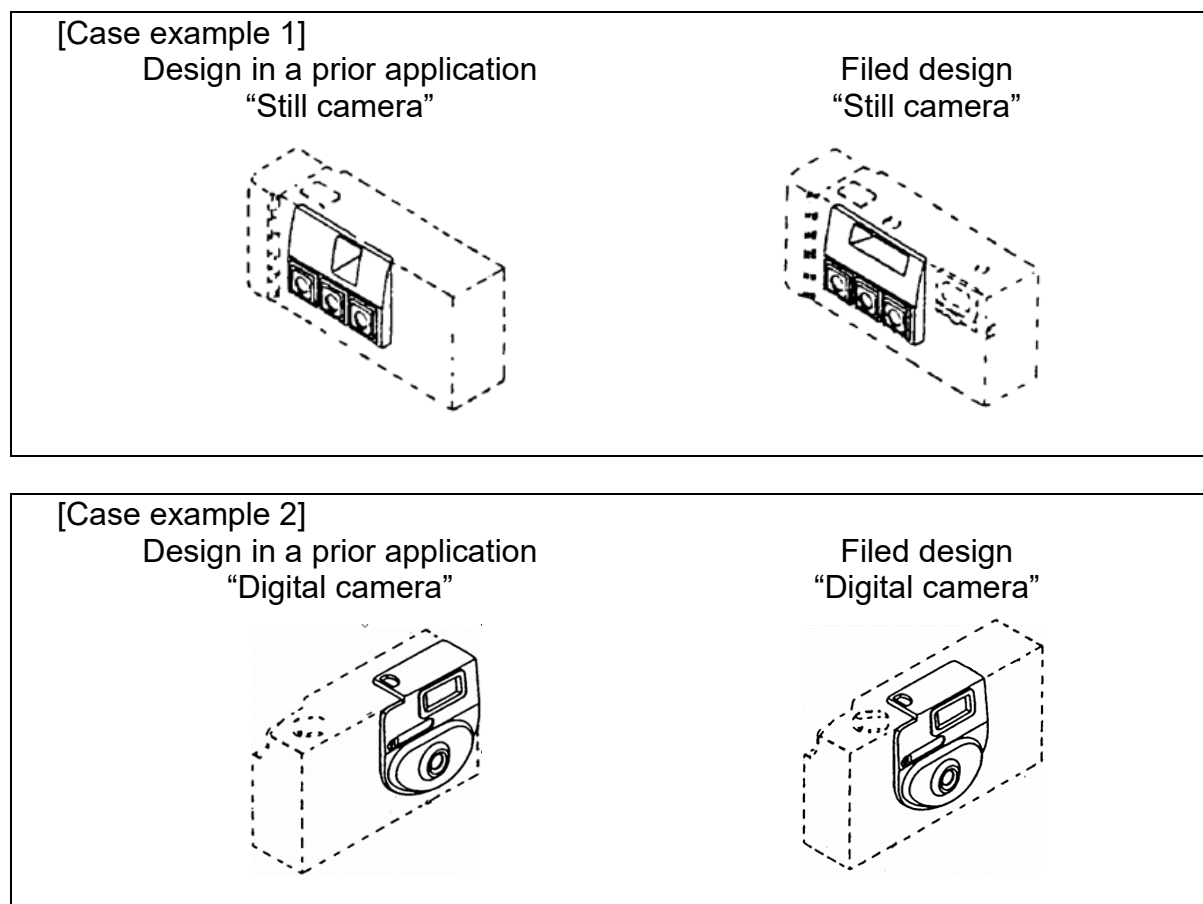
Where the designs are identical with regard to all of (i) through (iv) above, the examiner should determine that the two designs are identical.

3.2.1 Viewpoints for determining similarity between two “designs for which the design registration is requested for part of an article, etc.”

The examiner should determine similarity according to the viewpoints set forth in (a) through (g) below. For matters other than those listed below, the examiner should make a determination in accordance with 2.2.2 “Approaches for determining similarity” in Part III, Chapter II, Section 1 “Novelty.”

- (a) Finding of the usage and function of the articles, etc. to the design of the two designs being compared, and determination of similarity
- (b) Finding of common points and different points in the usage and function of the “part for which the design registration is requested”
- (c) Finding of common points and different points in the position, size, and scope of the “part for which the design registration is requested”
- (d) Finding of the shape, etc. of the “part for which the design registration is requested”
- (e) Finding of common points and different points in the shape, etc. of the “part for which the design registration is requested”
- (f) Individual evaluation of common points and different points in the shape, etc. of the “part for which the design registration is requested”
- (g) Comprehensive determination of similarity between “designs for which the design registration is requested for part of an article, etc.”

3.2.2 Examples of applications for design registration for “designs for which the design registration is requested for part of an article, etc.” that are found to be similar under Article 9, paragraph (1) of the Design Act



Where the application for design registration for a partial design shown on the right-hand side in the case example above is filed during the period starting from the filing date of the application for design registration for a partial design in the prior application shown on the left-hand side and ending on the publication date (including the said date) of the design bulletin for the said prior 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), the application also falls under the provisions of Article 3-2 of the Design Act, so the provisions of Article 3-2 of the Design Act are applied in examination practice.

3.3 Determination of similarity between a whole design and “a design for which the design registration is requested for part of an article, etc.”

In determining similarity between a whole design and “a design for which the design registration is requested for part of an article, etc.” under Article 9, paragraph (1) or (2) of the Design Act, the examiner should determine that the two designs are similar if both designs comply with all of the following.

- (i) The usage and function of the articles, etc. to the design of the two designs are identical or similar
 - (ii) The usage and function of the whole design and the usage and function of the “part for which the design registration is requested” in the “design for which the design registration is requested for part of an article, etc.” are identical or similar
 - (iii) Relative to the entire article, etc. of the whole design, the position, size and scope of the “part for which the design registration is requested” in the “design for which the design registration is requested for part of an article, etc.” within the shape, etc. of the entire article, etc. are within the scope of ordinary in the art of the design
 - (iv) The shape, etc. of the whole design and the shape, etc. of the “part for which the design registration is requested” in the “design for which the design registration is requested for part of an article, etc.” are identical or similar
- (Note) The shape, etc. of “any other parts” alone is not subject to comparison.

Where the designs are identical with regard to all of (i) through (iv) above, the examiner should determine that the two designs are substantially identical.

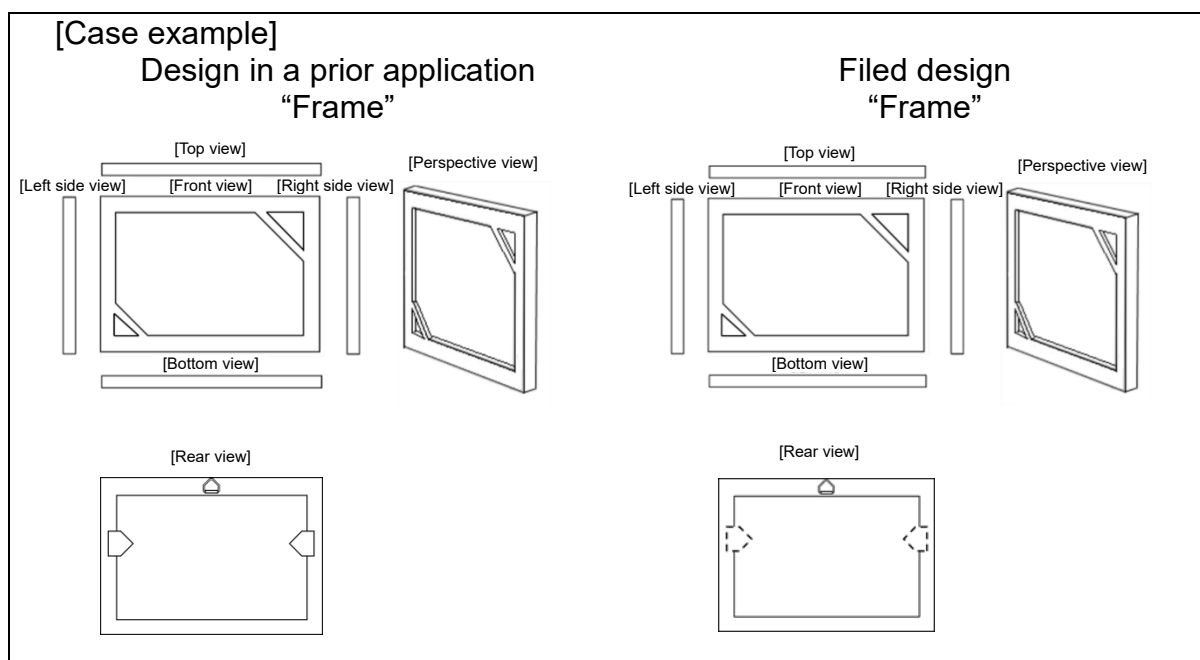
3.3.1 Viewpoints for determining similarity between a “design for which the design registration is requested for part of an article, etc.” and a whole design

The examiner should determine similarity according to the viewpoints set forth in (a) through (g) below. For matters other than those listed below, the examiner should make a determination in accordance with 2.2.2 “Approaches for determining similarity” in Part III, Chapter II, Section 1 “Novelty.”

- (a) Finding of the usage and function of the articles, etc. to the design of the two designs being compared, and determination of similarity
- (b) Finding of common points and different points in the usage and function of the whole design and the usage and function of the “part for which the design registration is requested” in the “design for which the design registration is requested for part of an article, etc.”
- (c) Finding of common points and different points between the position, size, and scope of the whole design and those of the “part for which the design registration is requested” in the “design for which the design registration is requested for part of an article, etc.” within the shape, etc. of the entire article, etc.
- (d) Finding of the shape, etc. of the whole design and that of the “part for which the design registration is requested” in the “design for which the design registration is requested for part of an article, etc.”
- (e) Finding of common points and different points between the shape, etc. of the whole design and that of the “part for which the design registration is requested” in the “design for which the design registration is requested for part of an article, etc.”
- (f) Individual evaluation of common points and different points between the shape, etc. of the whole design and that of the “part for which the design registration is requested” in the “design for which the design registration is requested for part of an article, etc.”

- (g) Comprehensive determination of similarity between the whole design and the “design for which the design registration is requested for part of an article, etc.”

3.3.2 Examples of applications for design registration for whole designs and “designs for which the design registration is requested for part of an article, etc.” that are found to be similar under Article 9, paragraph (1) of the Design Act



Where the application for design registration for a partial design shown on the right-hand side in the case example above is filed during the period starting from the filing date of the application for design registration for a whole design in the prior application shown on the left-hand side and ending on the publication date (including the said date) of the design bulletin for the said prior 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), the application also falls under the provisions of Article 3-2 of the Design Act, so the provisions of Article 3-2 of the Design Act are applied in examination practice.

4. Handling of applicants and filing dates

4.1 Applications for design registration filed for identical designs on different dates

Where two or more applications for design registration have been filed for identical designs on different dates, under Article 9, paragraph (1) of the Design Act, regardless of whether the applications for design registration are filed by the same person or by different persons, in either case, only the applicant who filed the application for design registration on the earliest date may obtain a design registration for that design.

4.2 Applications for design registration filed for similar designs on different dates

(1) Where the applications for design registration are filed by different persons

Where two or more applications for design registration have been filed for similar designs by different persons on different dates, under Article 9, paragraph (1) of the Design Act, only the applicant who filed the application for design registration on the earliest date may obtain a design registration for that design.

Where two or more applications for design registration have been filed for similar designs by different persons on different dates, the examiner should register the design in the earliest application for design registration for which there are no reasons for refusal, and should refuse any designs in subsequent applications for design registration for this reason under Article 9, paragraph (1) of the Design Act. Furthermore, where the earlier application is an application for design registration for which the examiner's decision or trial decision to the effect that an application is to be refused has become final and binding as a result that no agreement was reached by consultations or consultations were unable to be held based on Article 9, paragraph (2) of the Design Act, the examiner should refuse any designs in subsequent applications for design registration for this reason under Article 9, paragraph (1) of the Design Act.

(2) Where the applications for design registration are filed by the same person

Where two or more applications for design registration have been filed for similar designs by the same person on different dates, the design may be registered as a related design if the applications for design registration are not subject to any other reasons for refusal and they comply with the requirements for obtaining design registration as a related design as provided for in Article 10 of the Design Act (see [Part V "Related Design"](#)).

Where two or more applications for design registration have been filed for similar designs by the same person on different dates, the examiner should register the design in the earliest application for design registration for which there are no reasons for refusal. Regarding designs in any subsequent applications for design registration, the design may be registered as a related design if the application for design registration is an application for design registration of a related design, it is not subject to any other reasons for refusal, and it complies with the requirements for obtaining design registration as a related design as provided for in Article 10 of the Design Act (see [Part V "Related Design"](#)).

Where the earlier application is an application for design registration for which the examiner's decision or trial decision to the effect that an application is to be refused has become final and binding as a result that no agreement was reached by consultations or consultations were unable to be held based on Article 9, paragraph (2) of the Design Act, the examiner should refuse any designs in subsequent applications for design registration for this reason under Article 9, paragraph (1) of the Design Act.

4.3 Applications for design registration filed for identical designs on the same date

Where two or more applications for design registration have been filed for identical designs on the same date, the two or more applications for design registration fall under the provision of the first sentence of Article 9, paragraph (2) of the Design Act, and become subject to an order for consultation under Article 9, paragraph (4) of the Design Act, regardless of whether they are applications for design registration filed

by the same person or by different persons. As a result, only one applicant for design registration, who was selected by consultations, may obtain a design registration for that design.

4.4 Applications for design registration filed for similar designs on the same date

(1) Where the applications for design registration are filed by different persons

Where two or more applications for design registration have been filed for similar designs by different persons on the same date, the two or more applications for design registration fall under the provision of the first sentence of Article 9, paragraph (2) of the Design Act, and become subject to an order for consultation under Article 9, paragraph (4) of the Design Act. As a result, only one applicant for design registration, who was selected by consultations, may obtain a design registration for that design.

(2) Where the applications for design registration are filed by the same person

Where two or more applications for design registration have been filed for similar designs by the same person on the same date, the two or more applications for design registration fall under the provision of the first sentence of Article 9, paragraph (2) of the Design Act, and become subject to an order for consultation under Article 9, paragraph (4) of the Design Act. In principle, persons other than the one applicant for design registration who was selected by consultations may not obtain a design registration, but where the applications for design registration are filed by the same person, the design may be registered as a related design if the applications for design registration are not subject to any other reasons for refusal and they comply with the requirements for obtaining design registration as a related design as provided for in Article 10 of the Design Act (see [Part V “Related Design”](#)).

4.5 Handling of applications for design registration filed for identical designs on different dates

Where two or more applications for design registration have been filed for identical designs on different dates, regardless of whether they are applications for design registration filed by the same person or by different persons, the examiner should register one design in the earliest application, and should refuse any designs in subsequent applications for design registration for this reason under Article 9, paragraph (1) of the Design Act. Furthermore, where the earlier application is an application for design registration for which the examiner’s decision or trial decision to the effect that an application is to be refused has become final and binding as a result that no agreement was reached by consultations or consultations were unable to be held based on Article 9, paragraph (2) of the Design Act, the examiner should refuse any designs in subsequent applications for design registration for this reason under Article 9, paragraph (1) of the Design Act.

4.6 Handling of applications for design registration filed for similar designs on different dates

(1) Where the applications for design registration are filed by different persons

Where two or more applications for design registration have been filed for similar designs by different persons on different dates, the examiner should register the design in the earliest application for design registration for which there are no reasons for refusal, and should refuse any designs in subsequent applications for design registration for this reason under Article 9, paragraph (1) of the Design Act.

Furthermore, where the earlier application is an application for design registration for which the examiner's decision or trial decision to the effect that an application is to be refused has become final and binding as a result that no agreement was reached by consultations or consultations were unable to be held based on Article 9, paragraph (2) of the Design Act, the examiner should refuse any designs in subsequent applications for design registration for this reason under Article 9, paragraph (1) of the Design Act.

(2) Where the applications for design registration are filed by the same person

Where two or more applications for design registration have been filed for similar designs by the same person on different dates, the examiner should register the design in the earliest application for design registration for which there are no reasons for refusal. Regarding designs in any subsequent applications for design registration, the design may be registered as a related design if the application for design registration is an application for design registration of a related design, it is not subject to any other reasons for refusal, and it complies with the requirements for obtaining design registration as a related design as provided for in Article 10 of the Design Act (see [Part V "Related Design"](#)).

Where the subsequent application for design registration is not an application for design registration of a related design, the examiner should provide notice, citing the earliest application as the reason for refusal under Article 9, paragraph (1) of the Design Act. Where the subsequent application for design registration is not subject to any other reasons for refusal, and through amendment, it complies with the requirements for obtaining design registration as a related design, the design may be registered as a related design.

Where the earlier application is an application for design registration for which the examiner's decision or trial decision to the effect that an application is to be refused has become final and binding as a result that no agreement was reached by consultations or consultations were unable to be held based on Article 9, paragraph (2) of the Design Act, the examiner should refuse any designs in subsequent applications for design registration for this reason under Article 9, paragraph (1) of the Design Act.

4.7 Handling of applications for design registration filed for identical or similar designs on the same date

(1) Where the applications for design registration are filed by different persons

- (i) An order for consultation is to be given in the name of the Commissioner of the Patent Office to the respective applicants for design registration under Article 9, paragraph (4) of the Design Act.
- (ii) Where a report on the results of consultations is submitted within the designated time limit, an examiner's decision to the effect that a design registration is to be granted is rendered only for the application for design registration filed by one applicant for design registration who was selected by consultations. However, even where such a report is submitted, if the procedures for withdrawal or waiver are not taken for the applications for design registration other than the application for design registration filed by the one applicant for design registration selected in the consultations, or if the contents of reports of the results of consultations held in response to multiple orders for consultations are inconsistent (see [4.7.1 "Examples of cases where the contents of reports on multiple orders for consultations are found to be inconsistent" in this Chapter](#)), it is found that no

agreement was reached by consultations, and the respective applicants for design registration are notified of the reasons for refusal under the second sentence of Article 9, paragraph (2) of the Design Act.

- (iii) Where no report on the results of consultations is submitted within the designated time limit, it is deemed that no agreement was reached by consultations under Article 9, paragraph (5) of the Design Act, the respective applicants for design registration are notified of the reasons for refusal under the second sentence of Article 9, paragraph (2) of the Design Act.
- (2) Where the applications for design registration are filed by the same person
 - (i) An order for consultation is to be given in the name of the Commissioner of the Patent Office to the applicant for design registration under Article 9, paragraph (4) of the Design Act. However, at the same time as giving the order in the name of the Commissioner of the Patent Office, a notice of the reasons for refusal based on the second sentence of Article 9, paragraph (2) of the Design Act is given. It is handled this way in cases where the applicant is the same person since time for consultations is deemed unnecessary.
 - (ii) Where no report on the results of consultations is submitted within the designated time limit, it is deemed that no agreement was reached by consultations under Article 9, paragraph (5) of the Design Act. Where a report on the results of consultations is submitted within the designated time limit, but the applications for design registration other than the application for design registration filed by one applicant for design registration, who was selected by consultations, are not withdrawn or waived, or the contents of reports on multiple orders for consultations are inconsistent (see [4.7.1 “Examples of cases where the contents of reports on multiple orders for consultations are found to be inconsistent” in this Chapter](#)), it is found that no agreement was reached by consultations, and the examiner should render a decision to the effect that each application for design registration should be refused based on the previously notified reason for refusal under the second sentence of Article 9, paragraph (2) of the Design Act.

4.7.1 Examples of cases where the contents of reports on multiple orders for consultations are found to be inconsistent

- (1) Examples of a report selecting one of the applicants of the applications for design registration subject to consultations, for which no agreement is found to have been reached
 - (i) A report whereby both applicants select themselves
 - (ii) A report whereby both applicants select each other
- (2) Examples of a report specifying the design in one of the applications for design registration subject to consultations as a principal design and the designs in the other applications for design registration as its related designs, for which no agreement is found to have been reached
 - (i) A report selecting a design that does not exist as a principal design
 - (ii) A report selecting a dissimilar design or a design in an application for design registration filed by a different applicant for design registration as a principal design
 - (iii) A report selecting multiple designs as a principal design

4.7.2 Handling of cases where no report is submitted in response to an order for consultations, and procedures for withdrawal or waiver, or for amendment, are taken only for one or some of the applications for design registration

With regard to applications for design registration that are filed for identical or similar designs by the same person on the same date, an order for consultations is issued for each such application for design registration, and in principle, a report on the results of consultations is required to be submitted for each application for design registration.

Even if procedures for withdrawal or waiver or for amendment are taken only for one or some of the applications for design registration subject to consultations, the examiner may not as a result immediately deem that agreement has been reached by consultations. Accordingly, until the expiration of the designated time limit, the examiner must assume that the results of consultations have not yet been reported, and must wait for all of the applications for design registration subject to consultations to be processed in accordance with the purport of the order for consultations.

Where no report on the results of consultations is submitted by the designated time limit, it may be deemed that no agreement was reached by consultations under Article 9, paragraph (5) of the Design Act; however, if, within the designated time limit, an amendment has been made to make the design in an application for design registration subject to consultations a principal design or its related design, or if either of the applications for design registration subject to consultations has already been withdrawn or waived, such procedures for amendment or for withdrawal or waiver will result in the reason for consultations being overcome. In this case, the examiner should not deem that no agreement was reached by consultations.

5. Reference date for determination on the provisions of Article 9, paragraph (1) or (2) of the Design Act with regard to division of an application for design registration, conversion of an application, or filing of a new application for an amended design

In the case of division of an application for design registration under Article 10-2, paragraph (1) of the Design Act, conversion of a patent application or an application for utility model registration into an application for design registration under Article 13, paragraph (1) or (2) of the Design Act, or filing of a new application for design registration for an amended design for which a ruling dismissing an amendment has been made under Article 17-3 of the Design Act, if the procedures are conducted legitimately, such application for design registration is deemed to have been filed at the time of filing the original application or at the time of submitting the written amendment of proceedings.

However, since determination for applying the provisions of Article 9, paragraph (1) or (2) of the Design Act is made on the basis of the filing date of the application for design registration, with regard to a new application for design registration resulting from division, a new application for design registration resulting from conversion, or a new application for design registration for an amended design for

which a ruling dismissing an amendment has been made, the filing date of the original application or the date of submission of the written amendment of proceedings for which a retroactive effect was recognized will be the reference date for the determination.

6. Reference date for determination on the provisions of Article 9, paragraph (1) or (2) of the Design Act with regard to an application for design registration containing a priority claim under the Paris Convention, etc.

When applying the provisions of Article 9, paragraph (1) or (2) of the Design Act, if the effects of that claim are recognized, the filing date of the application filed in the first country will be the reference date for determination.

7. Reference date for determination on the provisions of Article 9, paragraph (1) or (2) of the Design Act with regard to an international application for design registration

In applying the provisions of Article 9, paragraph (1) or (2) of the Design Act, the date of the international registration on which an application for design registration was deemed to have been filed under Article 60-6, paragraph (1) of the Design Act will be the reference date for determination (however, this excludes cases where the effect of a priority claim under the Paris Convention, etc. is recognized).

Chapter VI Unregistrable Design

1. Outline

Article 5 of the Design Act provides that, even if a design complies with the requirements for registration, etc., such as industrial applicability, novelty, and creative difficulty, it may not be registered for reasons of public interest if it is liable to injure public order or morality (hereinafter referred to as “public order or morality, etc.” in this Chapter) or if it is likely to impede the development of industry.

This Chapter describes how an examiner should determine whether a filed design falls under the grounds of unregistrability outlined above (hereinafter referred to as “grounds of unregistrability” in this Chapter).

2. Basic concept in determining whether a design falls under grounds of unregistrability

Even if the filed design complies with the requirements for registration, etc., such as industrial applicability, novelty, and creative difficulty, if, at the time of the grant of an examiner’s decision on design registration, the filed design falls under any of the following, the examiner should determine that the design falls under the grounds of unregistrability.

- (1) A design which is liable to injure public order or morality (Article 5, item (i))
- (2) A design which is liable to create confusion with an article, building, or graphic image pertaining to another person’s business (Article 5, item (ii))
- (3) A design solely consisting of a shape that is indispensable for securing functions of the article or a shape that is indispensable for the usage of the building, or a design solely consisting of a display that is indispensable for the usage of the graphic image (Article 5, item (iii))

Furthermore, in cases of an application requesting design registration for part of an article, etc., regarding application of the provisions of (1) above (Article 5, item (i)) and (2) above (Article 5, item (ii)), the examiner should make the shape, etc. of the entire article to the design, including the “part for which the design registration is requested” and “any other parts,” the subject of determination. On the other hand, regarding application of the provisions of (3) above (Article 5, item (iii)), the examiner should make only the shape of the “part for which the design registration is requested” the subject of determination.

3. Specific determination of whether a design falls under grounds of unregistrability

3.1 Design which is liable to injure public order

A design that represents the image of the head of state or the national flag of Japan or a foreign country or a design representing the imperial chrysanthemum crest of Japan or a royal crest of a foreign country (including a design similar thereto) is likely to injure the dignity of the country or the imperial or royal family. Given this, the examiner should determine that such a design is one which is liable to injure public order as provided in Article 5, item (i) of the Design Act.

Furthermore, the examiner should treat in the same manner a design that represents the portrait or personal information, etc. of a specific person who is completely unrelated to the applicant.

However, where the design is not likely to injure the dignity of a specific country or the imperial or royal family—like a design where the flags of all nations are represented as part of the scene of a sporting event—the examiner should not determine that such a design is liable to injure public order.

3.2 Design which is liable to injure morality

The examiner should determine that a design that unjustly offends the moral sense of or arouses a sense of shame or disgust in a mentally and physically sound person—such as a design representing obscene material—is one which is liable to injure morality as provided in Article 5, item (i) of the Design Act.

3.3 Design which is liable to create confusion with an article, building, or graphic image pertaining to another person's business

A design representing another person's well-known or famous trademark or a mark that can be mixed up therewith is likely to lead to confusion that the article, etc. to the design is produced or sold in relation to the business of that person or organization. Given this, the examiner should determine that such a design is one which is liable to create confusion with an article, etc. pertaining to another person's business as provided in Article 5, item (ii) of the Design Act.

3.4 Design solely consisting of a shape that is indispensable for securing functions of the article or a shape that is indispensable for the usage of the building, or a design solely consisting of a display that is indispensable for the usage of the graphic image

A design solely consisting of a shape that is indispensable for securing functions of the article or a shape that is indispensable for the usage of the building, or a design solely consisting of a display that is indispensable for the usage of the graphic image, constitutes creation of a technical idea, which, by nature, should be protected by the Patent Act or the Utility Model Act, but for which granting an exclusive right as a design right is not appropriate.

If the filed design falls under any of the following categories, for example, the examiner should determine that it is a design solely consisting of a shape that is indispensable for securing functions of the article or a shape that is indispensable for the usage of the building, or a design solely consisting of a display that is

indispensable for the usage of the graphic image as provided in Article 5, item (iii) of the Design Act.

(1) Design solely consisting of a shape that is inevitably decided for securing the functions of the article or by the usage of the building

If the filed design is one solely consisting of a shape that is inevitably decided for securing the functions of the article or by the usage of the building (inevitable shape), the examiner should determine that it falls under a design solely consisting of a shape that is indispensable for securing functions of the article or a shape that is indispensable for the usage of the building as provided in Article 5, item (iii) of the Design Act.

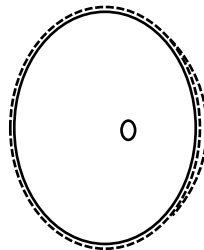
When determining whether or not the filed design falls under a design solely consisting of an inevitable shape, the examiner should focus only on the shape that embodies the technical function of the article or the usage of the building, regardless of the pattern and color, which are the constituent elements of the design. In doing so, the examiner should take the following points in particular into consideration.

(a) Whether or not there exists any other alternative shape that can secure the function of the article or the usage of the building

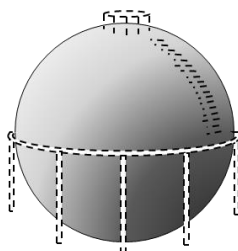
(b) Whether or not the design includes a shape, other than the inevitable shape, etc., which should be taken into consideration in evaluating the design

<Examples where the design for which the design registration is requested falls under a design solely consisting of an inevitable shape>

[Case example 1] A design for which the design registration is requested only for the inner surface part of a “parabolic antenna,” which consists solely of a shape that is inevitably decided for securing the functions of the article



[Case example 2] A design for which the design registration is requested only for the main body of a “gas tank,” which consists solely of a shape that is inevitably decided by the usage of the building



- (2) Design consisting of a shape that is decided by a specification standardized for securing the compatibility of the article, etc. or according to the usage of the building, etc. (quasi-inevitable shape)

Regarding a design where the elements of the article, etc., such as its shape, size, etc. are specified or standardized for securing the compatibility of the article, etc. (including securing the technical function) or according to the usage of the building, etc., and which consists of a shape that must be accurately reproduced based on a specified or standardized shape, size, etc., the examiner should treat such a design in the same manner as a design solely consisting of an inevitable shape as set forth in (1) above.

Regarding specifications that fall under the following (a) or (b), for example, the examiner should determine that they are categorized as specifications standardized for securing the compatibility of the article, etc.

(a) Public standards

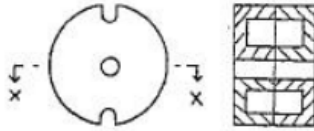
Standard specifications formulated by public standards organizations, such as JIS (Japanese Industrial Standards) formulated by the Japanese Standards Association, and ISO standards formulated by the International Organization for Standardization (ISO)

(b) De facto standards

Specifications that are not public specifications, but are recognized as industry standards in the field of the article, etc., where products based on said standard specifications practically dominate the market of the article, etc. and where it is possible to specify the details of the standard shape, size, etc. based on the name, number, etc. of the specification

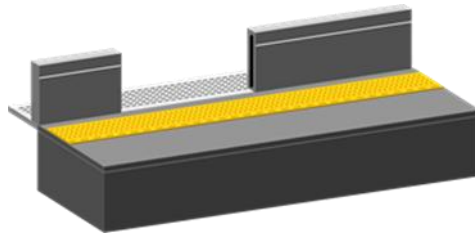
<Examples where the design for which the design registration is requested falls under a design consisting of a quasi-inevitable shape>

[Case example 1] Design of a “magnetic core,” the entire shape of which has been specified by a public standards organization



(Example: A magnetic core specified by JIS C2516 4.4)

[Case example 2] Design of a “platform” where only the tactile paving part, which is specified by a public standards organization, is the part for which the design registration is requested



However, the provisions of Article 5, item (iii) of the Design Act will only be applied to an article, etc. whose main purpose of use is to perform the function based on the shape, etc. Therefore, even though office paper (Sizes of paper JIS P 0202) and paper for daily use (Envelopes JIS S 5502), for example, have a shape that is decided by a public standard specification or a de facto standard specification, they are not subject to application of the provisions of Article 5, item (iii) of the Design Act.

(3) Design solely consisting of a display that is indispensable for the usage of the graphic image

Regarding a design solely consisting of a display that is inevitably decided according to the usage of the graphic image, etc., or a design solely consisting of a display that must be accurately produced based on a specified or standardized display, the examiner should determine that such a design falls under a design solely consisting of a display that is indispensable for the usage of the graphic image as provided in Article 5, item (iii) of the Design Act.

<Examples where the design falls under a design solely consisting of a display that is indispensable for the usage of the graphic image>

[Case example 1] Design of a “graphic image used for road signs,” where design registration is requested for the road sign display part



[Case example 2] Design of a “graphic image indicating a condition in a car” where only the indication, which is specified by a public standards organization, is the part for which the design registration is requested



(Example: Graphic symbols for use on equipment, specified in ISO 7000)

4. Examination procedure for determining whether a design falls under grounds of unregistrability

If the examiner is convinced that a filed design falls under grounds of unregistrability, the examiner should send a notice of reasons for refusal to the effect that the filed design may not be registered under the provisions of Article 5.

In response, the applicant may amend the design by submitting a written amendment of proceedings, or may make a counterargument or an explanation by means of a written opinion. As a result of the amendment, counterargument or explanation, if the examiner is no longer convinced that the filed design clearly falls under grounds of unregistrability, the reasons for refusal should be resolved.

If the examiner's conviction remains unchanged, the examiner should render a decision of refusal based on a reason for refusal to the effect that the design may not be registered under the provisions of Article 5.

Relevant Provisions

Design Act

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

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

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

(Paragraph (3) omitted)

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

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

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

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

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

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

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

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

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

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

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

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

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

Ordinance for Enforcement of the Design Act

Form No. 2 [Notes]

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

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

Form No. 6 [Notes]

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

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

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

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

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

Form No. 7 [Notes]

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

Form No. 8 [Notes]

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

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

Part IV

Individual Applications for Design Registration

Part IV	1
Chapter I Design Including a Graphic Image	1
1. Outline	1
2. Basic concept in examining a design including a graphic image	1
3. Graphic images subject to protection under the Design Act	2
3.1 Graphic image designs	2
3.2 Designs including a graphic image on a part of an article etc.	3
3.2.1 Designs including a graphic image as a part of an article	3
3.2.2 Designs including a graphic image as a part of a building	4
4. Matters to be stated in the application and drawings, etc. of an application for design registration for a design including a graphic image	5
4.1 Application and drawings, etc. for a graphic image design	5
4.1.1 Statements in the column of "Article to the Design"	5
4.1.2 Statements in the column of "Description of Article to the Design"	6
4.1.3 Statements in the column of "Description of the Design"	6
4.1.4 Statements in the drawings, etc.	6
4.2 Application and drawings, etc. for a design including a graphic image on a part of an article etc.	8
4.2.1 Statements in the column of "Article to the Design"	8
4.2.2 Statements in the column of "Description of Article to the Design"	9
4.2.3 Statements in the column of "Description of the Design"	9
4.2.4 Statements in the drawings, etc.	9
5. Concept of the "one application per design" requirement	10
5.1 Concept of one design in statements in the column of "Article to the Design"	10
5.1.1 Graphic image designs	10
5.1.2 Designs including a graphic image on a part of an article etc.	10
5.2 Concept of one design in contents of drawings, etc.	11
5.2.1 Examples of applications that are not filed for each design	11
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. ..	11
5.2.3 Two or more separate "parts for which the design registration is requested" which are treated as one design	12
5.2.4 Graphic images that change	12
5.2.4.1 Graphic images are for the same function	13
5.2.4.2 Graphic images have relevance in shape, etc.	14
5.2.4.3 Examples of subject matter not treated as one design	18
5.3 Exceptions to the "one application per design" in designs including a graphic image	21
6. Registration requirements for a design including a graphic image	21
6.1 The subject matter is an industrially applicable design	21
6.1.1 The subject matter is an industrially applicable graphic image design	21
6.1.1.1 The subject matter is found to be a graphic image design under the Design Act	21
6.1.1.2 The subject matter is a specific design	22

6.1.1.3 The subject matter is industrially applicable.....	23
6.1.2 The subject matter is an industrially applicable <u>design including a</u> <u>graphic image on a part of an article etc.</u>	24
6.1.2.1 The subject matter constitutes a design.....	24
6.1.2.2 The subject matter is a specific design	26
6.1.2.3 The subject matter is industrially applicable.....	26
6.1.3 Graphic images not found to be a “graphic image” constituting a design	26
6.1.4 Treatment of graphic images that contain a content display part	27
6.2 The subject matter is novel.....	28
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	28
6.2.2 Method of determining similarity between designs including a graphic image	29
6.2.2.1 The overall usage and functions of the two designs are identical or similar.....	29
6.2.2.2 The usage and functions of the parts for which design registration is requested in two designs are identical or similar.....	36
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	36
6.3 The subject matter involves creative difficulty (the subject matter is not something that could have been easily created)	36
6.3.1 Determining entity for creative difficulty in designs including a graphic image	36
6.3.2 Basic concept in determining the creative difficulty of designs including a graphic image.....	37
6.3.2.1 Examples of ordinary techniques in the art of designs including a graphic image	37
6.3.2.2 Examples of minor modification in the art of designs including a graphic image	37
6.3.2.3 Novelty and originality of design ideas from the viewpoint of a person skilled in the art	38
6.3.2.4 Examples of easily created designs.....	38
6.3.3 Determining creative difficulty in graphic images that change.....	47
6.4 The subject matter is not a design that is identical or similar to part of a design in a prior application	48
7. The subject matter is not similar to the design in a prior application	49
Chapter II Building Design	1
1. Outline.....	1
2. Basic concept in examining building design	1
3. Buildings under the Design Act.....	1
3.1 Requirements for categorization as a building under the Design Act	1
4. Concept of the “one application per design” requirement.....	2
4.1 Concept of one design in statements in the column of “Article to the Design”	2
4.2 Concept of one design in statements in the drawings, etc.	2

4.3 Concept of one design in cases where something fixed to a building or land is represented	3
4.4 Concept of one design in cases where something temporarily placed in a building, which is arbitrarily movable, is represented	4
4.5 Concept of one design in cases where subject matter not categorized as a design under the Design Act is represented.....	4
4.6 Concept of one design in cases where a graphic image is displayed on a building.....	4
4.7 Concept of one design in cases where a pattern or color is depicted on a building by switching on lighting apparatus	5
4.8 Concept of one design for buildings with changing shape, patterns, or colors	5
4.9 Exceptions to the one application per design in building design.....	6
5. Matters to be stated in the application and drawings, etc. of an application for design registration for a building design.....	6
5.1 Statements in the column of “Article to the Design”	6
5.2 Statements in the column of “Description of Article to the Design”	7
5.3 Statements in the column of “Description of the Design”	7
5.4 Statements in the drawings, etc.	7
5.4.1 Necessary drawings	7
5.4.2 Indication of view.....	8
5.4.3 Cases where articles extraneous to the design for which the design registration is requested are represented in drawings.....	8
6. Registration requirements for a building design	8
6.1 The subject matter is an industrially applicable design.....	9
6.1.1 The subject matter constitutes a design	9
6.1.1.1 Subject matter constitutes a building design under the Design Act.	9
6.1.1.2 Subject matter not categorized as a building under the Design Act	9
6.1.2 The subject matter is a specific design.....	11
6.1.3 The subject matter is industrially applicable	12
6.2 The subject matter is novel.....	12
6.2.1 Determining entity in the determination of similarity between building designs.....	13
6.2.2 Observation method in determining similarity between building designs	13
6.2.3 Determining similarity of usage and function	13
6.2.4 Evaluation of shape, etc. in cases where natural objects, etc. that constitute the design are included in part of a building.....	14
6.2.5 Case examples of determining similarity between building designs	15
6.3 The subject matter involves creative difficulty (the subject matter is not something that could have been easily created)	18
6.3.1 Determining entity for creative difficulty in building design	18
6.3.2 Basic concept in determining the creative difficulty of building design	18
6.3.3 Ordinary techniques and minor modifications	18
6.3.3.1 Examples of ordinary techniques	18
6.3.3.2 Examples of minor modification	18
6.3.4 Novelty and originality of design ideas from the viewpoint of a person skilled in the art	19

6.3.5 Concept in cases where natural objects, etc. that constitute the design are included in part of a building	19
6.3.6 Examples of easily created designs	19
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	25
7. The subject matter is not similar to the design in a prior application	25
8. Amendment and division of building design	26
8.1 Amendment of building design	26
8.1.1 Categories of amendments that change the gist	26
8.1.2 Amendment to interior design.....	26
8.1.3 Amendment to a design for a set of articles	27
8.2 Division of a building design	27
Chapter III Design for a Set of Articles	1
1. Outline	1
2. Basic concept in examining a design for a set of articles	1
3. Specific determinations in examining a design for a set of articles.....	2
3.1 The design falls under one for a set of articles as provided by Ordinance of the Ministry of Economy, Trade and Industry	2
3.2 Two or more articles, etc. are used together	2
3.3 The set of articles is coordinated as a whole.....	3
3.3.1 Examples of cases where the shape, patterns, or colors, or any combination thereof of each constituent article, etc. is represented through equivalent formative processing.....	4
3.3.2 Examples of cases where each constituent article, etc. of a set of articles represents one cohesive shape or pattern as a whole.....	7
3.3.3 Examples of cases where the shape, patterns, or colors, or any combination thereof of each constituent article, etc. gives a conceptually related impression as a whole set of articles, such as narrativity.....	9
4. Determination on the requirements for design registration, etc. concerning a design for a set of articles	9
5. Exception to lack of novelty concerning an application for design registration for a design for a set of articles	9
6. Amendment of a design for a set of articles.....	9
6.1 Categories of amendments that change the gist	10
6.2 Specific handling of an amendment made to the statement in an application	10
6.3 Specific handling of an amendment made to the drawings, etc. attached to an application.....	11
6.4 Amendment to building design	11
6.5 Amendment to interior design.....	12
7. Division concerning an application for design registration for a design for a set of articles	12
7.1 Division of an application for design registration where the design of which is found to be a design for a set of articles.....	12
7.2 Division of an application for design registration where the design of which is not found to be a design for a set of articles.....	12

8. Application for design registration for a design for a set of articles containing a priority claim under the Paris Convention, etc.....	13
Chapter IV Interior Design	1
1. Outline	1
2. Basic concept in examining an interior design.....	1
3. Requirements for categorization as an interior design	1
4. Filing an application for each design	2
4.1 Concept of one design in statements in the column of “Article to the Design”	2
4.2 Concept of one design in statements in drawings, etc.	2
4.3 Concept of one design for interior designs with changing shape, patterns, or colors	3
5. Matters to be stated in the application and drawings, etc. of an application for design registration for an interior design	4
5.1 Statements in the column of “Article to the Design”	5
5.2 Statements in the column of “Description of Article to the Design”	6
5.3 Statements in the column of “Description of the Design”	6
5.4 Statements in the drawings, etc.	7
5.4.1 Necessary drawings	7
5.4.2 Cases where subject matters other than the design for which the design registration is requested are represented in drawings.....	7
5.5 Feature statement	7
6. Registration requirements for an interior design.....	8
6.1 The subject matter is an industrially applicable design.....	8
6.1.1 The subject matter constitutes a design	8
6.1.1.1 The subject matter is inside a store, office, or other facility	9
6.1.1.2 The subject matter consists of multiple articles, buildings, or graphic images under the Design Act	10
6.1.1.3 The subject matter creates a coordinated aesthetic impression as a whole interior.....	13
6.1.2 The subject matter is a specific design.....	19
6.2 The subject matter is novel.....	20
6.2.1 Determining entity in the determination of similarity between interior designs.....	20
6.2.2 Observation method in determining similarity between interior designs	20
6.2.3 Determining similarity of the usage and function.....	20
6.2.4 Evaluating the layout and number of constituent objects in an interior design	21
6.2.5 Evaluation of shape, etc. in cases where natural objects, etc. that constitute the design are included in part of an interior design	22
6.2.6 Case examples of determining similarity between interior designs	22
6.3 The subject matter involves creative difficulty (is not something that could have been easily created).....	27
6.3.1 Determining entity for creative difficulty in interior designs.....	27
6.3.2 Basic concept in determining the creative difficulty of interior designs	27
6.3.3 Ordinary techniques and minor modifications	27
6.3.3.1 Examples of ordinary techniques	27

6.3.3.2 Examples of minor modification	27
6.3.4 Novelty and originality of design ideas from the viewpoint of a person skilled in the art	28
6.3.5 Concept in cases where natural objects, etc. that constitute the design are included in part of an interior design	28
6.3.6 Examples of easily created designs	28
6.3.6.1 Design through replacement	29
6.3.6.2 Design through aggregation	30
6.3.6.3 Design through mere deletion of a constituent part.....	31
6.3.6.4 Design through change of layout	32
6.3.6.5 Design through change of component ratio	33
6.3.6.6 Design through change in number of units of a continuous constituent element	34
6.3.6.7 Design through use or diversion of a constituent element beyond the framework of the article, etc.	35
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	35
7. The subject matter is not similar to the design in a prior application	35
8. Amendment and division of interior design	35
8.1 Amendment of interior design	35
8.1.1 Categories of amendments that change the gist	36
8.1.2 Amendment to building design	36
8.1.3 Amendment to a design for a set of articles	36
8.1.4 Amendment to delete inappropriate constituent objects of an interior design	37
8.1.5 Amendment to add or delete appropriate constituent objects of an interior design.....	37
8.1.6 Amendment to change the layout of appropriate constituent objects of an interior design.....	37
8.2 Division of an interior design	37
Relevant Provisions	1

Chapter I Design Including a Graphic Image

1. Outline

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

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.

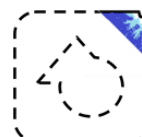
<Example of a design not constituting a graphic image design under the Design Act>



[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.

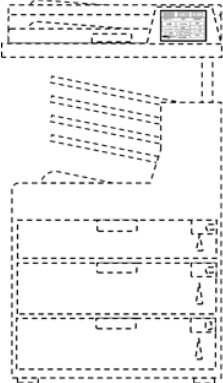
3.2.1 Designs including a graphic image as a part of an article

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]

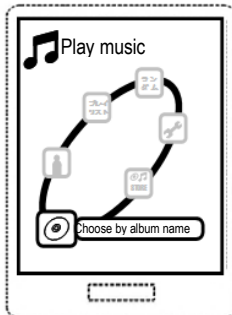


[Partial enlarged view of the display part]

Basic settings	Useful functions	Number of copies
Monochrome/Color	Magnification	Paper selection
Monochrome	100%	Automatic
Full color	Automatic	Tray 1 A4
	141% A4→A3	Tray 2 A3
	70% A3→A4	Manual feed
Copy density	70% B5→B4	
	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]

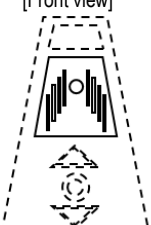


[Article to the Design] Computer with a music playback function
[Description of Article to the Design] The graphic image represented in the front view is for choosing the music selection method.
[Description of the Design] The part represented by the solid line is the part for which the design registration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

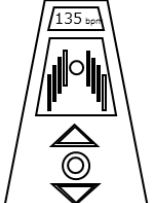
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

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

[Front view]

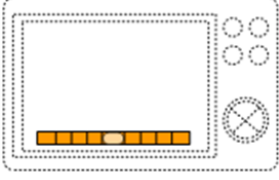


[Reference front view indicating the state of use]



[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

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**

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

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”

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”

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.

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]

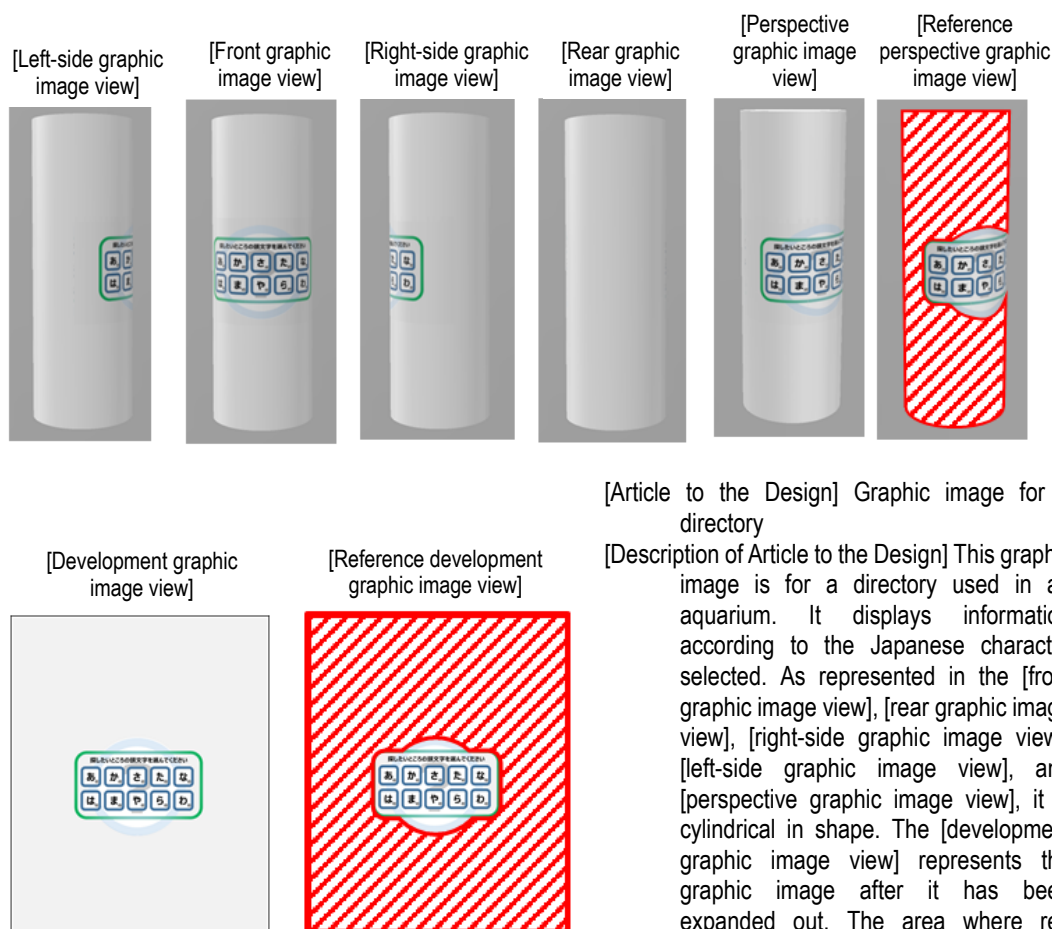


[Article to the Design] Graphic image displaying medical measurement results

[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

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”

5.1.1 **Graphic image designs**

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.

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.

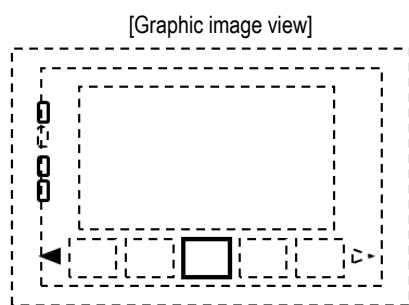
5.2 Concept of one design in contents of drawings, etc.

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

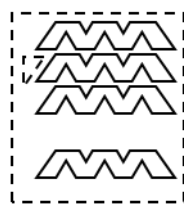
If it falls under any of the following, the examiner should treat subject matter as one design even if it includes two or more physically separate “parts for which the design registration is requested.”

(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.

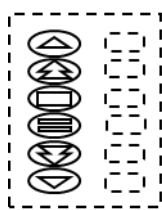
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(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](#))

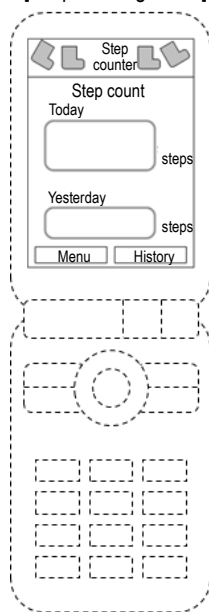
For example, in cases where a situation is represented in which graphic images are continuously changed using multiple views (including cases where it is found the intent is to show the so-called animation effect), the examiner should treat those plural graphic images which fall under both of the above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

5.2.4.1 Graphic images are for the same function

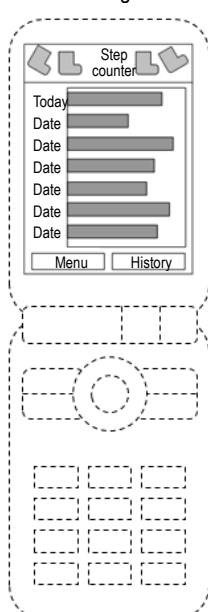
In order for the subject matter to be found to be one design with plural graphic images included, it must be found from the content of the statement in the application and drawings, etc. attached to the application, such as the “Description of Article to the Design,” that the plural graphic images are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

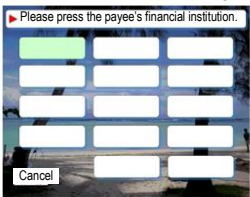
For example, like with the money transfer function of a bank ATM, the graphic images—ranging from the corresponding icon on the initial menu screen, to those for selecting the bank, entering the transfer destination, entering the transfer amount, and making the transfer—are found to be graphic images 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]



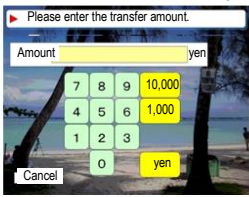
[Graphic image view #2 showing the state after the change]



[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.

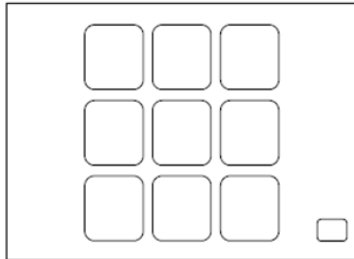
Regarding applications requesting design registration for part of a graphic image, relevance in shape, etc. based on commonality in figures, etc. must be found in the graphic images before and after the change in relation to the part for which the design registration is requested.

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

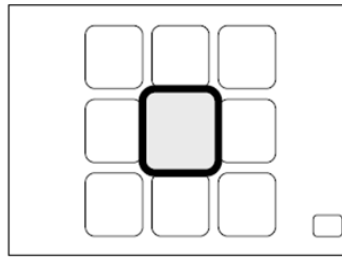
Where a figure, etc. continuously moves, expands, shrinks, rotates, or changes color within the graphic image, while hardly changing its own shape

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

[Graphic image view]



[Graphic image view showing the changed state]



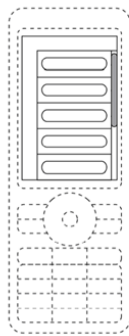
[Article to the Design] Graphic image for access control

[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.

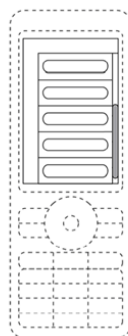
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

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

[Front view]



[Front view showing the changed state]

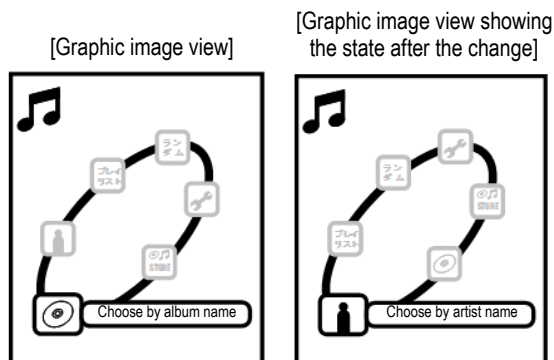


[Article to the Design] Mobile phone

[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

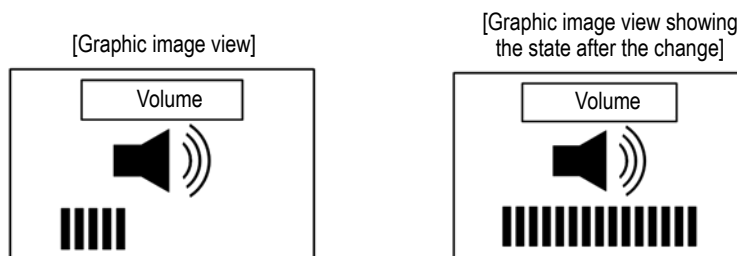
[Description of Article to the Design] The graphic images represented in the graphic image view and the graphic image view showing the state after the change are used for selecting the music playback function on a mobile phone. As each figure, etc. for operation is selected, the explanation for the said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

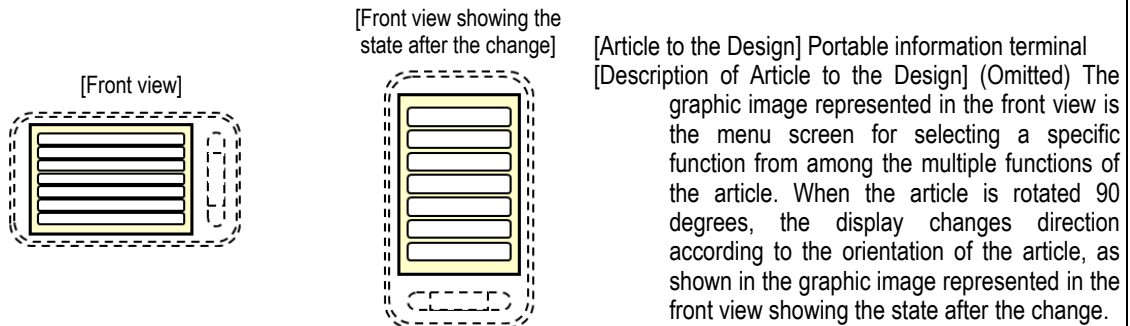
[Description of Article to the Design] (Omitted) The graphic images represented in the graphic image view and the graphic image view showing the state after the change are used for controlling the sound volume. The level gauge changes in conjunction with the operation of the volume control dial, and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

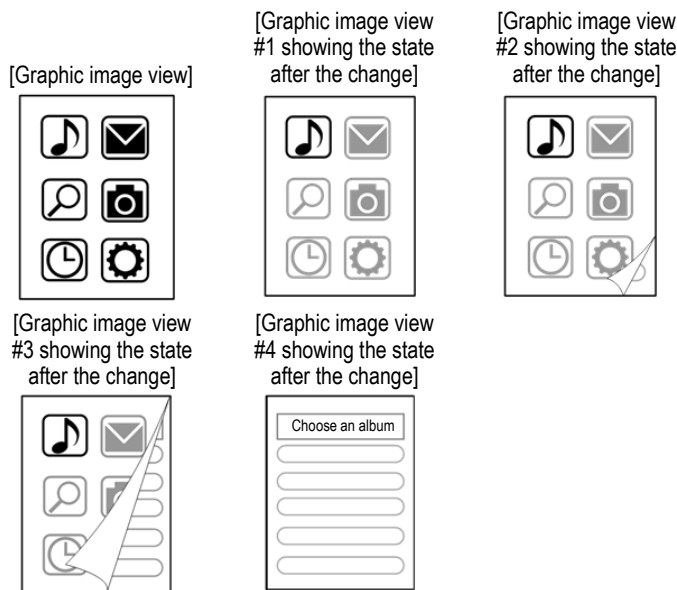


* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

(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

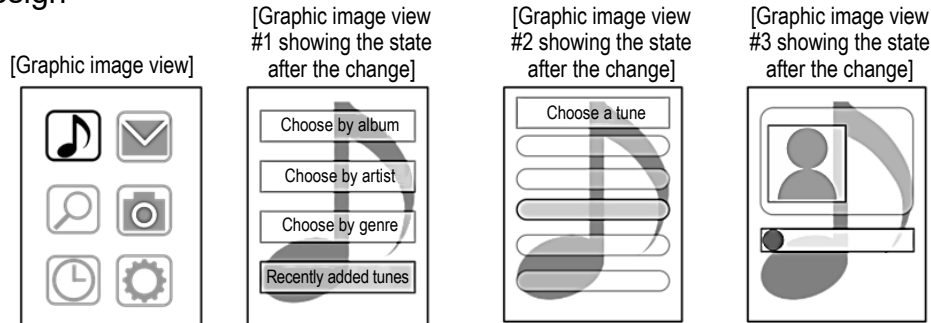
[Description of Article to the Design] (Omitted) The graphic image displayed on the display part is the menu screen for selecting a specific function from among the multiple functions of the article. The graphic image represented in graphic image view #4 showing the state after the change is a graphic 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

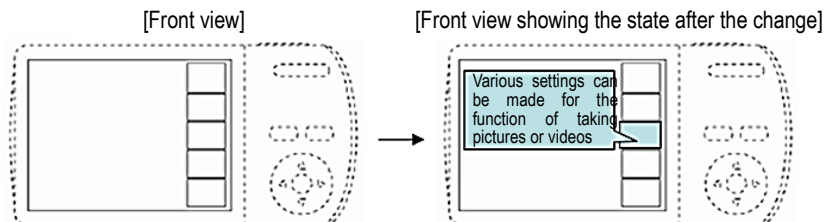
[Description of Article to the Design] (Omitted) The graphic image represented in the graphic image view is the menu screen for selecting a specific function from among the multiple functions of the article. By selecting an icon within the graphic image, the graphic image transitions to a one for the 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

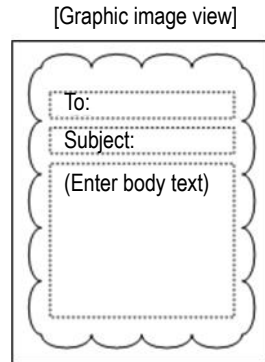
Plural graphic images for different functions and plural graphic images that are not found to have relevance in shape, etc. are not recognized as one design.

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.

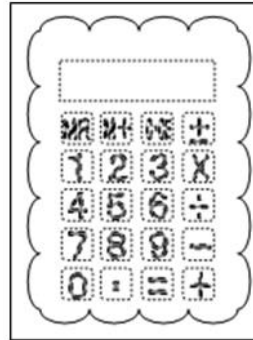
(1) Plural graphic images for different functions

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]



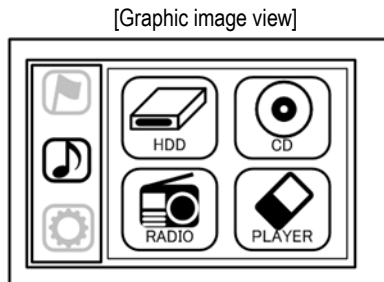
[Article to the Design] Graphic image for controlling a mobile phone

[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.

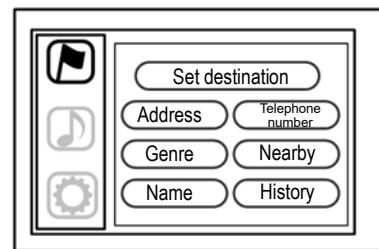
While the graphic image showing the state before the change is a graphic image for the email function, the graphic image showing the state after the change is a graphic image for the calculator function, so cannot be found to be graphic images for the same function.

* 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 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.

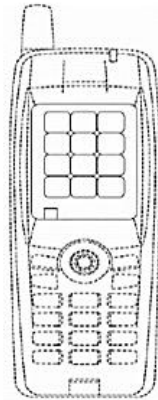
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

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

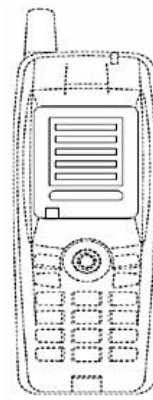
Where there is no cohesiveness in shape, etc. before and after the change, such as where the figures, etc. in the graphic images before and after the change have no commonality (or have very minor commonality), the graphic images cannot be found to be one design since relevance in shape, etc. is not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

Basic settings	Useful functions	Number of copies
Monochrome/Color	Magnification	Paper selection
Monochrome	100%	Automatic
Full color	Automatic	Tray 1 A4
Copy density	141% A4→A3 B5→B4	Tray 2 A3
	70% A3→A4 B4→B5	Manual feed
	Other magnification	

[Graphic image view showing the state after the change]

Basic settings	Useful functions	Number of copies
Settings		
Monochrome	<div> <div>1 2 3</div> <div>4 5 6</div> <div>7 8 9</div> <div>Clear</div> <div>copies</div> </div>	
Magnification 100%		
Paper A4 Tray 1		
One side		
Copy density Normal		

[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

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.

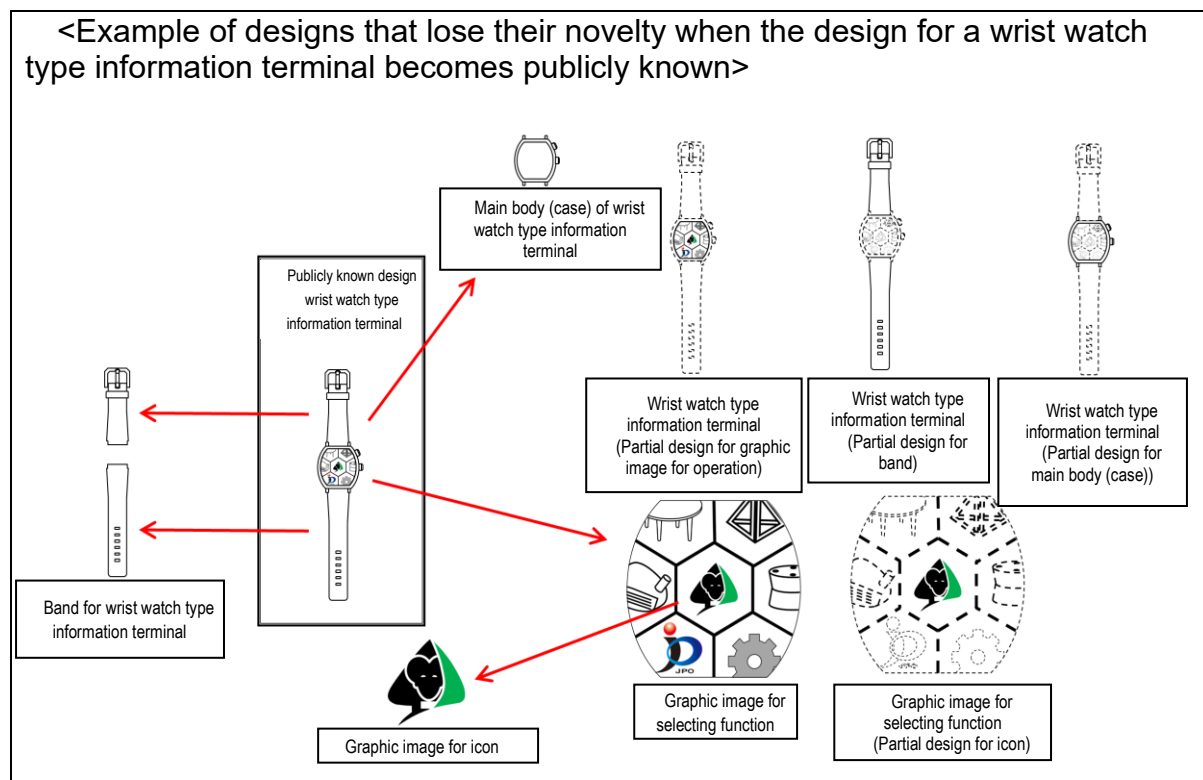
6.2.1 Treatment of cases where a graphic image is displayed on the display part, etc. of an article or building that is published in a publicly known source

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.

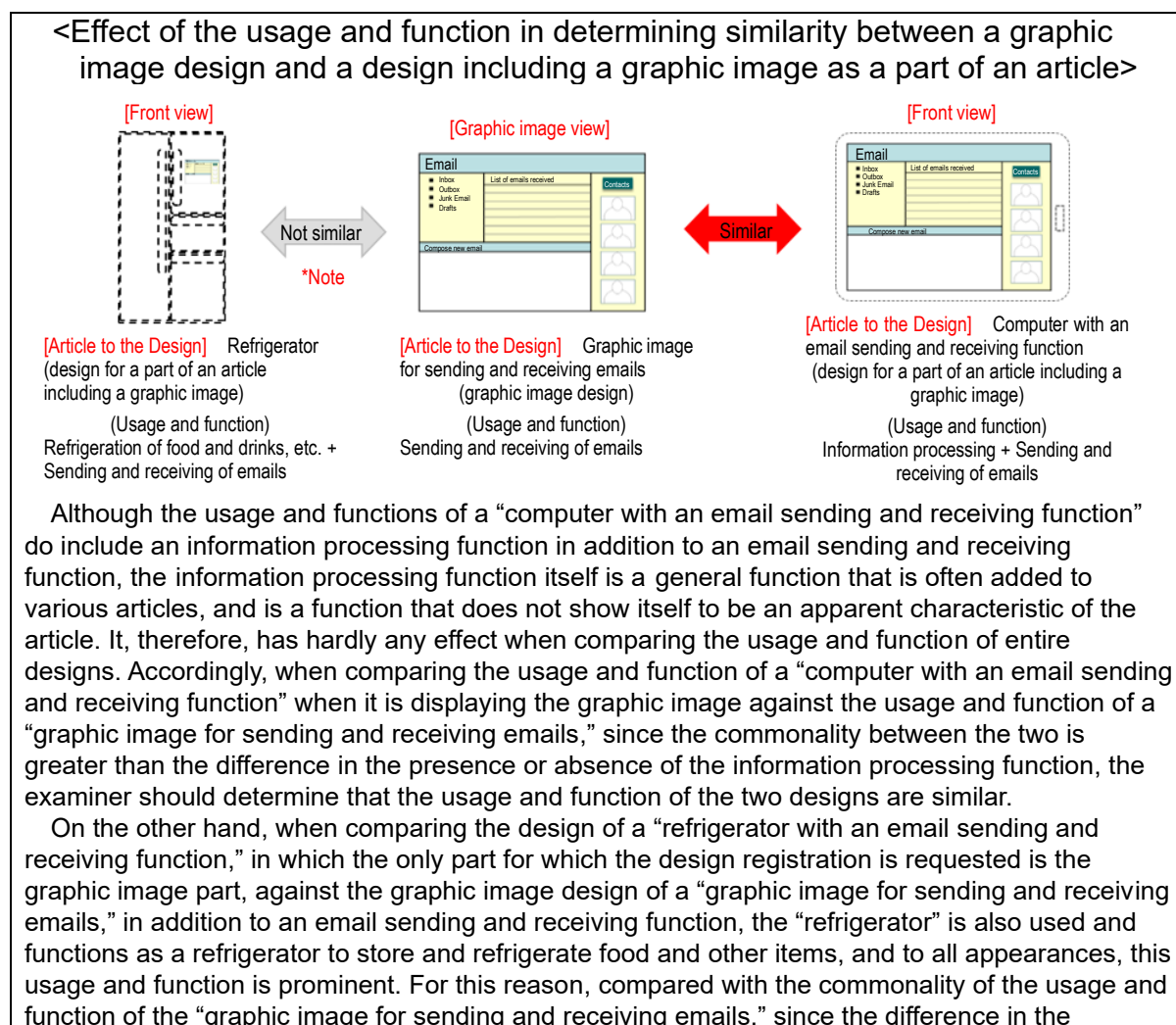
The examiner should determine the similarity of the usage and function of the two designs based on the above finding. When doing so, while similarity between designs assumes that the usage and function of the articles, etc. to the designs being compared are identical or similar, since there is no need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

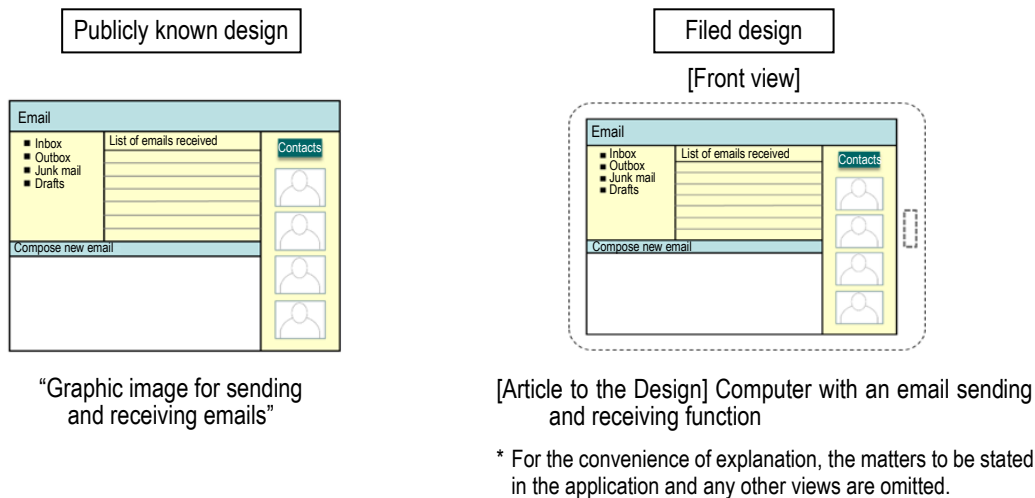
(Note) In cases where the design of the “refrigerator” was publicly known prior to the filing of the design for the “graphic image for sending and receiving emails,” since the graphic image displayed on the display part of the “refrigerator” is treated as information that serves as the basis for determination 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).

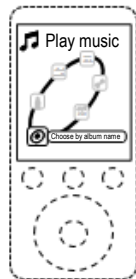
<Example of similar usage and function 1>



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>

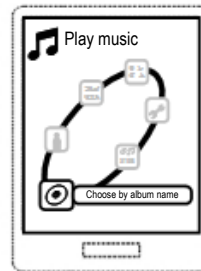
Publicly known design



“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

	2	8	9
	7	1	5
Mode	4	3	6
Switch	clear	0	enter
<input type="text"/>			
<input type="button" value="Enter"/>			

“Graphic image for entering passwords for access control”

Filed design

[Graphic image view]

	1	2	3
	4	5	6
Mode	7	8	9
Switch	*	0	#
<input type="text"/>			
<input type="button" value="Call"/>			

[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

Select the product to check for stock

A	B	C	D	E	F	G	H	I
---	---	---	---	---	---	---	---	---

“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]

Select the meeting room you want to book

Meeting room 1	Meeting room 2	Meeting room 3	Meeting room 4	Meeting room 5	Meeting room 6	Meeting room 7	Meeting room 8	Meeting room 9
----------------	----------------	----------------	----------------	----------------	----------------	----------------	----------------	----------------

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

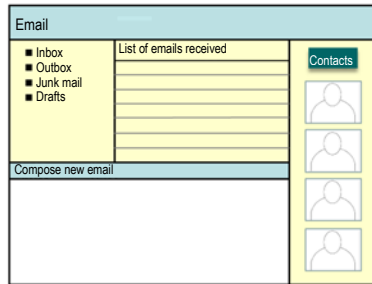
[Description of Article to the Design] (Omitted) The multiple rectangular shapes are **figures** that indicate each of the meeting rooms and are **for selecting meeting rooms**. Clicking on a figure displays a screen indicating the booking status of that meeting room.

* 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>

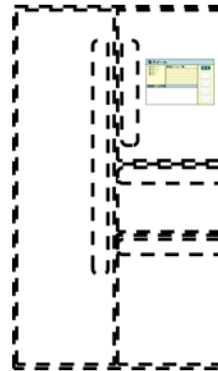
Publicly known design



“Graphic image for sending and receiving emails”

Filed design

[Front view]

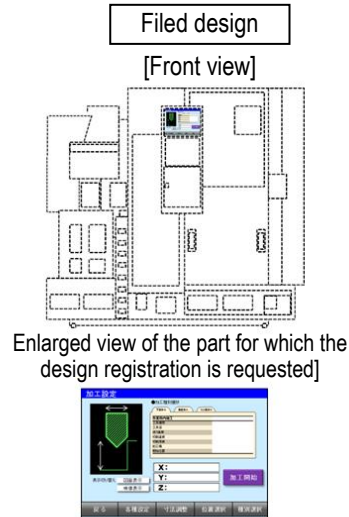
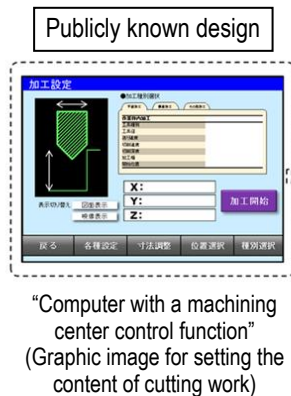


[Article to the Design] Refrigerator

* 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>

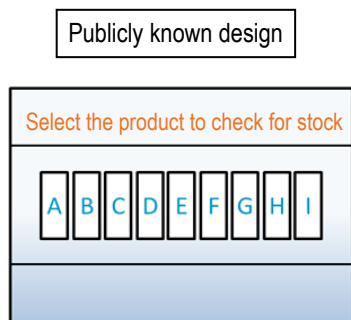


[Article to the Design] Machining center
[Description of Article to the Design] (Omitted) The graphic image for which design registration is requested is a graphic image for setting the content of cutting work.

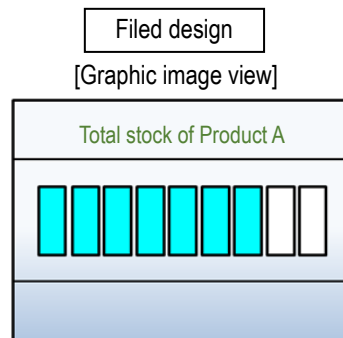
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

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>



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.



[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

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

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)

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

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

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

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

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

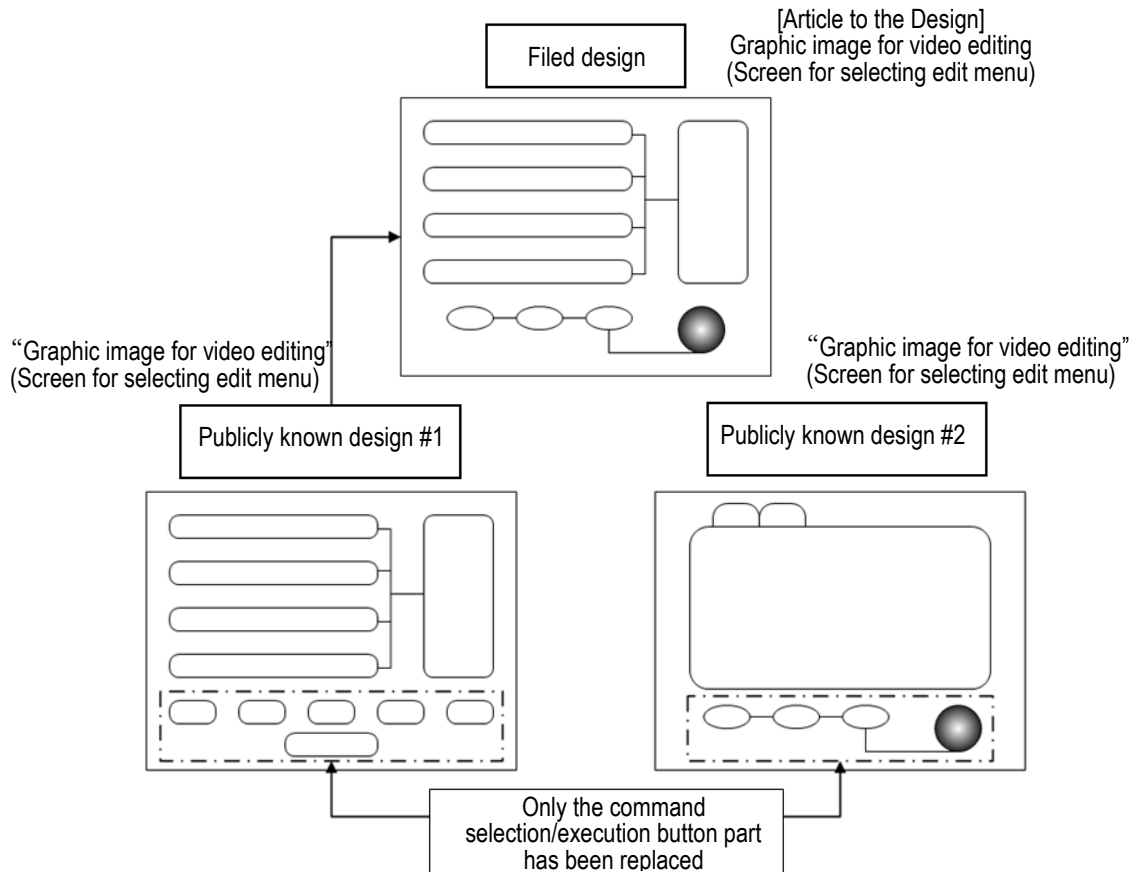
Regarding novelty or original design ideas from the viewpoint of a person skilled in the art, see [4.3 “Novelty and originality of design ideas from the viewpoint of a person skilled in the art” in Part III, Chapter II, Section 2 “Creative Difficulty.”](#)

6.3.2.4 Examples of easily created designs

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

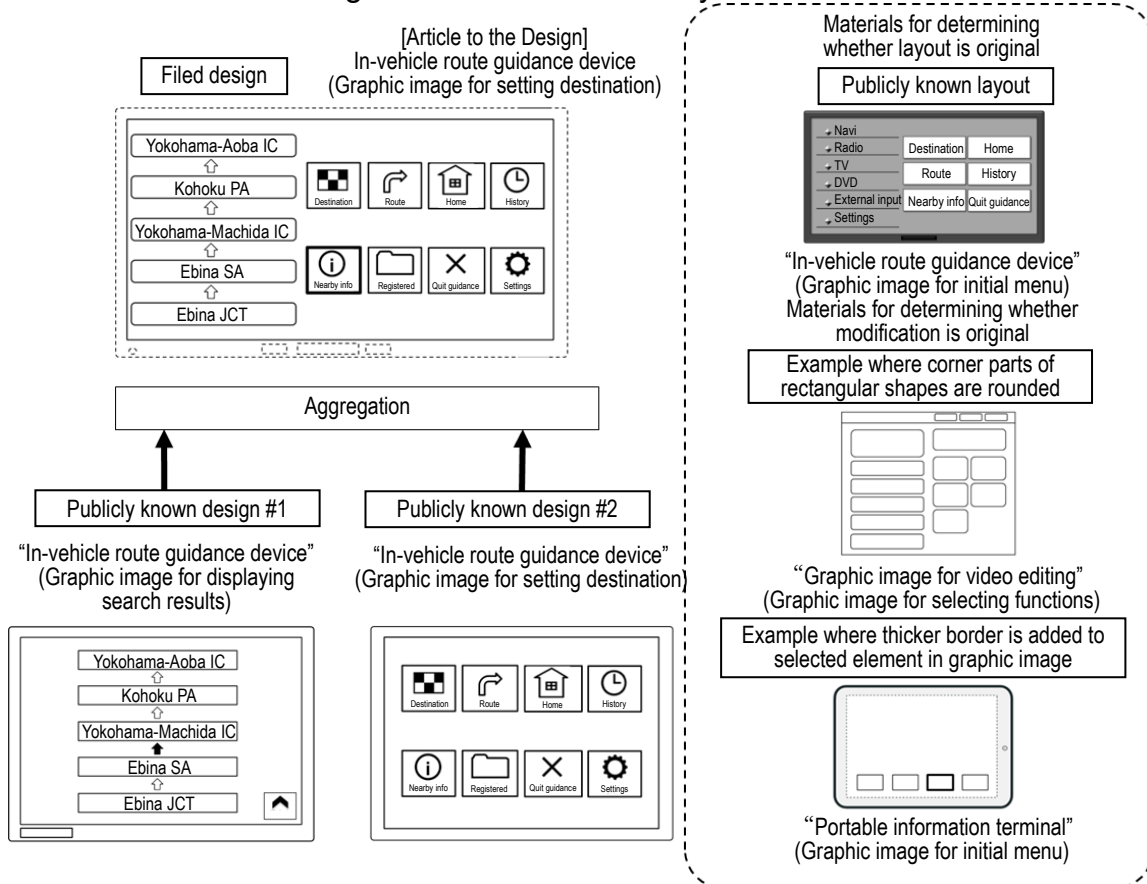
Where a design merely constitutes a single graphic image in which a part of a publicly known graphic image has been directly replaced with a part from another graphic image, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, 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

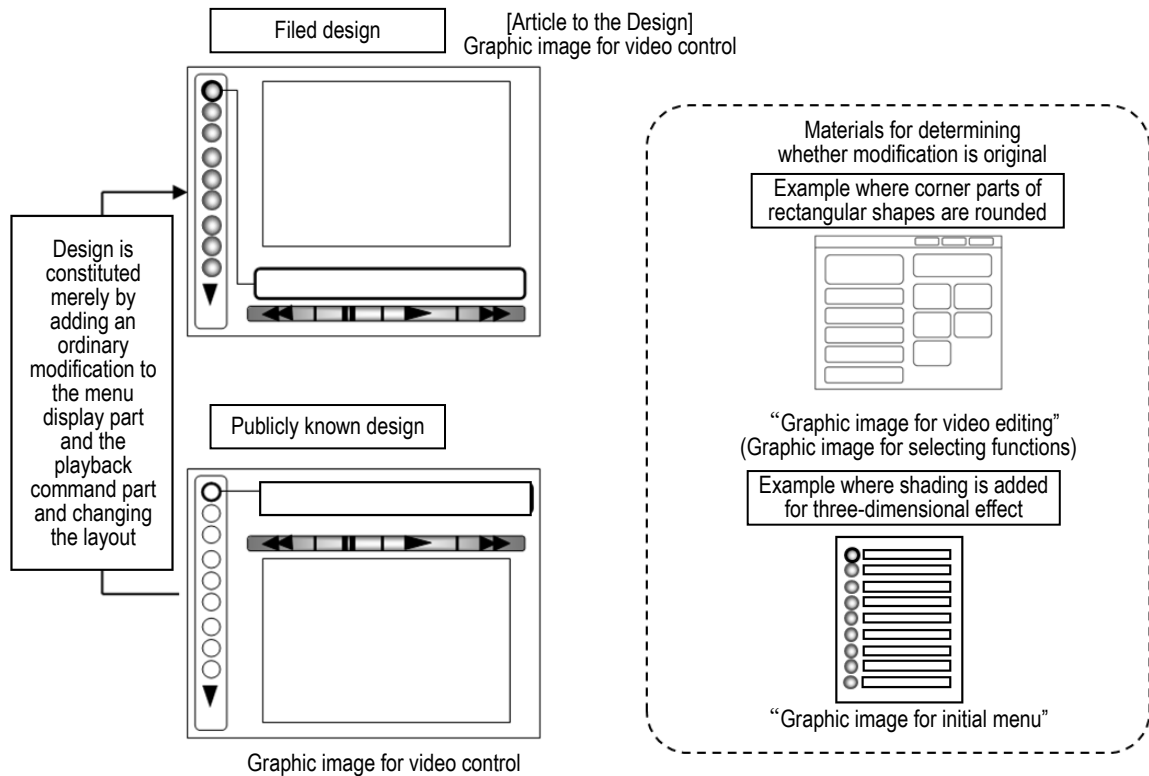
Where a graphic image merely constitutes a single graphic image in which plural publicly known graphic images have been aggregated, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the 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

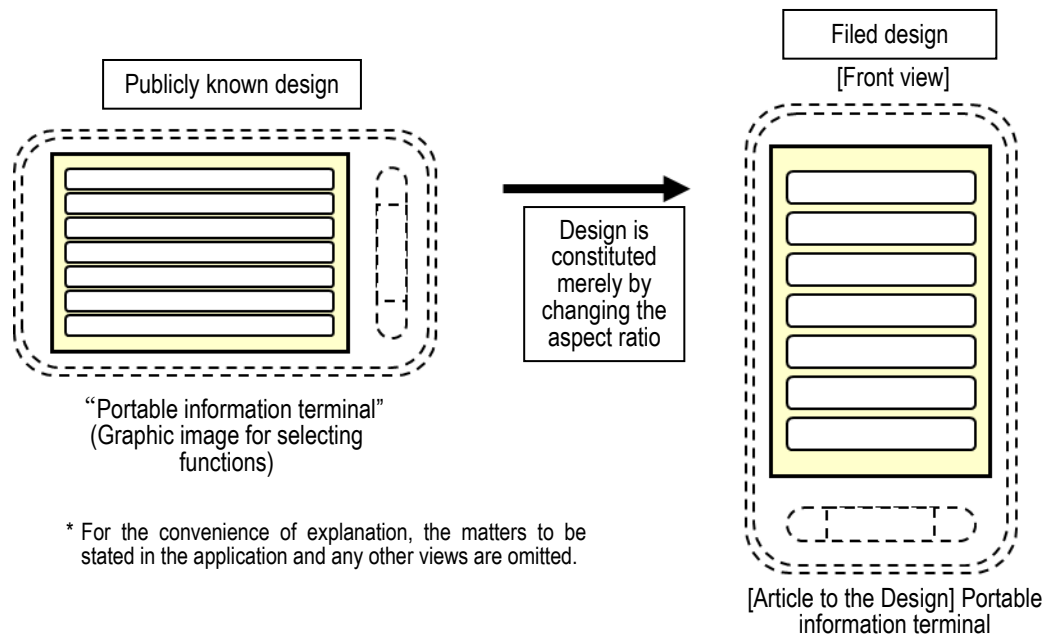
Where a graphic image is merely the rearrangement of a publicly known graphic image, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the layout (and with respect to any added modifications),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

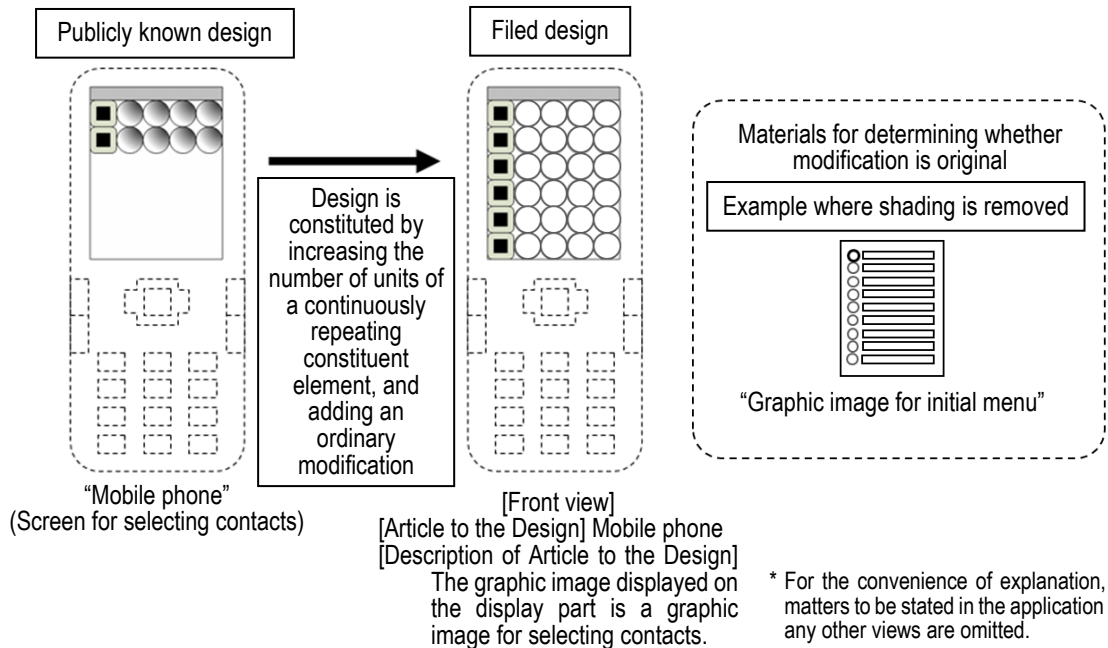
(4) Examples of designs that could have been easily created through change of component ratio

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.



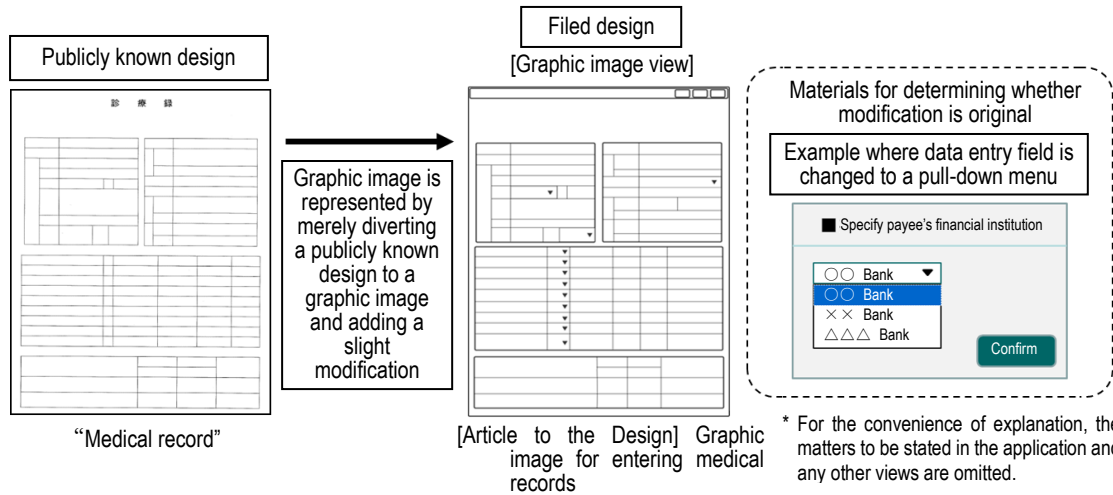
(5) Examples of designs that could have been easily created through change in number of units of a continuous constituent element

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.



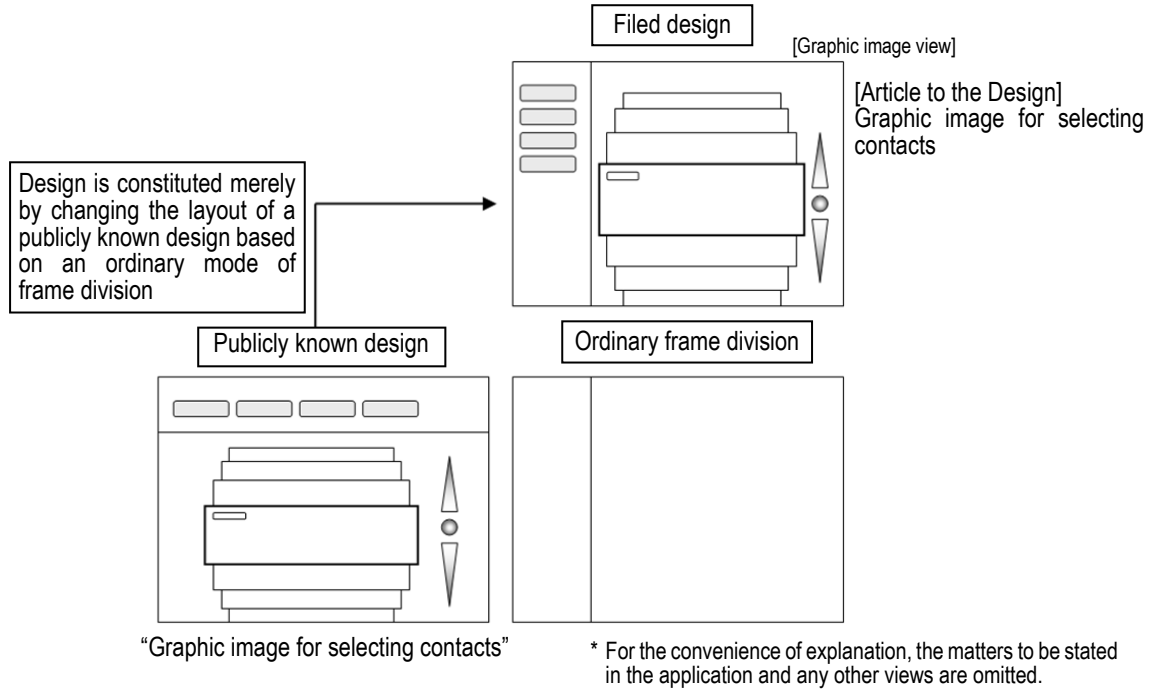
(6) Examples of designs that could have been easily created through use or diversion of a constituent element beyond the framework of the article, etc.

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.

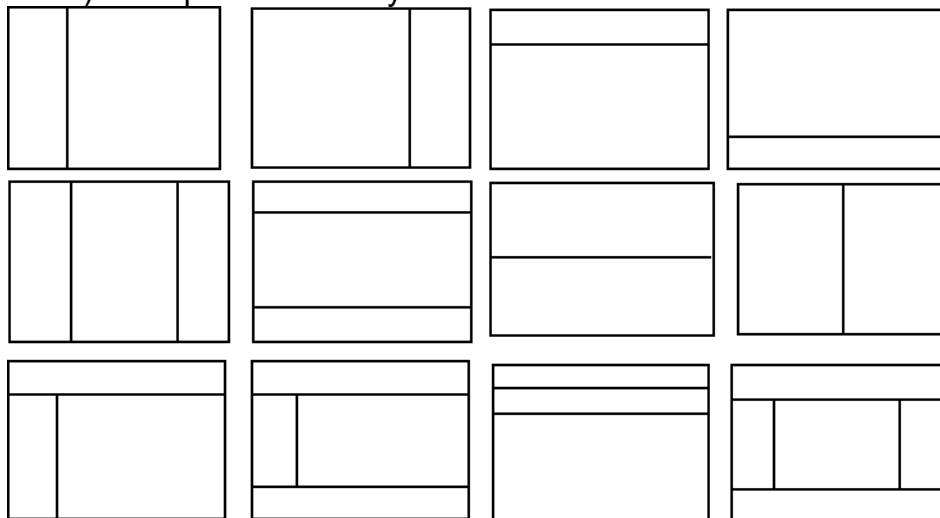


(7) Examples of designs that could have been easily created through change of the mode of frame division

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.

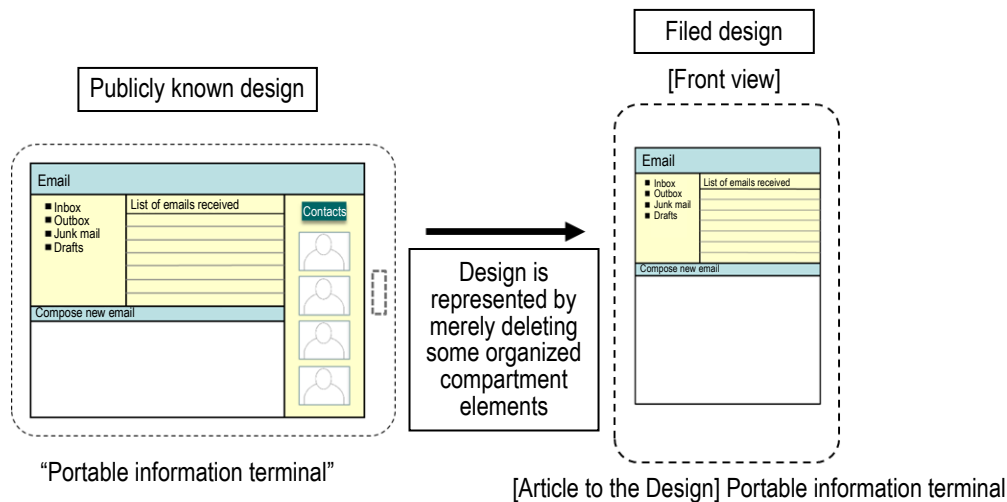


<(Reference) Examples of ordinary modes of frame division>



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

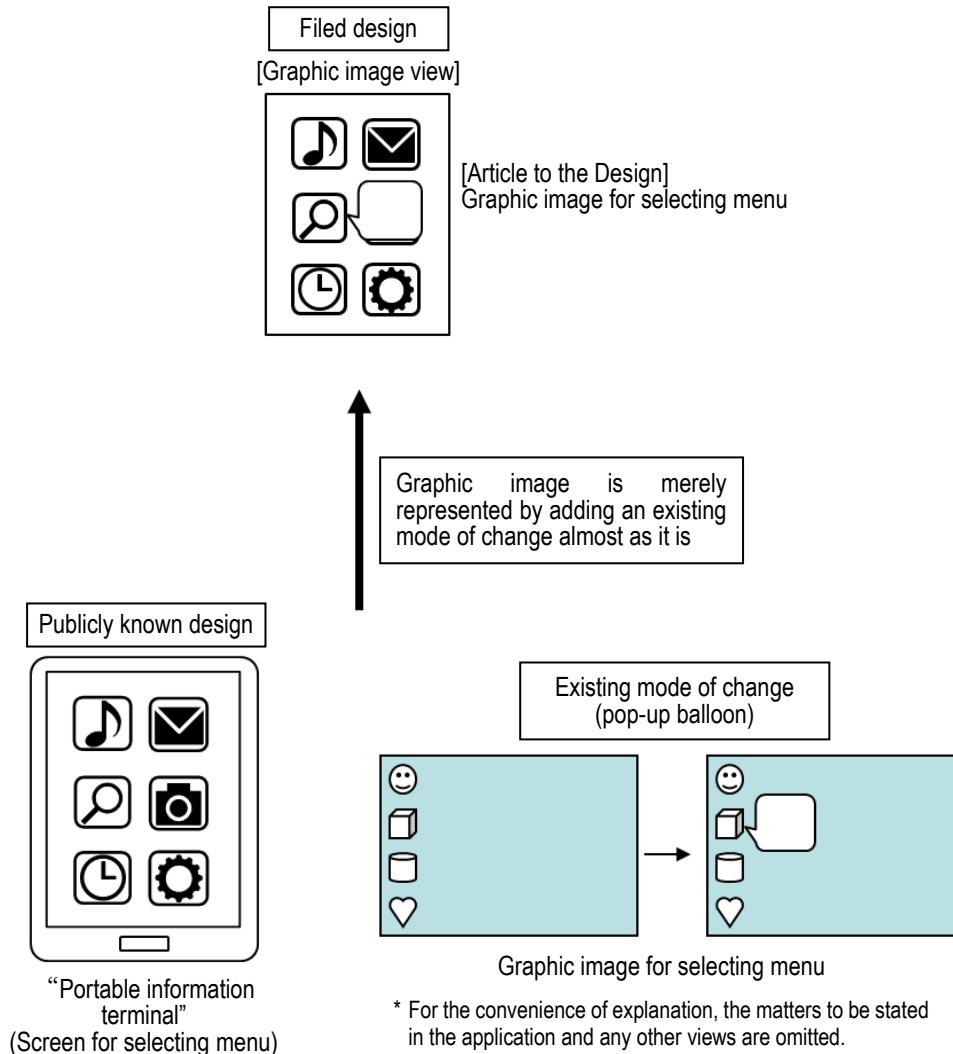
Where a graphic image constitutes a publicly known graphic image from which organized compartment elements have been deleted, and where novelty or original design ideas from the viewpoint of a person skilled in the art, which are based on original ingenuity, are not recognized with respect to the change 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.



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

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

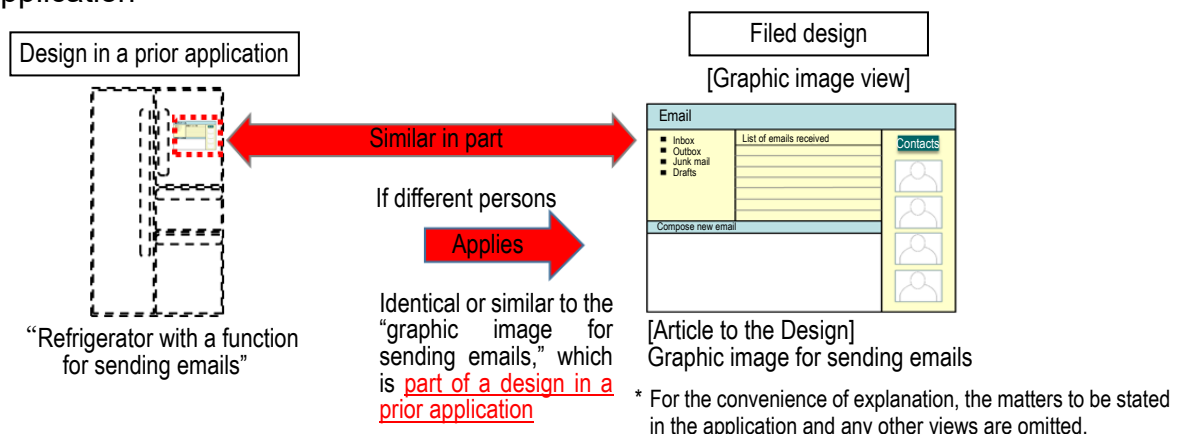
whether or not those graphic images can be found to be a single graphic image that changes, see [5.2.4 “Graphic images that change.”](#)

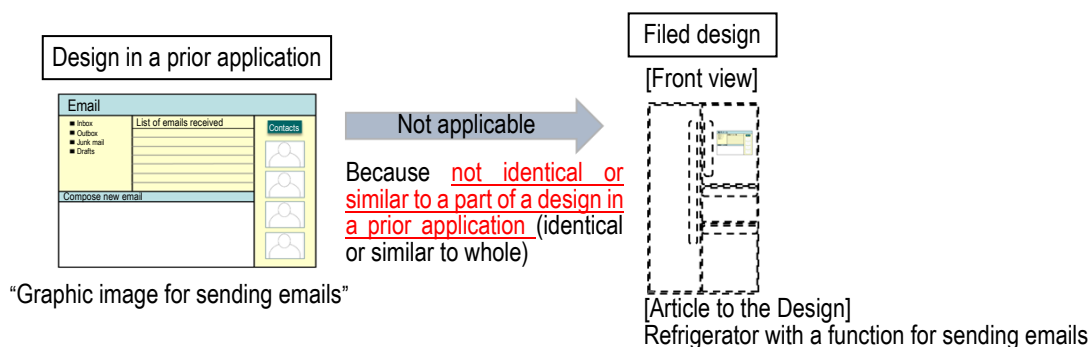
- (1) Where either of the graphic images indicating before and after the change could not have been easily created by a person skilled in the art
- (2) Where the mode of change could not have been easily created by a person skilled in the art

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.

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.”](#)

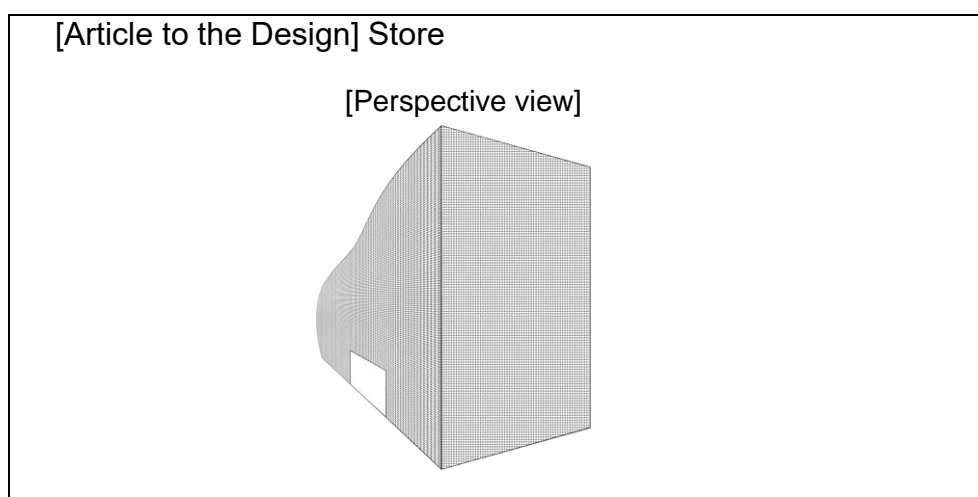
(2) Examples of cases where subject matter cannot be found to be a specific design

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

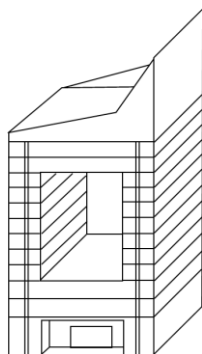
When determining similarity between designs, if part of the building includes natural objects, etc. that constitute the design—like the shape, etc. of branches,

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.

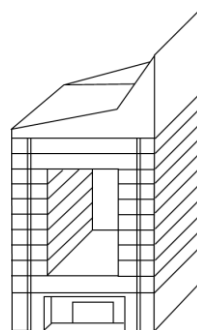
In addition, for the handling of cases where the subject matter of an application for building design includes some natural objects or other subject matter not categorized as a design under the Design Act, see [4.3 “Concept of one design in cases where something fixed to a building or land is represented”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



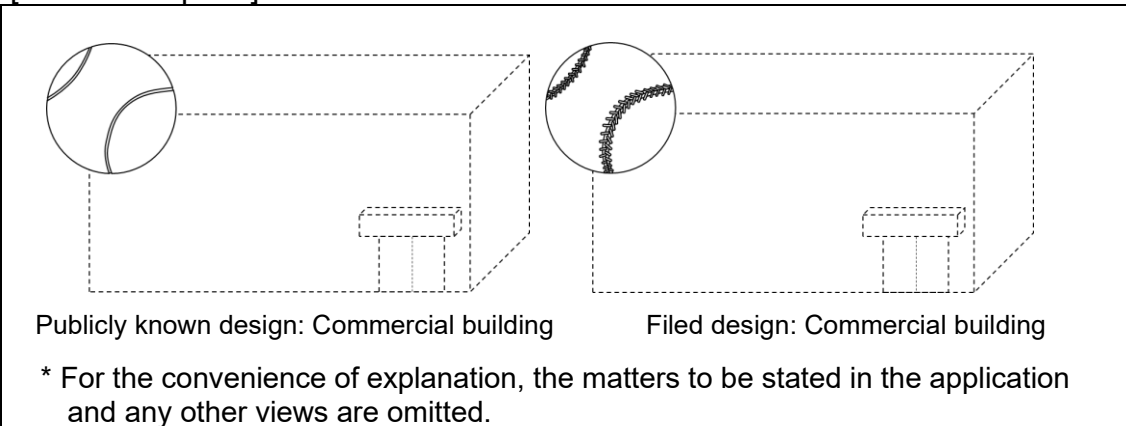
Publicly known design:
Office building



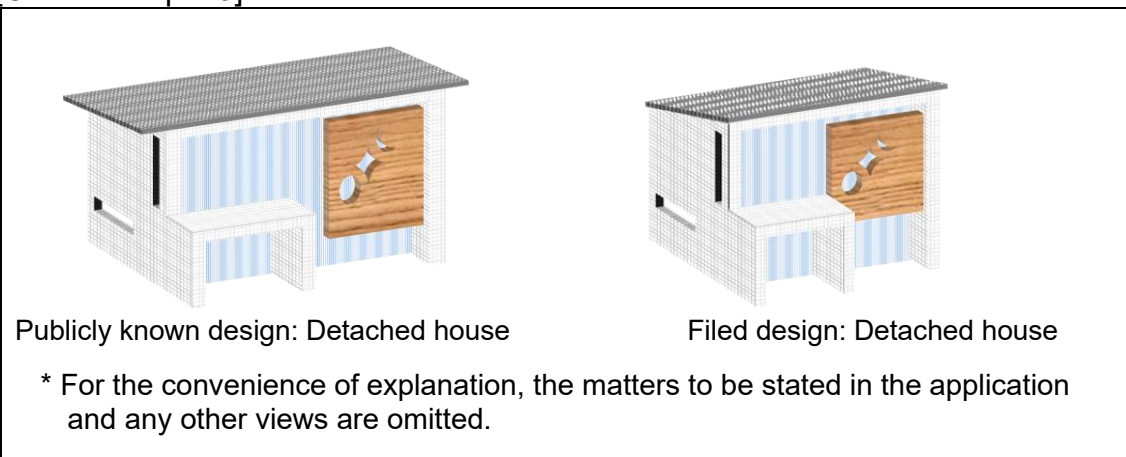
Filed design:
Office building

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

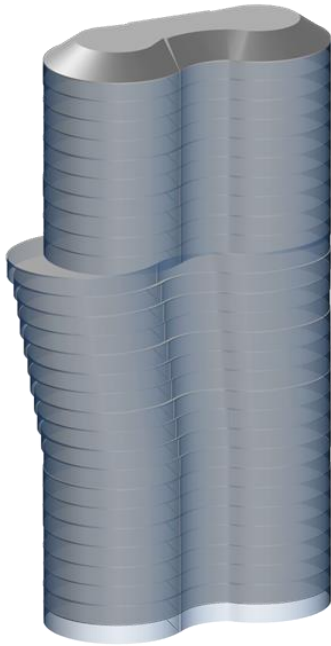
[Case example 2]



[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.

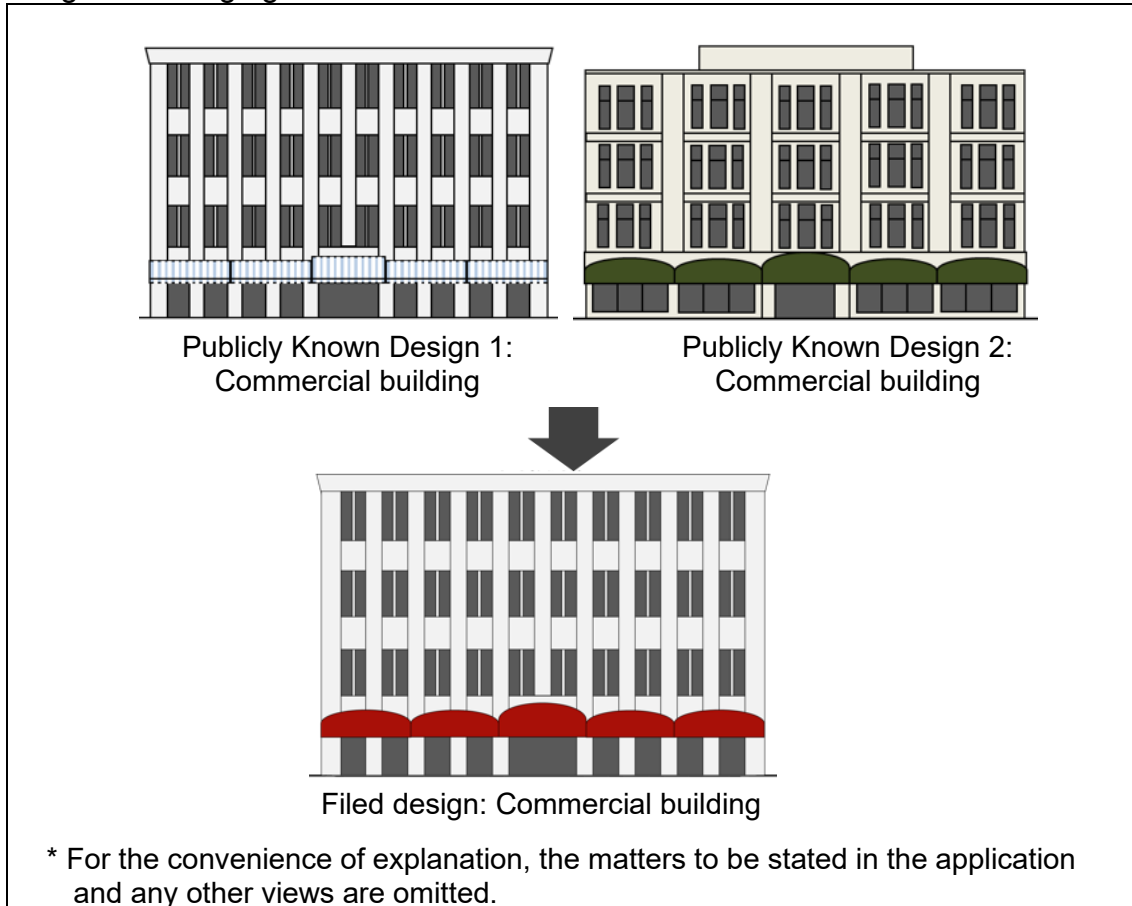
In addition, for the handling of cases where the subject matter of an application for building design includes some natural objects or other subject matter not categorized as a design under the Design Act, see [4.3 “Concept of one design in cases where something fixed to a building or land is represented”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

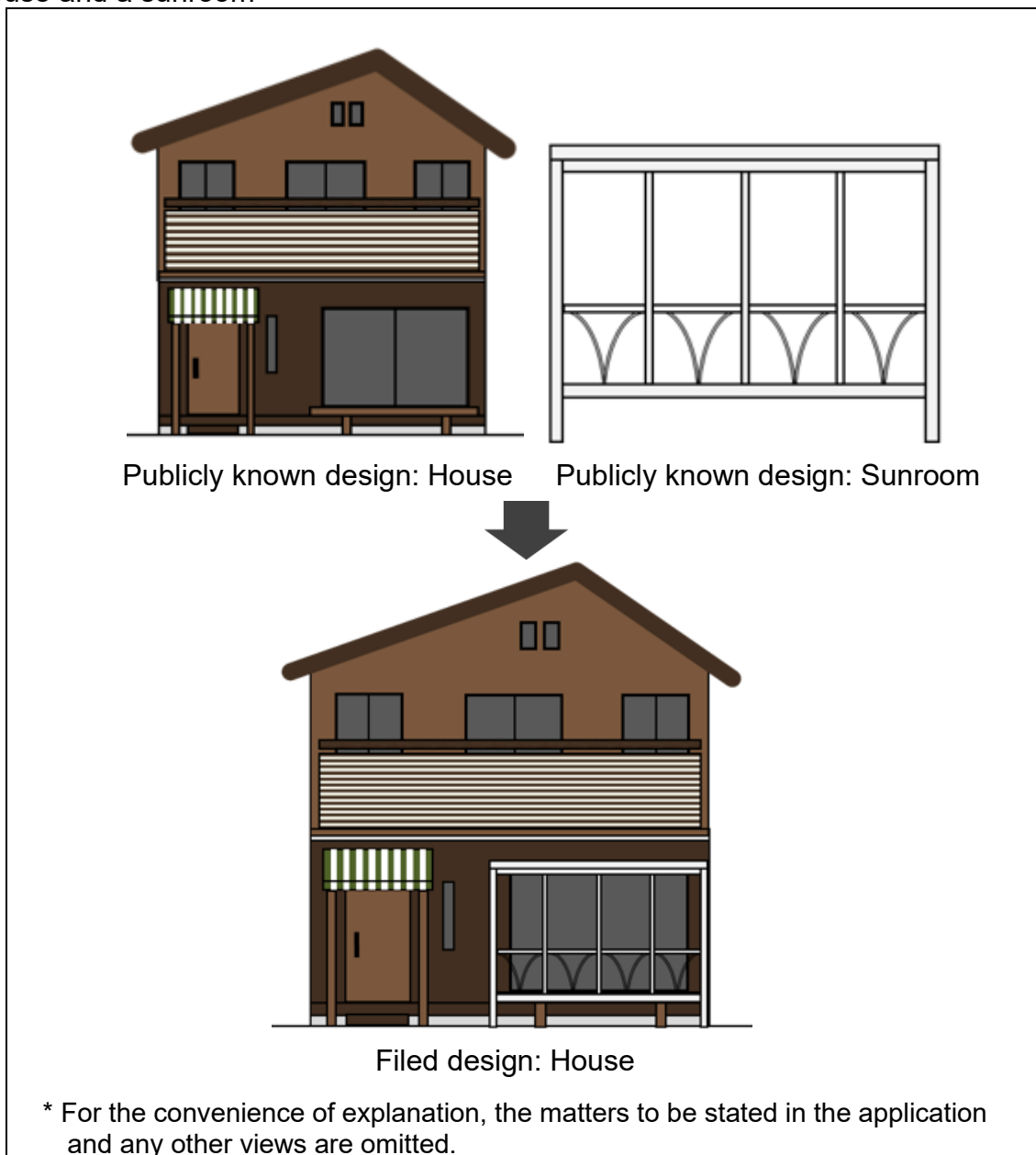
A design based on a publicly known commercial building, which merely represents an awning by replacing it with the awning of another publicly known commercial building and changing the color



(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”

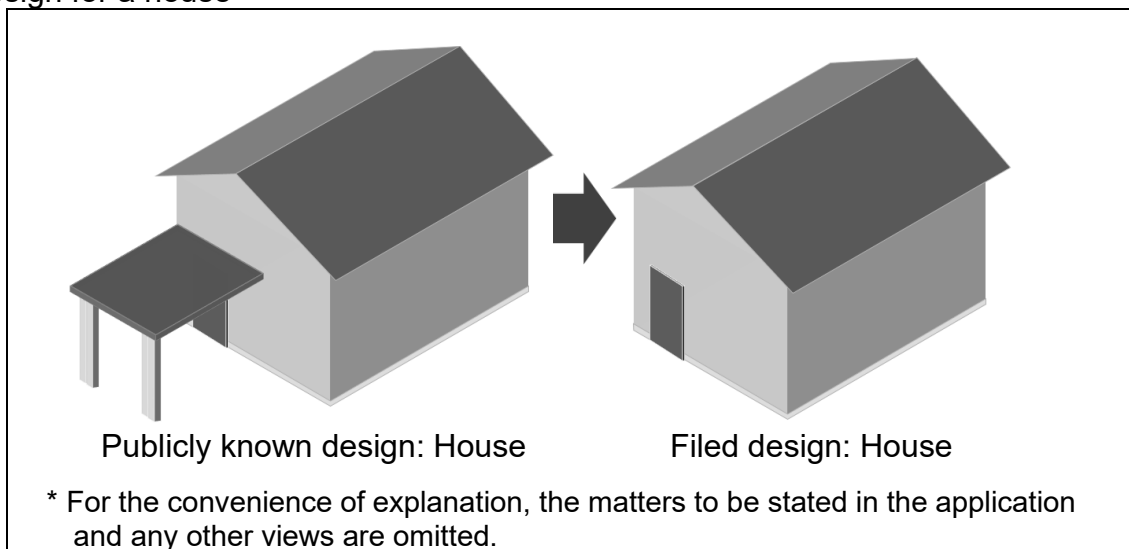
A design which merely represents the aggregation of publicly known designs for a house and a sunroom



(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”

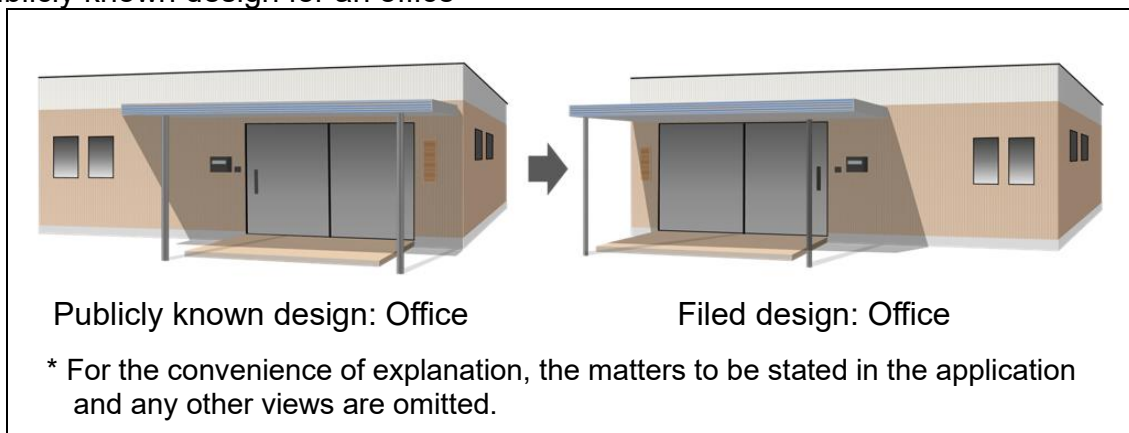
A design which merely represents the deletion of the portico from a publicly known design for a house



(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”

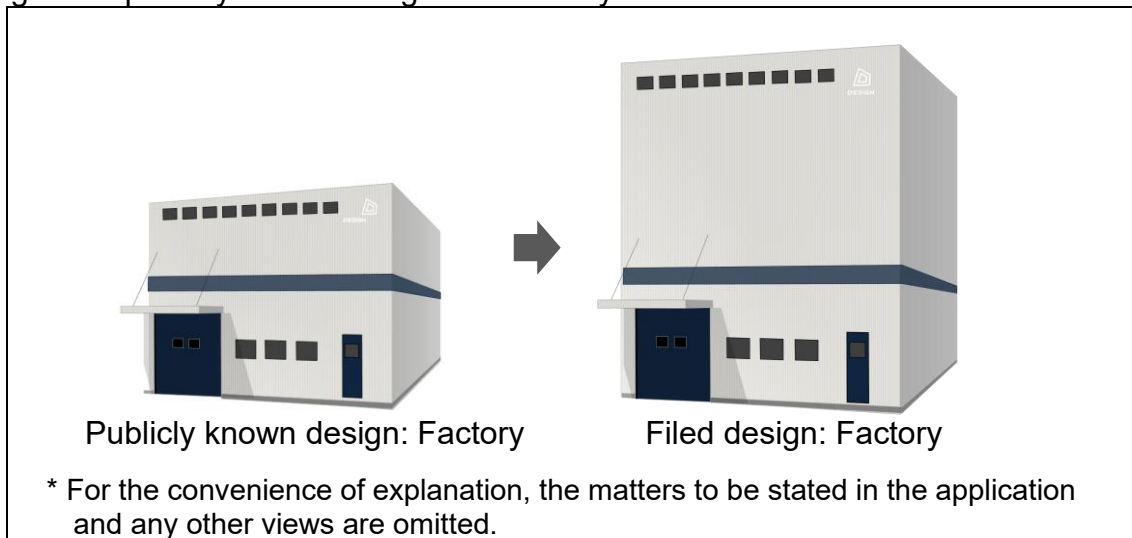
A design which merely represents the changed position of the point of entry in a publicly known design for an office



(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”

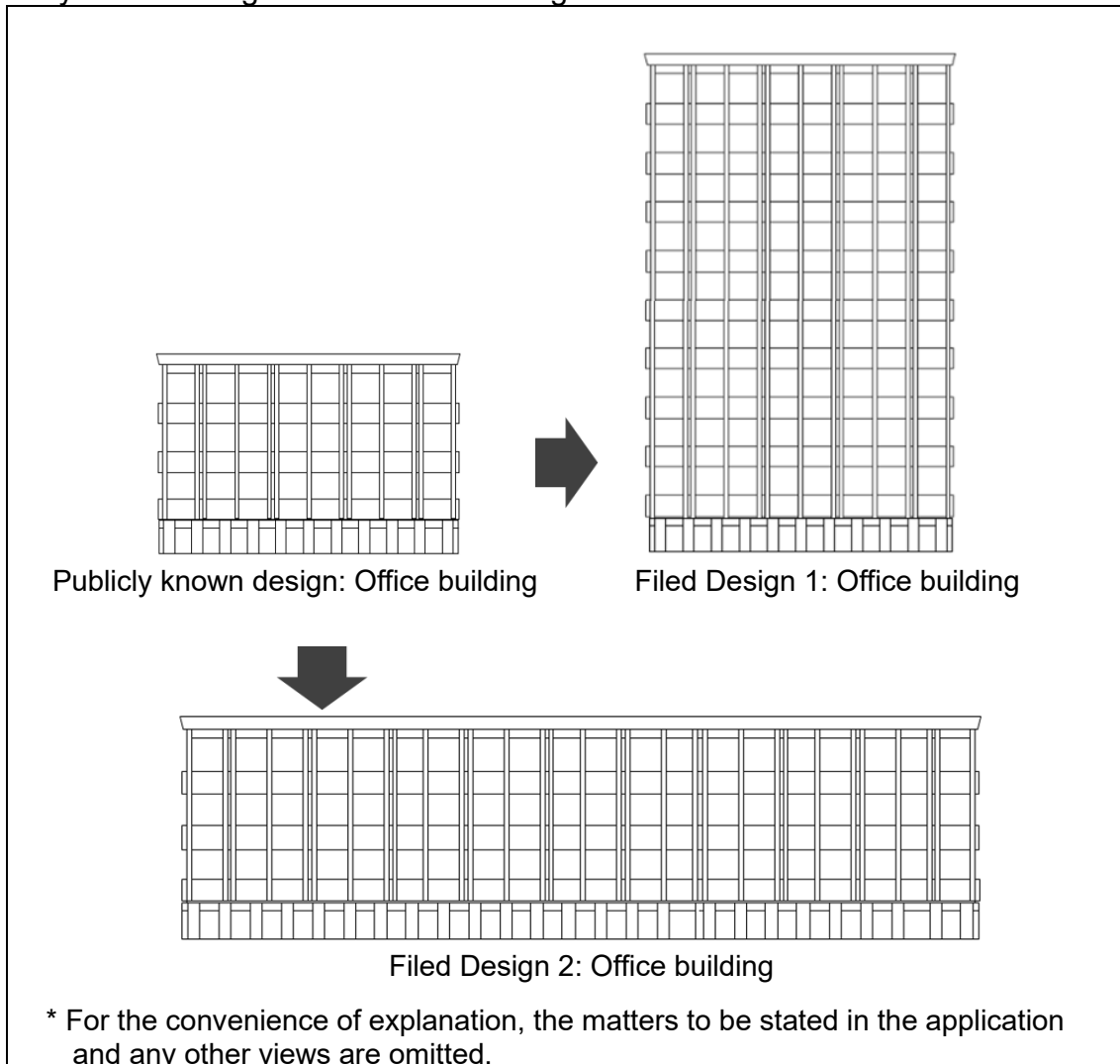
A design which merely represents the changed component ratio of width and height in a publicly known design for a factory



(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”

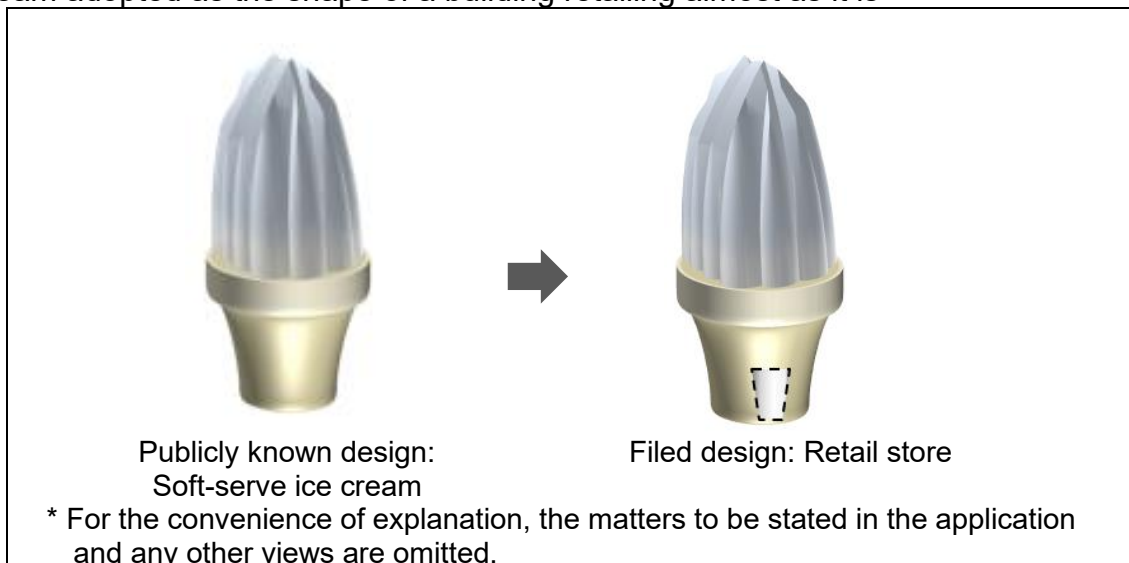
A design which merely represents an increase in the number of floors or width in a publicly known design for an office building



(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.”](#)

Chapter III Design for a Set of Articles

1. Outline

Article 8 of the Design Act provides, “Where two or more articles, buildings or graphic images are used together and are specifically designated by Ordinance of the Ministry of Economy, Trade and Industry (hereinafter referred to as a “Set of Articles”), if the Set of Articles is coordinated as a whole, an application for design registration may be filed as one design, and the applicant may obtain a design registration, for designs for the articles, buildings or graphic images that constitute the Set of Articles.”

An application for design registration shall be filed for each design (Article 7 of the Design Act), and, in principle, the application for a design can only be filed for a single article, etc. However, in the creation of designs, two or more articles, etc. are often created with a sense of unity.

In response, Article 8 of the Design Act provides that, even if a design comprises two or more articles, buildings, or graphic images (hereinafter referred to as “articles, etc.”), if those constituent articles, etc. are used together and are coordinated as a whole, an applicant may file an application for design registration and may obtain a design registration as one design.

Furthermore, Article 2 of the Design Act provides that parts of articles, etc. are also subject to design registration, and since the design for a set of articles is not an exception, even in the case of an application requesting design registration for two or more parts of an article, etc., design registration may be obtained as a design for a set of articles.

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

2. Basic concept in examining a design for a set of articles

For applications requesting design registration as a design for a set of articles, the examiner should determine whether the filed design complies with each of the following requirements in order to obtain design registration as a design for a set of articles (Note).

(1) The design falls under one for a set of articles as provided by Ordinance of the Ministry of Economy, Trade and Industry

(2) Two or more articles, buildings or graphic images (hereinafter referred to as an “article, etc.”) are used together

(3) The set of articles is coordinated as a whole

Where the filed design for a set of articles complies with each of the above requirements, the examiner should determine whether it complies with other requirements (the main paragraph of Article 3, paragraph (1) of the Design Act (as well as Article 2 of the Design Act); novelty (Article 3, paragraph (1) of the Design Act); creative difficulty (Article 3, paragraph (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 (Article 3-2 of the Design Act); unregistrable designs (Article 5 of the Design Act); prior application (Article 9 of the Design Act); and related designs (Article 10 of the Design Act)) not on the basis of each constituent article, but as a whole set of articles.

(Note) Even if the application does not comply with the requirements of (2) or (3) above, if the specific design is identifiable and there is no substantive deficiency, such non-compliance with the requirements constitutes a mere formal deficiency that applications should have been filed as a single design for each of the multiple articles, etc. Accordingly, where an application for design registration does not comply with the requirements of (2) or (3) above, registering that application as it is does not directly harm the interests of third parties in a substantial way. Therefore, failure to fulfill the requirements of Article 8 of the Design Act does constitute a reason for refusal, but does not constitute a reason for invalidation. Considering these circumstances, the examiner should not make an unnecessarily strict determination on the requirements of (2) or (3) above.

- * This Chapter focuses on particular matters that are applicable only when examining a design for a set of articles. For other matters not described in this Chapter, see the relevant parts of the ordinary determination standards for designs.

3. Specific determinations in examining a design for a set of articles

3.1 The design falls under one for a set of articles as provided by Ordinance of the Ministry of Economy, Trade and Industry

Where a design that has been filed as one for a set of articles does not fall under some of the designs for a set of articles listed in Appended Table, the examiner should give notice of reasons for refusal under Article 8 of the Design Act.

3.2 Two or more articles, etc. are used together

Where the examiner determines that the articles, etc. constituting a design that has been filed as one for a set of articles (hereinafter referred to as “constituent articles, etc.”) do not comprise two or more articles, etc. that are commonly used together, the examiner should give notice of reasons for refusal under Article 8 of the Design Act.

Where each constituent article, etc. of a filed design for a set of articles is used together, the examiner should determine that the design for a set of articles complies with this requirement in cases of two article designs, two building designs and two graphic image designs, as well as in cases of combinations of these, for example, a building design and a graphic image design, a building design and an article design, and an article design and a graphic image design.

It is not necessary for all constituent articles to be actually used at the same time. In determining this requirement, where each constituent article, etc. is used within the scope of a series of uses in accordance with the usage, function and the purpose of use, etc. of the filed design for a set of articles, the examiner should determine that the filed design complies with this requirement.

Furthermore, the examiner should also determine that the filed design complies with this requirement where each constituent article, etc. of a filed design for a set of articles is commonly distributed in an integrated manner.

3.3 The set of articles is coordinated as a whole

Where the constituent articles, etc. of a design that has been filed as one for a set of articles are not coordinated as a whole, the examiner should give notice of reasons for refusal under Article 8 of the Design Act.

Where the constituent articles, etc. of a design that has been filed as one for a set of articles include those for which the design registration is requested for a part of the article, etc., the examiner should examine whether all of the constituent articles, etc. have the part for which design registration is requested (including cases where design registration is requested for all of the constituent articles; hereinafter the same shall apply in this paragraph 3.3), and whether the parts for which design registration is requested in all constituent articles, etc. are coordinated as a whole, and where the examiner determines that the filed design complies with neither of these requirements, the examiner should give notice of reasons for refusal under Article 8 of the Design Act.

Where each constituent article, etc. (in cases where the filed design is one for which the design registration is requested for a part of an article, etc., “the part for which the design registration is requested in each constituent article, etc.”; hereinafter the same shall apply in this paragraph and in 3.3.1 through 3.3.3) falls under any of the following, for example, the examiner should determine that the set of articles is coordinated as a whole.

- (1) Where the shape, patterns, or colors, or any combination thereof of each constituent article, etc. is represented through equivalent formative processing
- (2) Where each constituent article, etc. of a set of articles represents one cohesive shape or pattern as a whole
- (3) Where the shape, patterns, or colors, or any combination thereof of each constituent article, etc. gives a conceptually related impression as a whole set of articles, such as narrativity

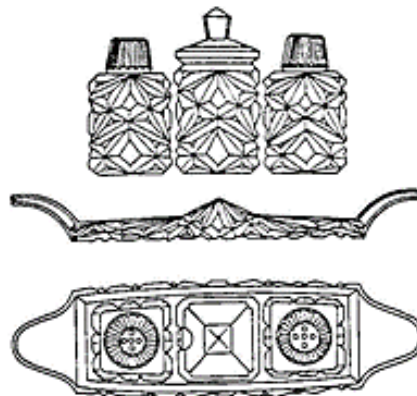
3.3.1 Examples of cases where the shape, patterns, or colors, or any combination thereof of each constituent article, etc. is represented through equivalent formative processing

- (1) Where the constituent articles, etc. are coordinated in shape
 - (a) Where the shapes of all constituent articles, etc. have a constant order or tone

[Case example 1] A set of electric and electronic appliances

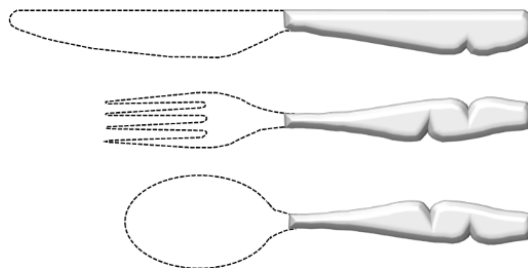


[Case example 2] A set of tableware

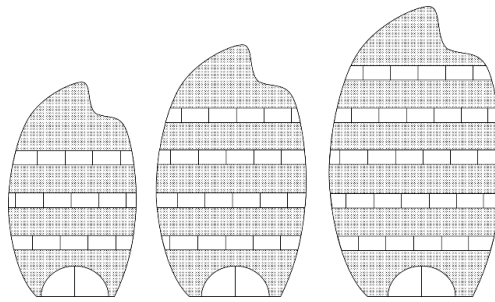


- (b) Where each constituent article, etc. represents a shape with equivalent characteristics

[Case example 1] A set of cutlery



[Case example 2] A set of buildings



[Description of Article to the Design]

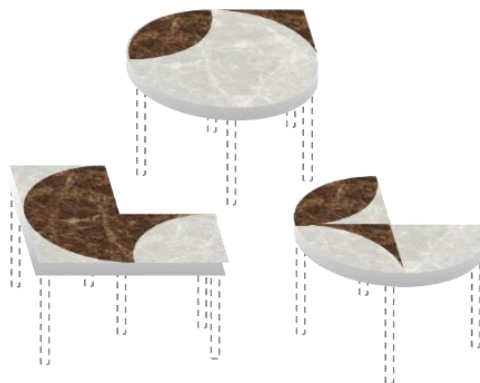
This set of buildings consists of a commercial building, a hotel, and a museum.

- (2) Where the constituent articles, etc. are coordinated in pattern
Where a pattern with the same motif or mode of expression is represented on each constituent article, etc.

[Case example 1] A set of furniture



[Case example 2] A set of furniture



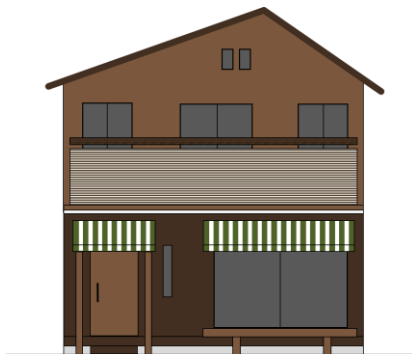
[Case example 3] A set of tableware



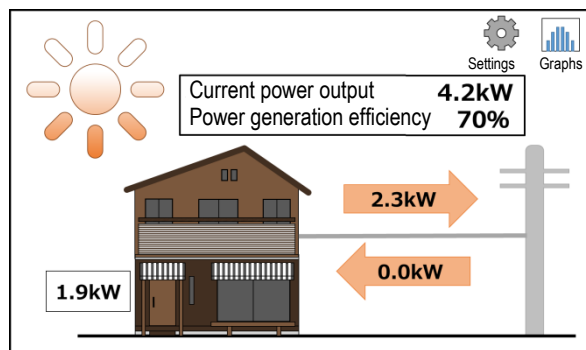
- (3) Where the constituent articles, etc. are coordinated in shape and pattern
Where a shape and pattern with the same motif or mode of expression is
represented on each constituent article, etc.

[Case example 1] A set of buildings

House with solar panels



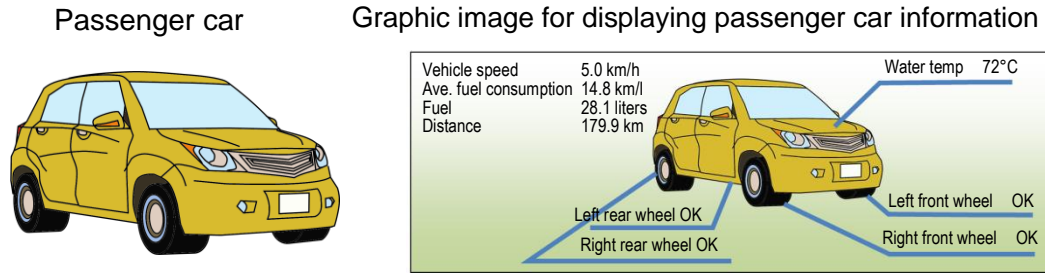
Graphic image for indicating power generation



[Description of Article to the Design]

This design comprises a house with solar panels and a graphic image for indicating power generation. The graphic image shown in the graphic image view indicates the amount of power generated, power generation efficiency, the amount of consumption, and the state of power sold to the grid.

[Case example 2] A set of transportation equipment



[Description of Article to the Design]

This design comprises a passenger car and a graphic image for displaying passenger car information. The graphic image shown in the graphic image view indicates passenger car information such as water temperature and tire pressure.

(4) Where the constituent articles, etc. are coordinated in color

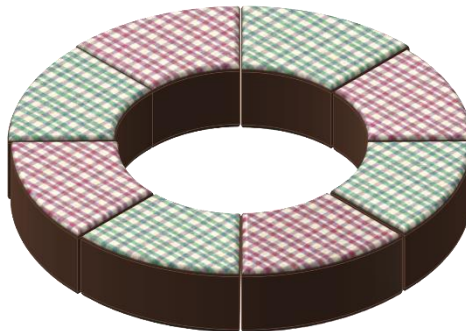
Where the constituent articles, etc. are coordinated as a whole by a specific color combined with a shape or pattern

3.3.2 Examples of cases where each constituent article, etc. of a set of articles represents one cohesive shape or pattern as a whole

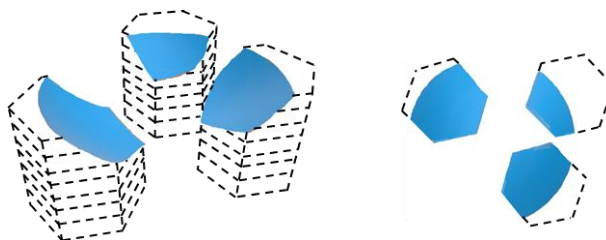
(1) Where the constituent articles, etc. are coordinated in shape

Where the constituent articles constitute one cohesive shape in an integrated manner

[Case example 1] A set of furniture



[Case example 2] A set of buildings

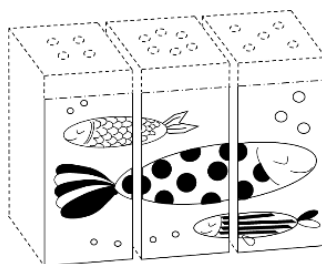


[Description of Article to the Design]

This set of buildings consists of a commercial building, a hotel, and a museum.

- (2) Where the constituent articles, etc. are coordinated in pattern
Where the patterns represented on the constituent articles form one cohesive pattern in an integrated manner

[Case example 1] A set of tableware



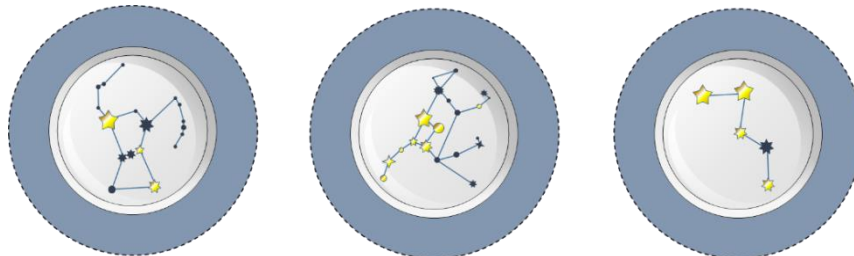
[Case example 2] A set of kitchen equipment



- (3) Where the constituent articles, etc. are coordinated in color
Where the constituent articles, etc. are coordinated as a whole by a specific color combined with a shape or pattern

3.3.3 Examples of cases where the shape, patterns, or colors, or any combination thereof of each constituent article, etc. gives a conceptually related impression as a whole set of articles, such as narrativity

[Case example] A set of tableware



4. Determination on the requirements for design registration, etc. concerning a design for a set of articles

Where an application for design registration for a design for a set of articles complies with the requirements provided in Article 8 of the Design Act, the examiner should determine whether or not the whole set of articles falls under each of the provisions including the following: the main paragraph of Article 3, paragraph (1) of the Design Act (as well as Article 2 of the Design Act); novelty (Article 3, paragraph (1) of the Design Act); creative difficulty (Article 3, paragraph (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 (Article 3-2 of the Design Act); unregistrable designs (Article 5 of the Design Act); prior application (Article 9 of the Design Act); and related designs (Article 10 of the Design Act).

5. Exception to lack of novelty concerning an application for design registration for a design for a set of articles

An application for design registration for a design for a set of articles is also subject to application of the provisions of Article 4, paragraph (1) or (2) of the Design Act.

With regard to the requirements, etc. and any other determination standards for application of the provisions of Article 4, paragraph (1) or paragraph (2) of the Design Act, see [Part III, Chapter III “Exception to Lack of Novelty.”](#)

6. Amendment of a design for a set of articles

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, appeal and trial or retrial (Article 60-24 of the Design Act).

Below describes the points that examiners should note regarding the amendment of designs for sets of articles. For other information on the basic handling of amendments, see [Part VI, Chapter I “Amendment”](#) and [Chapter II “Dismissal of Amendments.”](#)

6.1 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 identical to that which 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.

6.2 Specific handling of an amendment made to the statement in an application

- (1) Amendment to change a statement to a set of articles listed in Appended Table

Where a set of articles listed in Appended Table is not stated in the column of “Article to the Design” in the application as originally filed, and it can be recognized as a single design from statements such as those in the application and drawings, etc. attached to the application, if an amendment has been made to change a statement in the column of “Article to the Design” in the application to a set of articles listed in Appended Table, the examiner should determine that such an amendment changes the gist of the statement in the application or drawings, etc. attached to the application as originally filed.

However, where the statement in the column of “Article to the Design” in the application as originally filed was, for example, “a set (pair) of xxx set (unit),” “a set (pair) of xxx” or “xxx set (unit),” and is unregistrable under Article 8 of the Design Act, but a set of articles listed in Appended Table can be inevitably derived by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application, if an amendment has been made to change a statement in the column of “Article to the Design” to such set of articles that could be inevitably derived, the examiner should determine that such an amendment does not change the gist.

- (2) Amendment to change from a design for a set of articles listed in Appended Table to a single article, etc. to the design

Where a set of articles listed in Appended Table is stated in the column of “Article to the Design” in the application, but the drawings, etc. attached to the application show only single design, an amendment to change the statement in the column of “Article to the Design” in the application to such a single article, etc. to the design does not change the gist.

6.3 Specific handling of an amendment made to the drawings, etc. attached to an application

(1) Amendment to delete an article that is found to be inappropriate as a constituent article of a set of articles

Where a set of articles listed in Appended Table is stated in the column of “Article to the Design” in the application as originally filed, but the drawings, etc. attached to the application show a design with inappropriate constituent articles, etc., the examiner should determine that there are multiple designs. In contrast, when an applicant divides the application for design registration into one application for design registration for a design for a set of articles and one or more other applications for design registration, the examiner should not determine that an amendment to the original application for design registration to delete the design with inappropriate constituent articles, etc. from drawings, etc. attached to the application changes the gist.

(2) Amendment to supplement or delete an article that is found to be appropriate as a constituent article

The examiner should determine that an amendment to add or delete a design that is found to have appropriate constituent articles, etc. exceeds the scope of identity that can be inevitably derived by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application as originally filed, and it changes the gist.

(3) Amendment to add drawings of the respective constituent articles, etc. with regard to an application for design registration that only has a drawing of the articles in a combined state

Where drawings represent the shape, etc. of respective constituent articles, etc. that cannot be inevitably derived by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application as originally filed, the examiner should determine that an amendment to add such drawings to drawings, etc. attached to the application changes the gist.

Where the shape, etc. of the constituent articles, etc. can be inevitably derived by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application as originally filed, the examiner should not determine that an amendment to add drawings representing the shape, etc. of the respective constituent articles, etc. to drawings, etc. attached to the application changes the gist.

6.4 Amendment to building design

Where the subject matter of an application for a design for a set of articles does not contain multiple articles, buildings or graphic images and is not recognized as a design for a set of articles, and if it is recognized that, in essence, it should be filed as a building design, the examiner should determine that an amendment which changes this application to one for design registration for a building 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 a design for a set of articles complies with the requirements for categorization as a design for a set of articles, the examiner should determine that an amendment which changes the application to one for a building design does change the gist of the design. (For the

design applicability requirements for designs for a set of articles, see [3. “Specific determinations in examining a design for a set of articles” in this Chapter.](#))

Furthermore, when determining whether two designs are identical, in addition to the shape, etc. of both designs, the examiner should also compare usage and function, and in the case of designs 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.

6.5 Amendment to interior design

Where the subject matter of an application for a design for a set of articles complies with the requirements for categorization as a design for a set of articles, the examiner should determine that an amendment which changes the application for a design for a set of articles to one for an interior design does change the gist of the design. (For the design applicability requirements for designs for a set of articles, see [3. “Specific determinations in examining a design for a set of articles” in this Chapter.](#))

Furthermore, when determining whether two designs are identical, 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 designs 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.

7. Division concerning an application for design registration for a design for a set of articles

7.1 Division of an application for design registration where the design of which is found to be a design for a set of articles

Where a design constituted by multiple articles, etc. complies with the requirements provided in Article 8 of the Design Act, such design is found to be one design as a whole, so if one or more new applications for design registration are filed for respective constituent articles, etc., it is not found to be legitimate division based on the provisions of Article 10-2 of the Design Act and the new application for design registration is treated as having been filed at the time of the division.

7.2 Division of an application for design registration where the design of which is not found to be a design for a set of articles

Where an application for design registration for a design for a set of articles does not comply with the requirements provided in Article 8 of the Design Act, such design is not found to be one design as a whole, so division based on the provisions of Article 10-2 of the Design Act is allowed, and the new application for design registration is deemed to have been filed at the time of filing the original application for design registration.

With regard to any other determination standards, see [Part VIII, Chapter I “Division of Applications for Design Registration.”](#)

8. Application for design registration for a design for a set of articles containing a priority claim under the Paris Convention, etc.

A priority claim under the Paris Convention, etc. is effective with regard to an application for design registration for a design for a set of articles only where the constituent articles, etc. are filed as one design in the first country equivalent to the case of a set of articles in Japan.

With regard to any other determination standards, see [Part VII “Advantage of Priority under the Paris Convention.”](#)

Chapter IV Interior Design

1. Outline

Article 8-2 of the Design Act specifies that interior designs are subject to protection under the Design Act, providing, “Where designs for articles, buildings or graphic images that constitute equipment and decorations inside a store, office and the other facilities (hereinafter referred to as “interior”) create a coordinated aesthetic impression as a whole interior, an application for design registration may be filed as one design, and the applicant may obtain a design registration.”

An interior design consists of multiple constituent articles, etc., such as furniture and fixtures, and is an exception to the “one application per design” requirement (Article 7 of the Design Act).

In order to make the aesthetic impression of an entire interior subject to protection, including how each constituent article, etc. is combined and arranged, an application for design registration may be filed as one design, and the applicant may obtain a design registration, for a design for articles, buildings, or graphic images that constitute an interior only where it creates a coordinated aesthetic impression as a whole interior.

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

2. Basic concept in examining an interior design

When examining an interior design, 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.

This Chapter focuses on specific matters when examining interior design, such as the requirements for categorization as an interior design. For other matters not described in this Chapter, see the relevant parts of the examination standards pertaining to each requirement for registration.

In examining an interior design, the examiner should first determine whether the design for which the design registration is requested falls under an interior 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. Requirements for categorization as an interior design

Where the filed design complies with all of the following requirements, the examiner should determine that it falls under an interior design provided in Article 8-2 of the Design Act.

- (1) The subject matter is inside a store, office, or other facility (→ see [6.1.1.1](#))
 - (i) The subject matter falls under a store, office, or other facility
 - (ii) The subject matter falls under the inside
- (2) The subject matter consists of multiple articles, buildings, or graphic images under the Design Act (→ see [6.1.1.2](#))
 - (i) The subject matter consists of articles, buildings, or graphic images under the Design Act
 - (ii) The subject matter consists of multiple articles, etc.
- (3) The subject matter creates a coordinated aesthetic impression as a whole interior (→ see [6.1.1.3](#))

For details of each requirement (1) to (3) above, see [6.1.1 “The subject matter constitutes a design” in this Chapter](#).

4. Filing an application for each design

Article 7 of the Design Act provides that an application for design registration should be filed for each design, and in principle, only one article, etc. may be included in each application. On the other hand, as an exception to this principle, Article 8-2 of the Design Act provides that, where an interior design consisting of multiple articles, etc. complies with the prescribed requirements, an application may be filed and design registration obtained as one design.

As described above, while Article 8-2 of the Design Act specifies that, under prescribed requirements, multiple articles, etc. may be included in a single application, there is no change to the fact that this is limited to cases where the design consisting of these articles, etc. can be recognized as a single design. Therefore, where a design that has been filed as an interior design does not fall under a single interior design, the examiner should determine that the application for design registration has not been filed for each design and does not comply with the provisions of Article 7 of the Design Act.

The examiner should determine whether a design that has been filed as an interior design falls under a single interior design from the following perspectives.

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 interior design 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.

Example 1: “Interior of an office, interior of a school classroom”

Example 2: “Interior of a hotel guest room, and in addition, interior of a room in a hospital ward”

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

When determining whether representations in the drawings, etc. attached to an application for design registration fall under a single interior design, the examiner should examine them from the perspective of whether the interior design relates to a single space. To be included in a single application as a single design, an interior

design must, in principle, relate to a physically continuous single space which is not divided by walls, etc. that partition space. Therefore, if an application includes two or more physically divided spaces, in principle, the examiner should determine that it does not fall under a single interior design. However, where the walls, etc. that partition space are, for example, transparent and the spaces can otherwise be recognized as being visually continuous, the examiner should treat them as a single space.

If the design relates to a single space, like, for example, where a cafe area for rest is incidentally set up within an office space, it may include parts with multiple usages in its interior.

In addition, even if a design includes two or more spaces, if the spaces have commonality in their usage, and if their shape, etc. is recognized as having been created in an integrated manner, the examiner should treat the design as a single interior design.

<Example of a design that is determined to be a single interior design>

Example: “Interior of an office” where workspaces and a cafe for talking business are located in the same space

However, if they are physically separate, such as the cafe for talking business on the first floor and the workspaces on the second floor, and if they have not been created in an integrated manner as a single space, the examiner should not determine the design is a single interior design.

<Examples of designs that are determined not to fall under a single interior design>

Example 1: “Interior of a hotel guest room” and “interior of a hotel lobby” located in separate spaces

Example 2: “Interior of a station building” and “interior of a railway carriage”

4.3 Concept of one design for interior designs with changing shape, patterns, or colors

Regarding interior designs with changing shape, patterns, or colors, based on a single usage and function, the examiner should treat the design, including the shape, etc. before and after the change, as a single interior design.

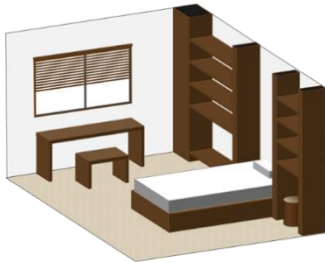
However, such changes are limited to those within the scope of changes necessary in view of the single usage and function. One applicable example of this is the “interior of a break room for an office for rent” which has a movable bed that can be stored against the wall when not in use.

<Example of an interior with changing shape, patterns, or colors>

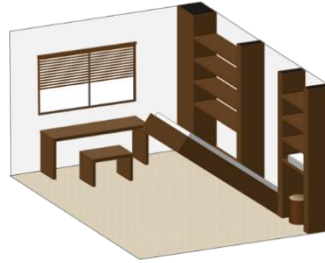
[Article to the Design]: Interior of a break room for an office for rent

[Description of Article to the Design]: The filed design is of the interior of a break room in an office for rent, and has a movable bed for the user to nap on. Since the bed can be stored against the wall when not in use, the space within the office can be used efficiently.

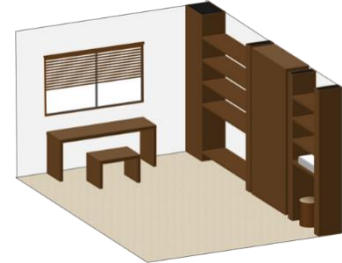
[Perspective view]



[Perspective view showing the bed midway stored]



[Perspective view showing the bed stored]



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

Furthermore, where a graphic image shown on an image display device, etc. contained in the interior changes, or a graphic image projected on a wall or ceiling, etc. by a projector contained in the interior changes, the examiner should treat the graphic image as constituting a single interior design only where changes in the graphic image are within the scope of changes allowable as a single graphic image design (see [Chapter I “Design Including a Graphic Image” in this Part](#)). In addition, where a displayed pattern changes by switching on lighting apparatus contained in the interior, the examiner should treat the pattern as constituting a single interior design only where there is relevance in the patterns before and after the change.

On the other hand, many constituent articles, etc. of interior design can be moved arbitrarily. For example, in the “interior of an office conference room” in which desks and chairs are arranged, it is normal for the desks and chairs to be rearranged depending on the conference format, etc. Nevertheless, Article 8-2 of the Design Act protects aesthetic impression, including the arrangement of each article, etc. that constitutes the interior design. Therefore, where the subject matter of an application for interior design includes a rearrangement of each constituent article, etc., the examiner should determine that it includes articles, etc. pertaining to the creation of separate designs, and as described above, except for cases where such changes are within the scope of changes necessary in view of the single usage and function, the examiner should determine that it does not fall under a single interior design.

<Example of subject matter treated as a single interior design, including the shape, patterns, or colors before and after any change>

Example: “Interior of an accessible toilet for hotels” equipped with movable handrails and baby changing table

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

Some of the matters that must be stated in the application and drawings, etc. of an application for design registration for an interior 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 an interior design.

During examination of an interior 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 an interior design, so that the contents of the design are clear, statements complying with both requirements in (1) and (2) below should be included in the column of “Article to the Design” of the application.

- (1) It is clear that the application is for an interior design
“Interior for ○○” or “interior of ○○” should be stated in the column of “Article to the Design”.
- (2) The specific usage of the interior design is clear
A statement should be included in the column of “Article to the Design” clarifying the type of facility and the usage of the interior in that facility, like “interior of a hotel lobby” for example.

Furthermore, many facilities consist of a variety of spaces. Therefore, in addition to the usage of facility, the usage of the actual interior space represented in the attached drawings, etc. should be stated in the column of “Article to the Design”.

For example, if only “interior of a hotel” is stated in the column of “Article to the Design”, since hotels typically consist of several different spaces, it would not be possible to identify whether it is the interior of the hotel lobby or the interior of guest rooms. For this reason, a statement should be included specifically clarifying the usage of the interior, like “interior of a hotel ○○.”

However, with regard to an interior with multiple usages within a single space, it is sufficient for the primary usage of the interior—or if there is no superior-subordinate relationship between each usage, the usage of the actual facility—to be stated in the column of “Article to the Design”, and each specific usage of the interior to be explained in the column of “Description of Article to the Design”.

<Examples of statements that comply with both requirements above>

It should be noted that the items below are all examples of statements, but that examples of statements recognized as appropriate are not limited to the following.

- Examples of statements concerning commercial and office spaces
Interior of a restaurant, interior of a cafe, interior of an office, interior of a grocery store, interior of a drugstore, interior of a home center, interior of a clothing store, interior of a shoe store, interior of a jewelry store, interior of a musical instrument store, interior of a bookstore, interior of an auto showroom, interior of a beauty salon or barbershop, interior for a dry cleaner, interior of a travel agency, interior of an estate agency, interior of a financial institution, interior for an auditorium of a cinema, interior of a game arcade, interior of a bowling alley, interior for a training room in a fitness center, interior of hotel guest rooms, interior of a bathhouse at a Japanese-style inn, etc.
- Examples of statements concerning living spaces
Interior of a residential living room, interior of a residential kitchen, interior of a residential bedroom, interior of a residential bathroom, interior of a residential toilet, etc.
- Examples of statements concerning educational and medical spaces
Interior of a school classroom, interior of a study room for a private tutoring school, interior of a medical treatment room, interior of an operating room, interior of a room in a hospital ward, etc.
- Examples of statements concerning transportation spaces
Interior of an airport terminal lobby, interior of an airplane passenger cabin, interior of a subway platform, interior for a sightseeing train, interior of a bus terminal lobby, interior for an expressway bus, interior of a ferry terminal lobby, interior of a ferry passenger cabin, etc.

<Example of statement for an interior with multiple usages in a single space>

Example: [Article to the Design] Interior of an office

[Description of Article to the Design] In addition to an office workspace, a cafe will be set up in the same space to be used by workers for taking breaks and holding meetings, etc.

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

If the usage of the interior 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 an interior with multiple usages in a single space, each 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 an application for design registration for an article design, see [Part III, Chapter I “Industrially Applicable Design.”](#)

Furthermore, regarding interior designs with changing shape, patterns, or colors, if the changing order or the changing mode is unclear from statements in the drawings 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 an interior design, since it is the same as an application for design registration for an article design, see [Part III, Chapter I “Industrially Applicable Design.”](#)

In addition, when filing an application for design registration for an interior design, drawings, etc. must be prepared while giving consideration to the following points.

(1) Disclose at least one floor, wall, or ceiling

One of the requirements for categorization as an interior design is that the subject matter falls under the inside of a facility.

Therefore, at least one floor, wall, or ceiling showing that the subject matter is inside the facility must be disclosed in the drawings, etc.

(2) Sufficient for only the internal shape, etc. of the facility to be disclosed

In drawings, etc. representing interior design, the space that encompasses people must be shown. In principle, this is based on the view from inside the space. Therefore, unlike an article design, which is based on disclosure of the external appearance, it is sufficient to disclose only the internal shape, etc. of the facility.

Furthermore, if the facade of a store, for example, is included in the design registration being requested, in addition to just the internal shape, etc. of the facility, drawings should be attached, where necessary, which also represent the relevant external parts.

(3) Disclosure using various drawing methods is permitted to the extent it does not hinder specification of the design

In addition to just orthographic projection, disclosure using various drawing methods is permitted to the extent it does not hinder specification of the design, such as disclosure based on a combination of the top view and multiple perspective views and disclosure using multiple photographs taken from a variety of angles.

5.4.2 Cases where subject matters other than the design for which the design registration is requested are represented in drawings

Drawings for an interior 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 a subject matter other than the design for which the design registration is requested, as well as cases where subject matters relevant to the design for which the design registration is requested can be clearly recognized from other subject matters because of distinguishing indications in drawings, etc.

5.5 Feature statement

Where a feature statement has been submitted which contains the applicant's subjective intention and so on regarding creation of the filed interior design, the

examiner should take this into consideration while proceeding with the examination. For information that serves as the basis in finding of a design, see [1. “Outline” in Part II, Chapter I “Finding of a Design in an Application for Design Registration.”](#)

Furthermore, although the features of a design are to be included in a feature statement (Article 6 of the Ordinance for Enforcement of the Design Act), a feature statement cannot be submitted at the same time as filing an international application for design registration based on the Geneva Act of the Hague Agreement. Therefore, even if a statement on the features of the design is included in the column of “Description” (treated as equivalent to the column of “Description of the Design” and the column of “Description of Article to the Design” in applications for design registration in Japan), provided that it is not a statement corresponding to a particular reason for refusal, like one that makes the design unclear for example, the examiner should not regard it as an object of reason for refusal.

In addition, as far as ordinary applications filed in Japan are concerned, similarly, cases where a statement on the features of the relevant design is included in the column of “Description of the Design” should also be treated the same.

6. Registration requirements for an interior design

In order for the subject matter of an application for design registration to be registered as an interior design, 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 an interior design.

- (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 design registration as an interior design does not comply with any of the following requirements, the examiner should determine that it does not fall under an industrially applicable design prescribed in the main paragraph of Article 3, paragraph (1) of the Design Act:

- (1) The subject matter constitutes a design (→ see [6.1.1](#))
- (2) The subject matter is a specific design (→ see [6.1.2](#))
- (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 [2. “Determining requirements for design applicability” in Part III, Chapter I “Industrially Applicable Design.”](#)

Furthermore, in order for the subject matter of a filed application to fall under an interior design, it must comply with all of the requirements in (1) through (3) below.

- (1) The subject matter is inside a store, office, or other facility (→ see [6.1.1.1](#))
 - (a) The subject matter falls under a store, office, or other facility
 - (b) The subject matter falls under the inside
- (2) The subject matter consists of multiple articles, buildings, or graphic images under the Design Act (→ see [6.1.1.2](#))
 - (a) The subject matter consists of articles, buildings, or graphic images under the Design Act
 - (b) The subject matter consists of multiple articles, etc.
- (3) The subject matter creates a coordinated aesthetic impression as a whole interior (→ see [6.1.1.3](#))

6.1.1.1 The subject matter is inside a store, office, or other facility

In order to fall under the inside of a store, office, or other facility, the filed design must comply with both requirements (1) and (2) below.

- (1) The subject matter falls under a store, office, or other facility

The facility that is the subject of an interior design must be a “store, office or other facilities” (Article 8-2 of the Design Act). Although this is primarily intended for the interior designs and display designs of stores, designs of office spaces and so on, “and other facilities” is stipulated in the text of the Article so as not to be limited to these.

In accordance with the purpose of the Design Act, this “and other facilities” broadly includes all manner of industrial facilities, such as accommodation facilities, medical facilities, educational facilities, entertainment facilities, and houses.

Specifically, if the design that has been filed as an interior design is “one for the purpose of people spending a certain amount of time therein,” including stores and offices, the examiner should determine that it falls under a “store, office or other facilities.”

Furthermore, this includes movables where they comply with the above requirements. Relevant examples include the interior of simple demountable stores and offices, various types of vehicles and passenger planes, and passenger boats.

- (2) The subject matter falls under the inside

In order to fall under an interior design under the Design Act, the subject matter must fall under the “inside” of the various facilities (Article 8-2 of the Design Act). Therefore, if a design that has been filed as an interior design does not correspond mainly to the inside of the facility, the examiner should determine that it does not fall under an interior design.

Specifically, at least one floor, wall, or ceiling showing that the subject matter is inside the facility must be disclosed in the drawings, etc., and if none of these is disclosed, the examiner should notify reasons for refusal based on the same Article (→ see [5.4.1 “Necessary drawings,” \(1\) “Disclose at least one floor, wall, or ceiling” in this Chapter](#)). When doing so, if the design is found to be the design of an article or set of articles, etc., in principle, the examiner should also include notification to that effect.

However, creation of an interior design should not necessarily be limited to only the interior of the facility. There is, for example, the creation of an interior which takes into account connections with outside the facility, such as creation which includes the facade and display design at the front of a store, and creation which obscures the boundary between the interior and exterior. Given the reality of such creations, in principle, the examiner need not strictly examine whether the entire internal space of a facility is completely closed. In cases such as where the inside of a facility continues to the openings of the facility and to the outside of the facility, the outside of the facility annexed to the inside may be included.

Furthermore, given that the definition of design under the Design Act is a shape, etc. which “creates an aesthetic impression through the eye” (Article 2 of the Design Act), the examiner should determine that the scope not normally visible to the naked eye of users during normal conditions of use in the context of the usage and function of the facility does not fall under inside the facility. Relevant examples include the ceiling cavity (Note), under the floor, behind walls, and the pipe shaft, which people only ever access for the purpose of maintenance, etc.

(Note) Regarding interiors, etc. where there is no ceiling cavity and piping is exposed, since it is normally visible to the naked eye of users of the facility, the examiner should determine that such spaces, including these parts, falls under inside the facility.

6.1.1.2 The subject matter consists of multiple articles, buildings, or graphic images under the Design Act

In order to comply with the requirement of the subject matter comprising multiple articles, buildings, or graphic images under the Design Act, the filed design must comply with both requirements (1) and (2) below.

- (1) The subject matter consists of articles, buildings, or graphic images under the Design Act

Subject matter capable of constituting an interior design is limited to articles, buildings, or graphic images under the Design Act as exemplified below (Article 8-2 of the Design Act).

<Appropriate examples of subject matter constituting an interior design>

It should be noted that the items below are all examples of statements, but that examples of statements recognized as appropriate are not limited to the following.

- Furniture, such as desks, chairs, and beds
- Fixtures, such as display shelves
(can even include merchandise, etc. recognized as articles under the Design Act)
- Floor lamps, design lamps, etc.
- Graphic images displayed on a monitor fitted to a building that constitutes an interior design, and graphic images projected from a similarly fitted projector onto a wall of the building, etc.

Furthermore, patterns or colors that appear by switching on a lighting apparatus fixed to an interior should be treated as elements constituting the interior design (see [\(ii\) "Subject matter that is not solid" in Part III, Chapter I, 2.1, \(2\) "Examples of subject matter that is not found to be an article"](#)).

On the other hand, subject matter not falling under a design under the Design Act cannot be found to constitute an interior design as exemplified below.

<Inappropriate examples of subject matter constituting an interior design>

The items below are all examples, but examples are not limited to the following.

- Subject matter not falling under a design under the Design Act
(However, even if a subject matter falls under the following examples, if its position cannot be changed due to being perpetually fixed to the building or land, for example, and if it is within the scope of appurtenances to the building, it should be regarded as constituting part of a building design.)
- Living creatures such as humans, dogs, cats, or ornamental fish
 - Plants (however, artificial flowers fall under an article design under the Design Act)
 - Objects with indeterminate form, such as steam, smoke, dust, flames, or water (excluding, however, those in a container with shape retainability)
 - Non-visual objects that stage the interior space, such as aroma or sound, etc.
 - Actual natural topography

Furthermore, even if a subject matter that does not constitute a design under the Design Act is contained in a filed interior design, if it constitutes part of a building design, which is included in the interior design, the examiner should treat it as potentially constituting the interior design.

(For the handling of cases where the subject matter of an application for building design includes some natural objects or other subject matter not fall under 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 Chapter II "Building Design" in this Part](#); for treatment of objects in determining similarity when determining the novelty requirement, see [6.2.5 "Evaluation of shape, etc. in cases where natural objects, etc. that constitute the design are included in part of an interior design" in this Chapter](#); and for the treatment of objects in determining creative difficulty requirement, see [6.3.5 "Concept in cases where natural objects,](#)

etc. that constitute the design are included in part of an interior design" in this Chapter.)

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 interior design, they will not be reason for refusal, and they do not need to be deleted.

On the other hand, if it can be determined that an object is included which does not constitute a design under the Design Act, and there are no statements in the application or distinguishing indications in drawings, etc., the examiner should notify reasons for refusal based on Article 8-2 of the Design Act.

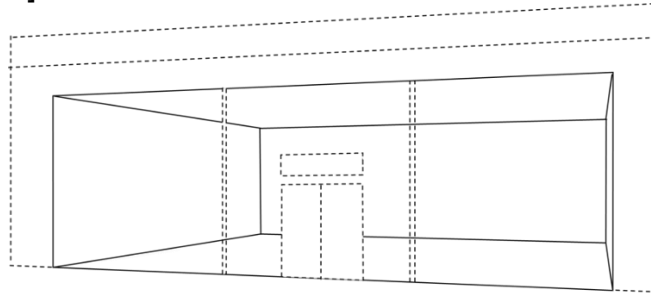
(2) The subject matter consists of multiple articles, etc.

Article 8-2 of the Design Act provides that where an interior, which consists of multiple constituent articles, etc., creates a coordinated aesthetic impression as a whole interior, an application for design registration may be filed as one design, and the applicant may obtain a design registration. Therefore, where it is found that a design, which has been filed as an interior design, consists only of one constituent article, etc.—not of two or more articles, etc.—the examiner should determine that it does not fall under an interior design provided for in the same Article.

Furthermore, where it is found that, under normal conditions of use, other articles, etc. besides the building, etc. that constitutes the actual facility are shown in a state that is visible to users of the interior design, the examiner should determine that the filed interior design complies with this requirement. In cases of an application requesting design registration for part of an interior, in addition to the part for which the design registration is requested, the examiner should also include any other parts in determining whether the filed interior design complies with this requirement.

<Example of subject matter not found to consist of multiple articles, etc.>

[Perspective view]



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

(Explanation) In this case example, only one design of the facility interior is represented, so the subject matter is not found to consist of multiple articles, etc. Furthermore, in this case, the subject matter may be registrable as a design for which the design registration is requested for an inside part of the building.

6.1.1.3 The subject matter creates a coordinated aesthetic impression as a whole interior

Article 8-2 of the Design Act provides that, to obtain design registration as an interior design, the subject matter must create a coordinated aesthetic impression as a whole interior.

As an exception to Article 7 of the Design Act—which provides that an application for design registration should be filed for each design, and in principle, only one article, etc. may be included in each application—this provision allows an application to be filed and design registration obtained as one design for an interior design comprising multiple articles, etc., and in addition, provides that the aesthetic impression of a whole interior, including how each constituent article, etc. is combined and arranged, is subject to protection.

Therefore, the examiner should determine that a design, which has been filed as an interior design, complies with this requirement only where the entire design creates a single, visually cohesive aesthetic impression.

On the other hand, given that articles, etc. constituting an interior design vary widely and it is rare for all of them to be processed with similar shape, etc., if the subject matter complies with this requirement as a whole interior, the question of whether all of the constituent articles, etc. have been processed with uniform shape, etc. should be omitted from consideration.

Furthermore, where the applicant is requesting design registration for part of an interior, the examiner should determine whether the filed design complies with this requirement with respect to the part for which the design registration is requested.

Following are examples that comply with this requirement and examples that do not comply with this requirement.

<Examples of subject matter that creates a coordinated aesthetic impression as a whole interior>

Examples of designs that create a coordinated aesthetic impression as a whole interior include but are not limited to the following.

- (i) Subject matter where constituent objects, etc. have been processed into a common shape, etc.
- (ii) Subject matter where the constituent objects, etc. represent one cohesive shape or pattern as a whole
- (iii) Subject matter where the constituent objects, etc. have conceptual commonality
- (iv) Subject matter where the constituent objects, etc. are arranged based on uniform order
- (v) Subject matter where the entire interior design is created based on a unified creative idea as a single design, and the entire shape, etc. creates a single, visually cohesive aesthetic impression

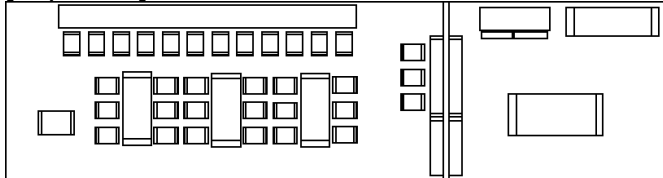
[Case example 1] Subject matter where constituent objects, etc. have been processed into a common shape, etc.

[Article to the Design] Interior of cafe

<Feature statement>

[Feature of design] A feature of the filed design is that the tabular member attached to the wall separating the kitchen, as well as the chairs, tables, and other fixtures, all have beveled corners.

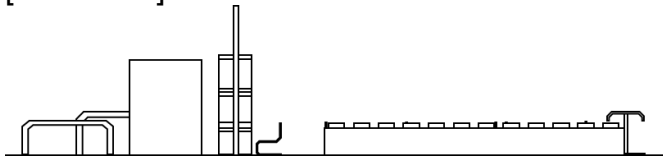
[Top view]



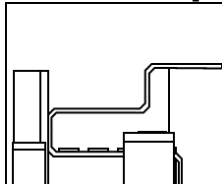
[Front view]



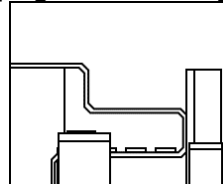
[Rear view]



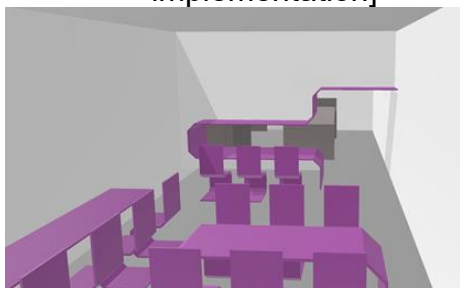
[Left side view]



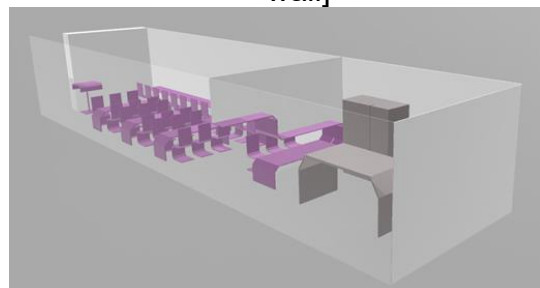
[Right side view]



[Reference view showing state of implementation]



[Reference view looking through front wall]



- * For the convenience of explanation, the matters to be stated in the application and any other views are omitted.
- * The purpose of this case example is to explain what creates a coordinated aesthetic impression as a whole interior; it is not for the purpose of indicating compliance with other requirements for registration, such as novelty and creative difficulty.

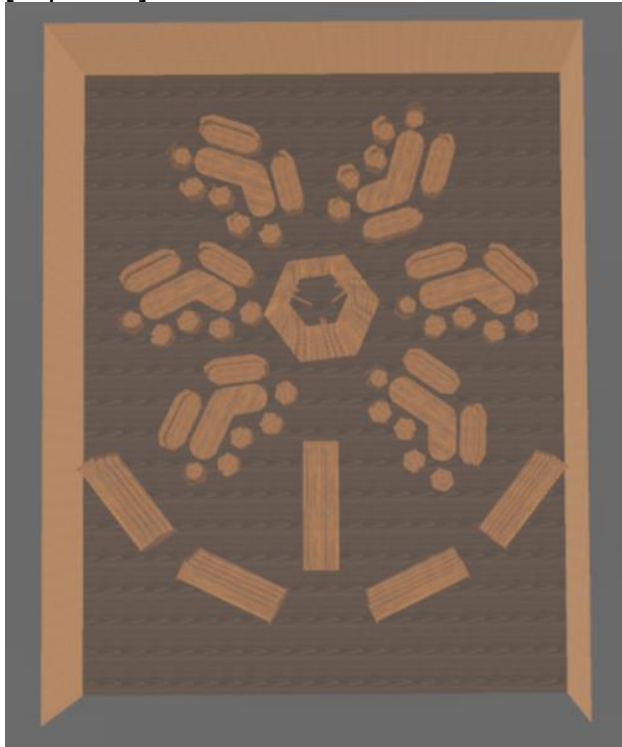
[Case example 2] Subject matter where the constituent objects, etc. represent one cohesive shape or pattern as a whole

[Article to the Design] Interior of a reading room for a library

<Feature statement>

[Feature of the Design] The filed design is the interior of a reading room in a library that holds a collection of botanical books. The walls, ceiling and fixtures all have a common woodgrain, and the fixtures is arranged to look like a single flower when viewing the entire space from above.

[Top view]



- * For the convenience of explanation, the matters to be stated in the application and any other views are omitted.
- * The purpose of this case example is to explain what creates a coordinated aesthetic impression as a whole interior; it is not for the purpose of indicating compliance with other requirements for registration, such as novelty and creative difficulty.

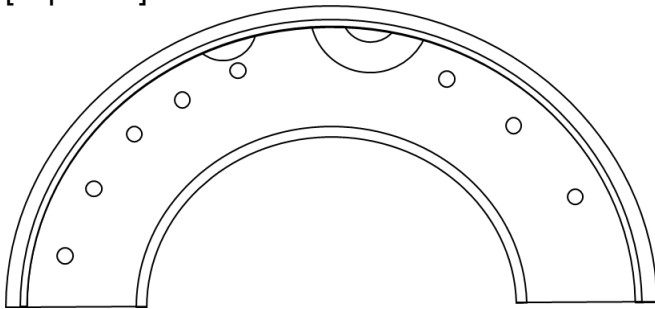
[Case example 3] Subject matter where the constituent objects, etc. have conceptual commonality

[Article to the Design] Interior of a connecting corridor for a museum

<Feature statement>

[Feature of the Design] The purpose of the filed design is to communicate to museum visitors the order and size of planets in the solar system in an easy-to-understand image. Assuming that the length of the entire internal wall is the diameter of the sun, the design features lighting apparatus modeled on each planet placed along the visitor flow, which reproduce the order and proportionate size of each planet.

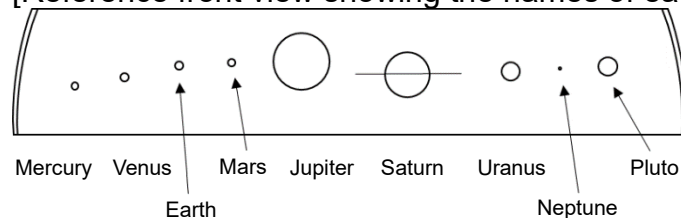
[Top view]



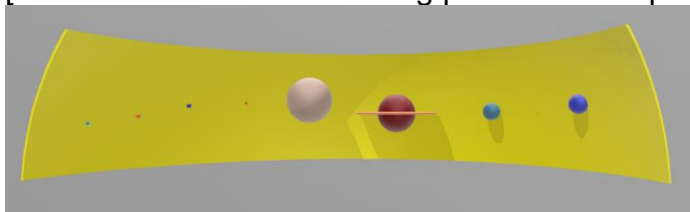
[Front view]



[Reference front view showing the names of each part]



[Reference front view showing practical example]



- * For the convenience of explanation, the matters to be stated in the application and any other views are omitted.
- * The purpose of this case example is to explain what creates a coordinated aesthetic impression as a whole interior; it is not for the purpose of indicating compliance with other requirements for registration, such as novelty and creative difficulty.

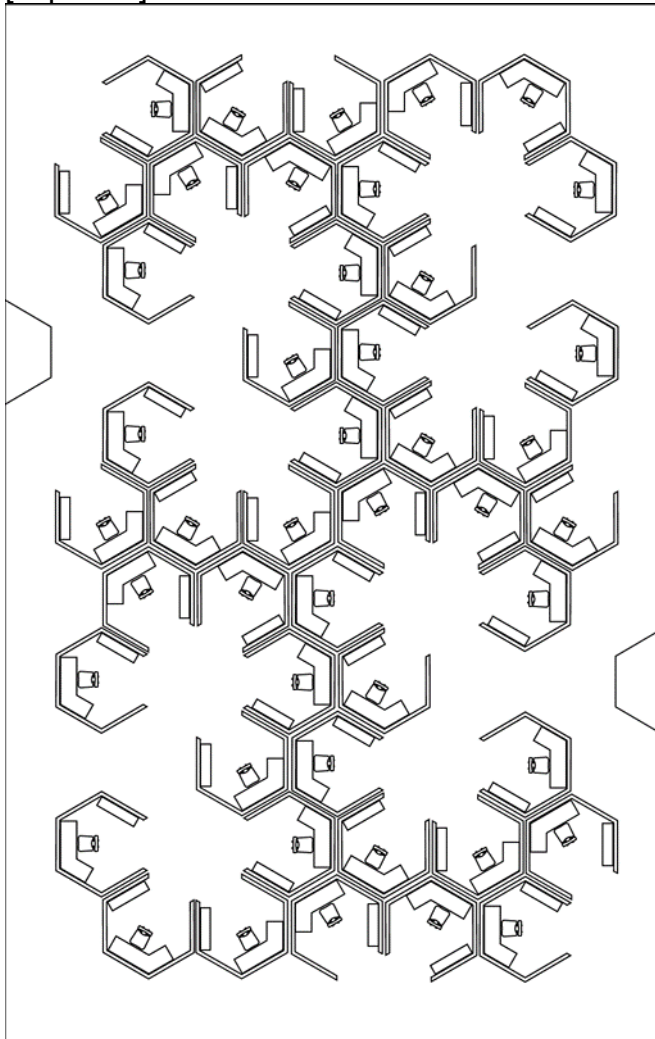
[Case example 4] Subject matter where the constituent objects, etc. are arranged based on uniform order

[Article to the Design] Interior of an office

<Feature statement>

[Feature of the Design] The filed design features individual hexagonal units arranged like a beehive so that individual workers can concentrate on their respective work in their own nook, while each team also maintains a sense of unity. In addition, the trapezoids at the upper left and lower right of the top view are standing desks for small group discussions so that workers can talk with other team members as required.

[Top view]



- * For the convenience of explanation, the matters to be stated in the application and any other views are omitted.
- * The purpose of this case example is to explain what creates a coordinated aesthetic impression as a whole interior; it is not for the purpose of indicating compliance with other requirements for registration, such as novelty and creative difficulty.

<Examples of subject matter that do not create a coordinated aesthetic impression as a whole interior>

Examples of subject matter that do not create a coordinated aesthetic impression as a whole interior include but are not limited to the following.

- (i) Subject matter where the entire interior design lacks cohesion, which only creates a complicated impression, and which creates hardly any aesthetic impression
- (ii) Subject matter which is created based on a unified creative idea, but where that sense of unity is not represented visually

6.1.2 The subject matter is a specific design

(1) Requirement for the design to be specific

To obtain a design registration as an interior 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 an interior design, based on the ordinary skill in the art of the design.

Next, for a design filed as an interior 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 (iv) below can be derived for the filed design, the examiner should determine that the design is not specific.

- (i) Usage and function of the interior
- (ii) Usage and function of the part, if design registration is requested for part of an interior
- (iii) Position, size, and scope of the part, if design registration is requested for part of an interior
- (iv) Shape, etc. of the interior

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 an interior 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 interior is unclear
- (ii) In the case of a design for which design registration is requested for part of an interior, where the usage and function of that part are unclear
- (iii) Where it is unclear whether the design registration is being requested for an interior design or a building design

- (iv) Where the specific shape, etc. in the design for which the design registration is requested as an interior design is unclear

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 interior design is identical to any publicly known design, or whether or not it falls under 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 an interior design are described below.

6.2.1 Determining entity in the determination of similarity between interior designs

Likewise with the determining entity in the determination of similarity between article designs, the determining entity in the determination of similarity between interior 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 the interior of a detached house, in general, the person who becomes the owner and the user of that house is considered the consumer, and in the case of the interior of a commercial facility, in general, the client who becomes the owner of that commercial facility is considered the consumer. However, since it is conceivable that the owner of a commercial facility 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 interior design, the examiner should determine similarity from the consumers’ viewpoint according to that usage.

6.2.2 Observation method in determining similarity between interior designs

Interior designs are big enough for a person to enter inside, and consist of multiple articles, etc.

Therefore, when observing a design for the purpose of determining similarity, based on observations with the naked eye under normal use conditions for the facility, and without limiting observation to a single observation method, the examiner should make comprehensive observations from multiple perspectives, such as, for example, if part of the interior has a constituent object with a characteristic shape, etc., observing that constituent object close-up in detail, or if the cohesiveness of the design as a whole is characteristic, pulling back and observing from a bird’s-eye view.

6.2.3 Determining similarity of the usage and function

(1) Determining similarity of the usage and function between interior designs

During the determination of similarity between interior designs, when determining similarity of the 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 interior design, like “interior of a residential bedroom” and “interior of a hotel guest room” for example, it is usual for there to be commonality in the usage and function in terms of both being used for people to enter inside and spend a certain amount of time there. Therefore, when determining similarity in the usage and function between interior designs, the examiner should, in principle, determine that there is similarity in the usage and function of all interior designs.

(2) Determining similarity of the usage and function between an interior design and a building design

Similar to (1) above, determining similarity of the usage and function between an interior design and a building 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 the “interior of a residential living room,” which is an interior design, and a design, where the part for which the design registration is requested is the living room part inside a “house,” which is a building design, since they have commonality in the 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.

(3) Determining similarity of the usage and function between an interior design and an article design

Similar to (1) above, determining similarity of the usage and function between an interior 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 the “interior of a bathroom in a house,” which is an interior design, and a design, where the part for which the design registration is requested is the interior bathroom part of a “bathroom,” which is an article design, since they have commonality in the usage and function in terms of both being used for people to enter inside and spend a certain amount of time there, and since the “bathroom” that is an article design has almost no other usage and function other than people entering inside and spending a certain amount of time there, the examiner should determine that the two designs have similar usage and function.

6.2.4 Evaluating the layout and number of constituent objects in an interior design

Article 8-2 of the Design Act specifies that, for an interior design comprising multiple articles, etc., the aesthetic impression of the entire interior, including the arrangement of each constituent article, etc., is subject to protection.

Therefore, when determining similarity of an interior design, in addition to the shape, etc. of each constituent article, etc., the examiner should also give consideration to the points in common and points of difference in their layout and combination.

In cases where there are differences in the layout of each constituent article, etc., if the differences are insignificant or are commonplace in the art of the design, the impact of that difference on determining similarity is relatively small.

Furthermore, in cases where the shape, etc. of each constituent article, etc. is common, but there are differences in quantity, if the differences are insignificant or are commonplace in the art of the design, the impact of that difference on determining similarity is relatively small.

6.2.5 Evaluation of shape, etc. in cases where natural objects, etc. that constitute the design are included in part of an interior design

Where determining similarity between designs, if part of an interior design 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 an interior that includes them.

Furthermore, in cases where part of an interior design includes natural objects, etc., for determining whether they constitute the design, see [6.1.1.2 “The subject matter consists of multiple articles, buildings, or graphic images under the Design Act” in this Chapter](#) and [4.3 “Concept of one design in cases where something fixed to a building or land is represented” in Chapter II in this Part](#).

6.2.6 Case examples of determining similarity between interior designs

(1) Examples where the usage and function are similar

In all of the examples in the box below, their designs have commonality in the usage and function in terms of being used for people to enter inside and spend a certain amount of time there. Therefore, in all cases, the examiner should determine that the usage and function are similar (Note).

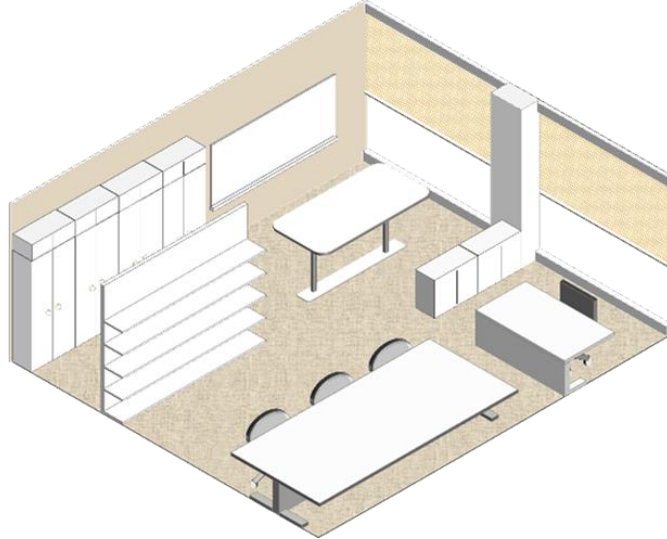
Interior of a restaurant, interior of an office, interior of a hotel guest room, interior of a residential living room, interior of a medical-treatment room, interior of an airport terminal lobby

(Note) However, in cases where the applicant is requesting design registration for part of an interior, if the usage and function of the part for which the design registration is requested is significantly different from the usage and function of the corresponding part in the other design being compared, the examiner may determine that the designs are dissimilar, even if the shape, etc. in the two designs is similar.

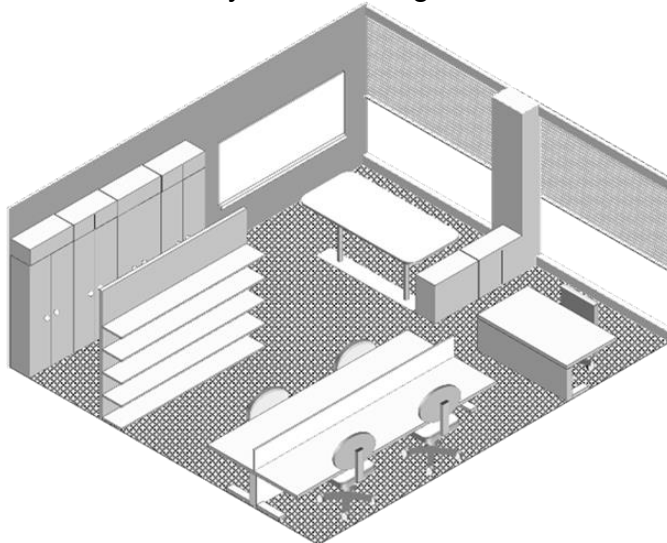
(2) Examples where shape, etc. is similar, and the usage and function are similar

[Case example 1] Example of an office

The basic shape of the overall interior is common to both designs, and the layout and shape, etc. of all constituent objects in the interior are substantially common. On the other hand, the quantity and layout of chairs and the orientation of the standing desk are different. However, since the differences are partial, the impact on determination of similarity is small, and comparing the entire designs, the two designs can be determined to be similar.



Publicly known design: Office



Filed design: Interior of an office

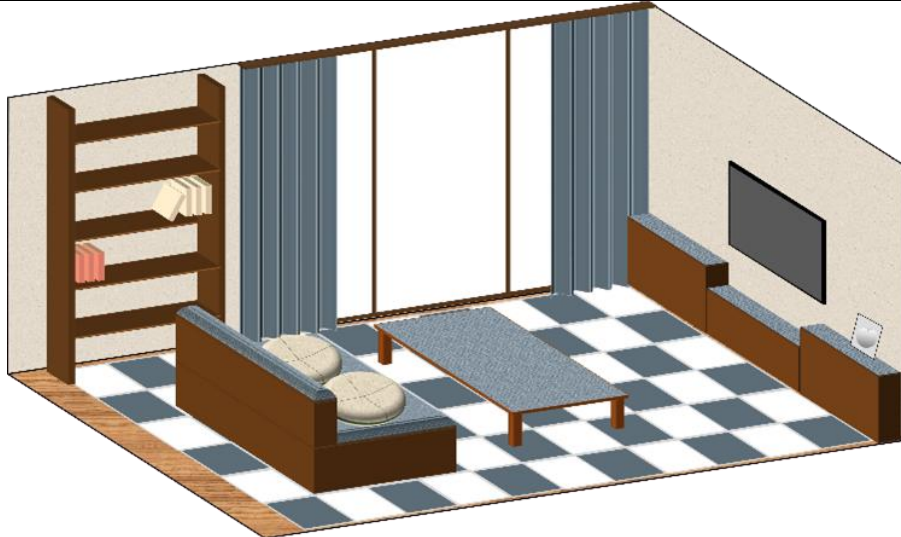
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* The purpose of this case example is to describe an example of determining similarity in interior design; it is not for the purpose of explaining other requirements for registration, such as creative difficulty.

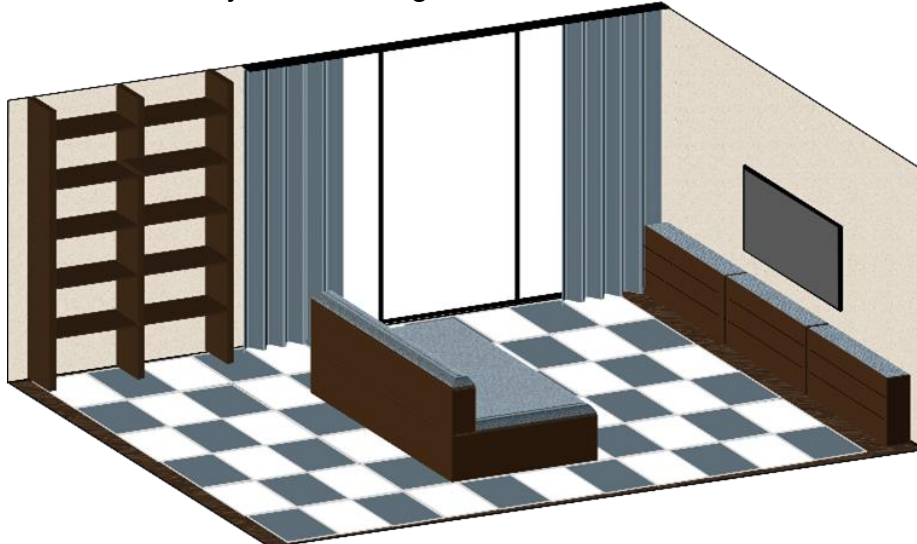
[Case example 2] Example of a waiting room for a hospital

The basic shape of the overall interior is common to both designs, and the layout and shape, etc. of all constituent objects in the interior, such as the blue curtains, the same-colored checkered carpet, and the color-coordinated woodgrain sofa and chests, are substantially common and form the basis of the design.

On the other hand, one design has a low table, and the shape of the shelves and the position, etc. of the sofa are different. However, since all the differences are minor and partial—accounting for only a small proportion of the entire design—the impact on determination of similarity is small, and comparing the entire designs, the two designs can be determined to be similar.



Publicly known design: Interior of Y's residence



Filed design: Interior of a waiting room for a hospital

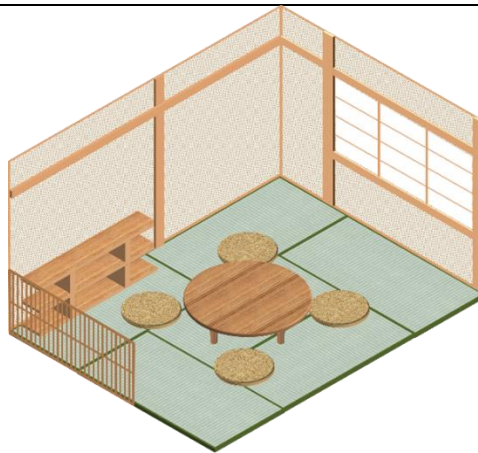
* For the convenience of explanation, the matters to be stated in the application and any other views are omitted.

* The purpose of this case example is to describe an example of determining similarity in interior design; it is not for the purpose of explaining other requirements for registration, such as creative difficulty.

(3) Examples where the usage and function are similar, but shape, etc. is not

[Case example 1] Example of a Japanese-style restaurant

Both designs are for a Japanese-style room with tatami mats. A low table and floor cushions are arranged in the center. A shelf is placed against a wall, and there is a screen at the edge of the tatami mats. Another point in common is that the entire rooms are coordinated with a common wood grain. On the other hand, there are conspicuous differences in the shape, etc. of the low tables. In particular, the shape of the low table in the filed design is extremely distinctive, and combined with the similarly shaped floor cushions, takes up a major part of the entire interior, drawing the attention of consumers. Accordingly, the impact of this difference on determination of similarity is large. Therefore, comparing the entire designs, the two designs can be determined to be dissimilar. Furthermore, although the overall size of the interior and the color of the wood grain are different, both are commonplace in the art of the design, and do not influence the above determination.



Publicly known design: Living room in T's residence



Filed design: Interior of a Japanese-style restaurant

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

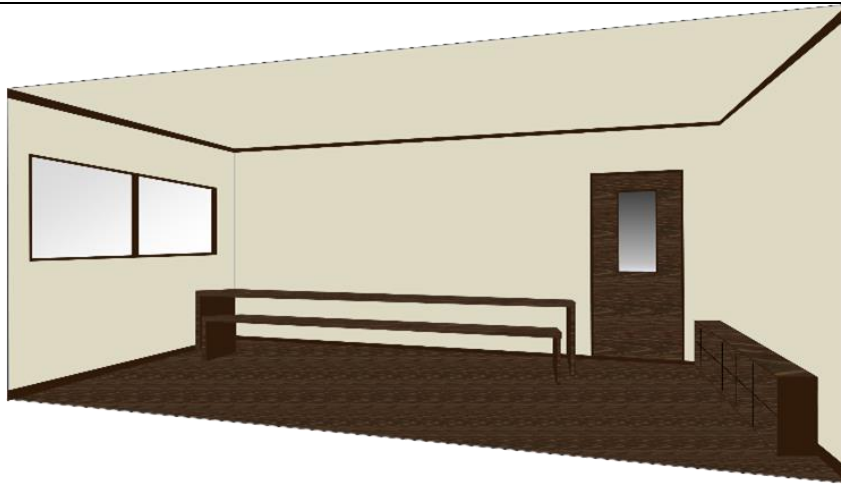
* The purpose of this case example is to describe an example of determining similarity in interior design; it is not for the purpose of explaining other requirements for registration, such as creative difficulty.

[Case example 2] Example of an exhibition room

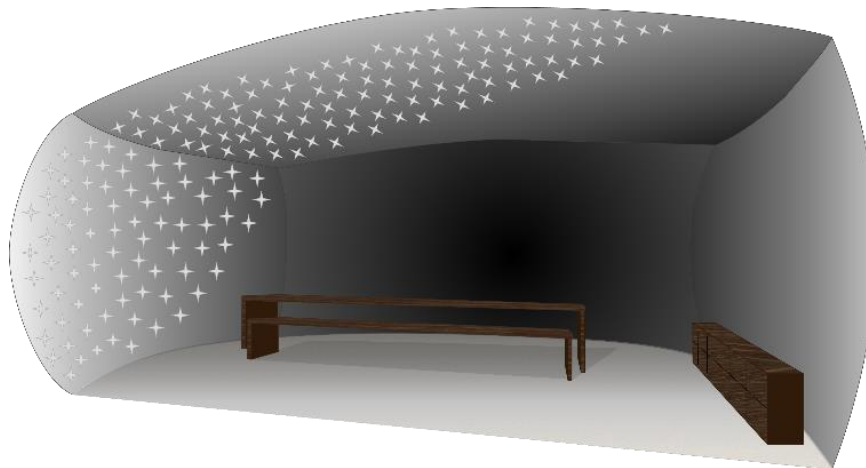
The overall shape of the interior in the two designs is very different. In particular, the shape of the interior in the filed design is extremely distinctive and takes up a large part of the entire interior, forming the tone of the interior, and drawing the attention of consumers. Accordingly, the impact of this difference on determination of similarity is large.

On the other hand, although the shape and layout of furniture is common to the two designs, they are a fraction of the overall interior. And because their shape is widely known, they will hardly draw the attention of consumers. The impact of this point in common on determination of similarity is small, and is buried in the point of difference above.

Therefore, comparing the entire designs, the two designs can be determined to be dissimilar.



Publicly known design: Western-style room



Filed design: Interior of an exhibition room

- * For the convenience of explanation, the matters to be stated in the application and any other views are omitted.
- * The purpose of this case example is to describe an example of determining similarity in interior design; it is not for the purpose of explaining other requirements for registration, such as creative difficulty.

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

6.3.1 Determining entity for creative difficulty in interior designs

The examiner should examine and determine the creative difficulty of the filed interior 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 designs in the industry in which interior designs are produced or sold.

6.3.2 Basic concept in determining the creative difficulty of interior designs

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

Where 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 interior designs 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 articles, etc. 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

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 an interior design

Where part of an interior 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, with respect to the positional relationship between artificial structures and natural objects, etc. and to the constitution of the entire design of an interior that includes them, formative characteristics should be evaluated as a creation of the design.

Furthermore, in cases where part of an interior design includes natural objects, etc., for determining whether they constitute the design, see [6.1.1.2 “The subject matter consists of multiple articles, buildings, or graphic images under the Design Act” in this Chapter](#) and [4.3 “Concept of one design in cases where something fixed to a building or land is represented” in Chapter II “Building Design” in this Part.](#)

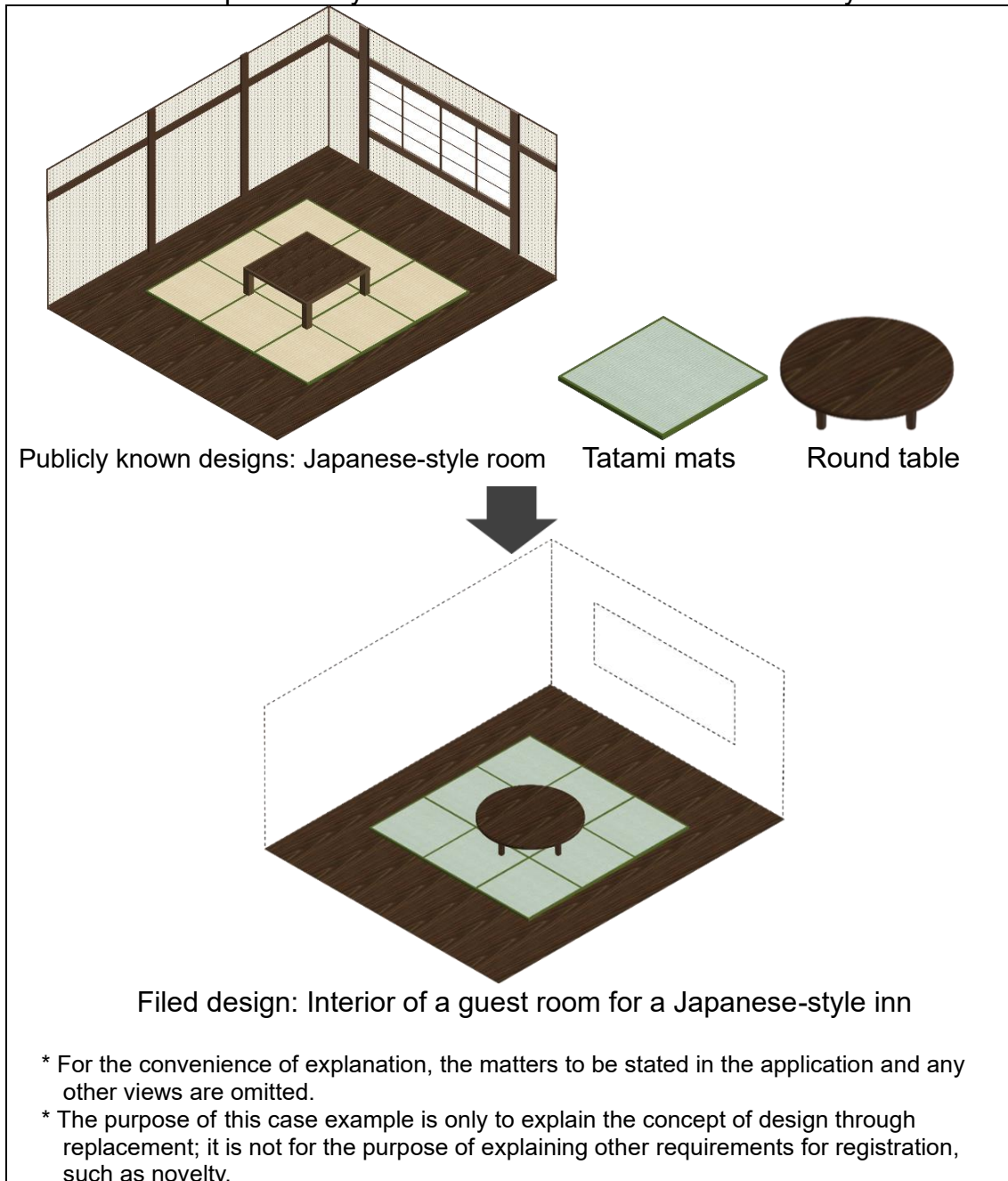
6.3.6 Examples of easily created designs

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.

6.3.6.1 Design through replacement

[Case example] “Guest room for a Japanese-style inn”

A design which merely represents the replacement of a publicly known table and tatami mats for a Japanese-style room with other items almost as they are

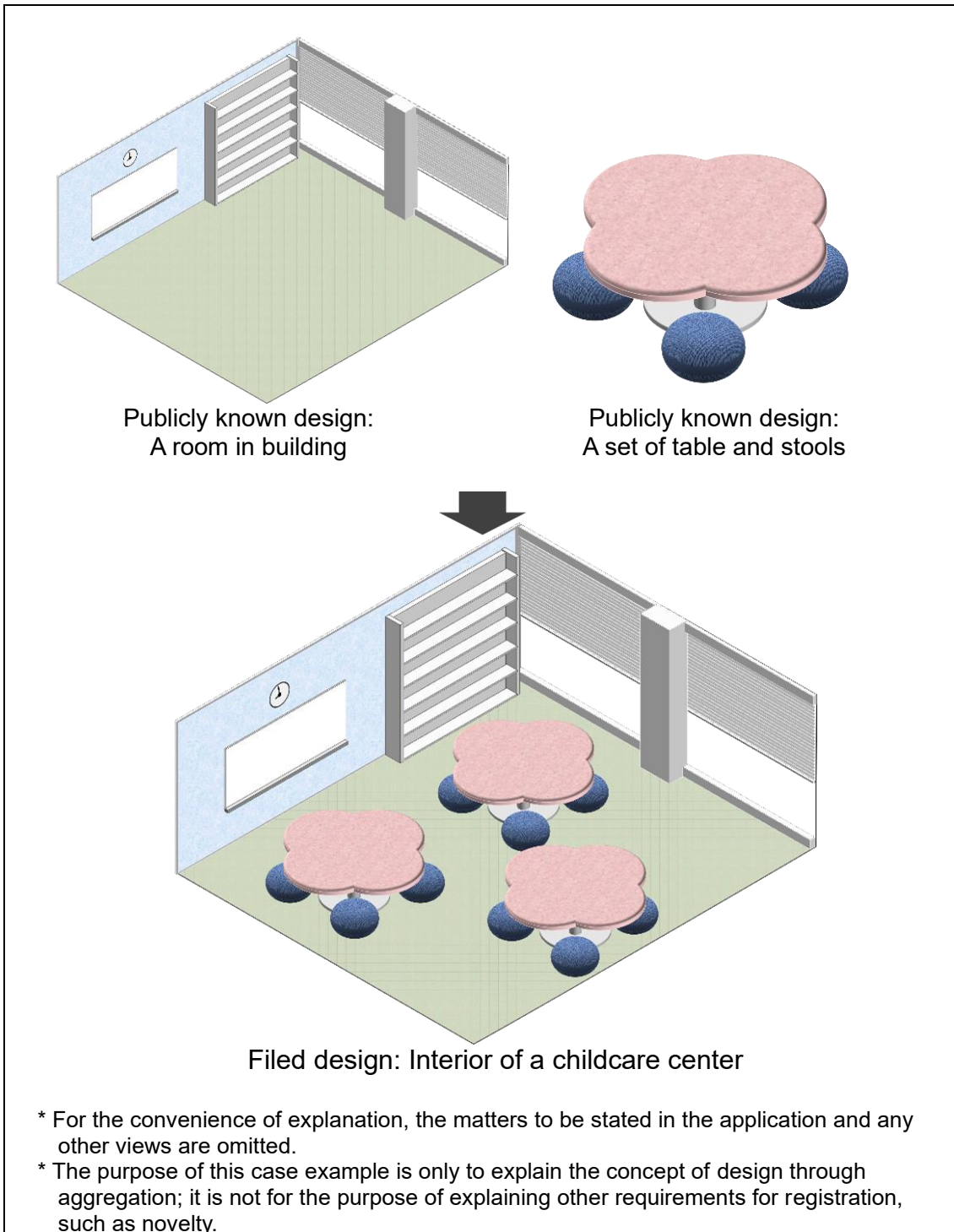


(Note) In this case example, it is assumed that replacing tables and tatami mats with other items is an ordinary technique in the art of the filed design, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents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

6.3.6.2 Design through aggregation

[Case example] “Childcare center”

A design which merely represents the aggregation of publicly known designs for a room and a set of table and stools

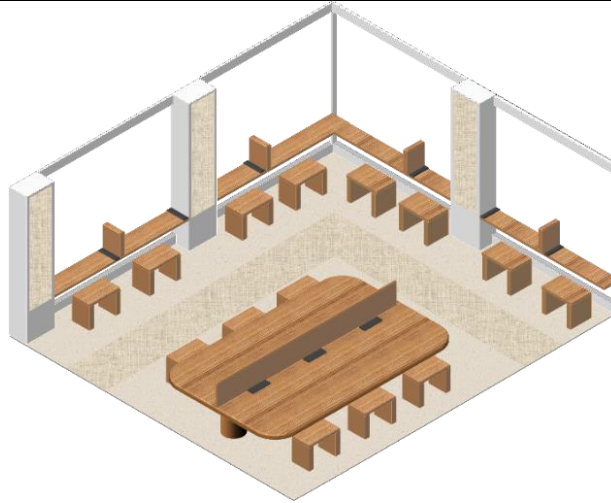


(Note) In this case example, it is assumed that aggregating various constituent objects, such as tables, chairs, and shelves, is an ordinary technique in the art of the filed design, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining creative difficulty assuming the filed design is novel.

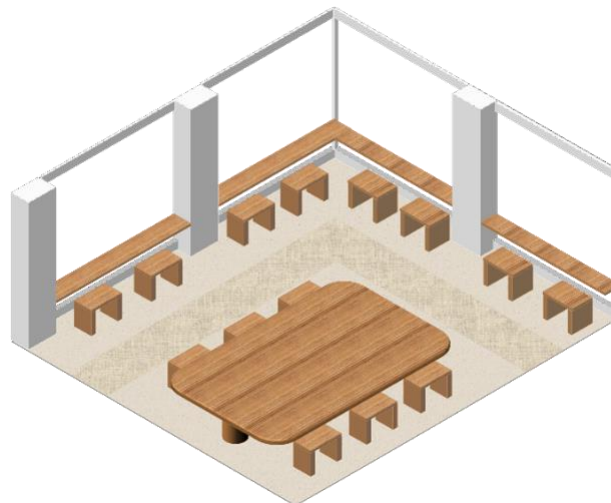
6.3.6.3 Design through mere deletion of a constituent part

[Case example] “Cafe”

A design which merely creates the interior of a cafe by deleting some components of a publicly known design for a study room



Publicly known design: A study room



Filed design: Interior of cafe

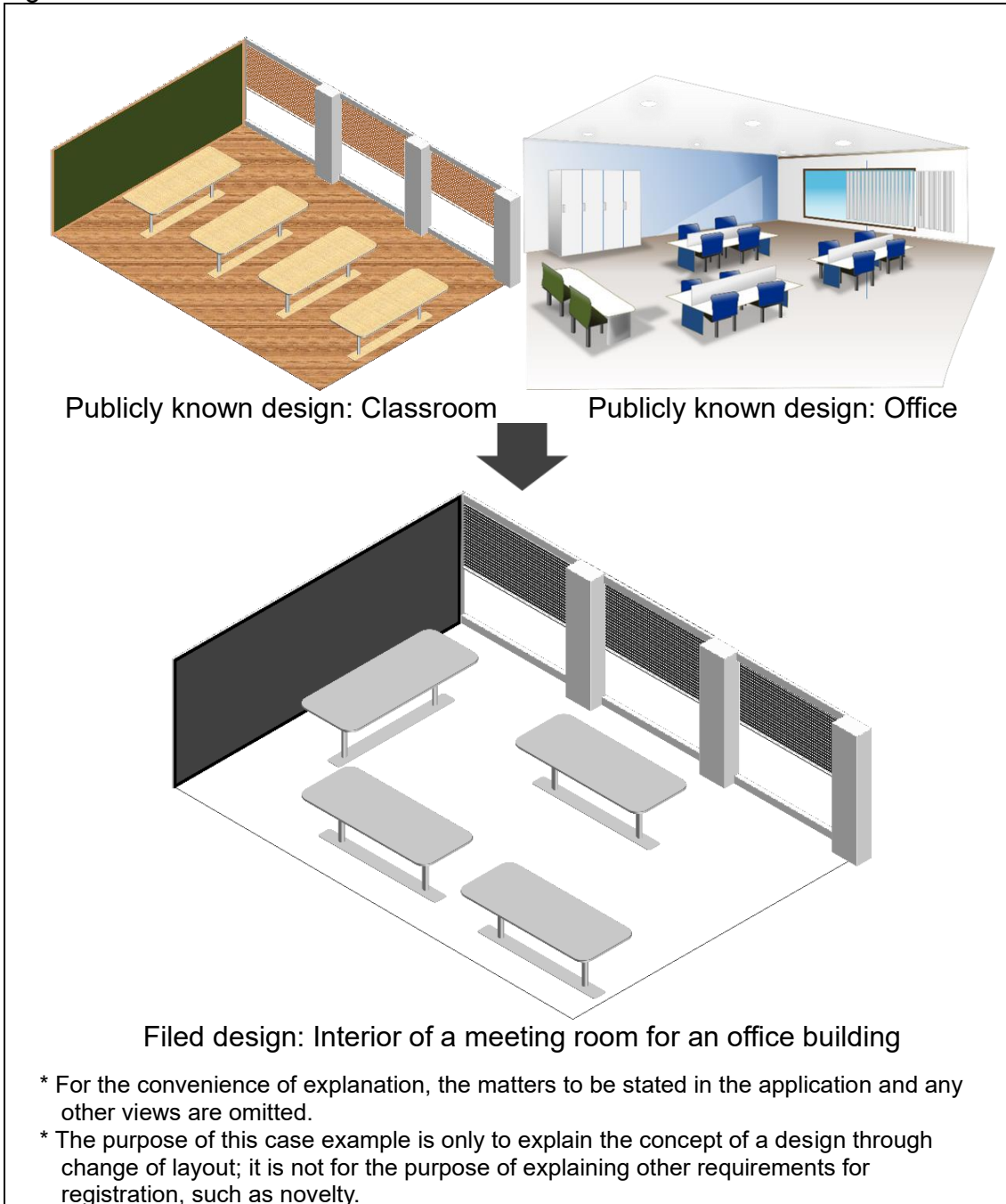
- * For the convenience of explanation, the matters to be stated in the application and any other views are omitted.
- * The purpose of this case example is only to explain the concept of a design through mere deletion of a constituent part; it is not for the purpose of explaining other requirements for registration, such as novelty.

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

6.3.6.4 Design through change of layout

[Case example] “Meeting room in an office building”

A design which merely represents the changed layout of desks in a publicly known design for a classroom, according to the layout of desks in another publicly known design for an office

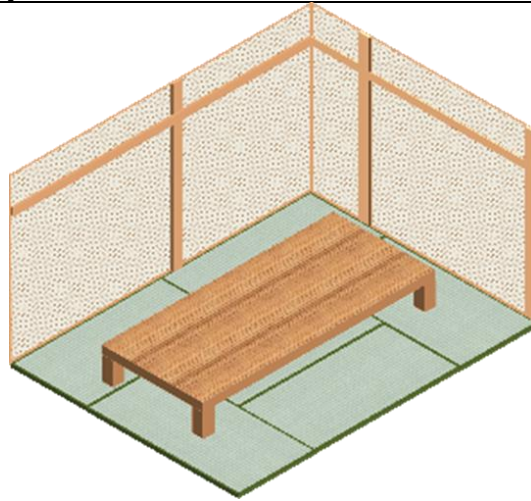


(Note) In this case example, it is assumed that changing the layout of desks is an ordinary technique in the art of the filed design, and that the filed design shows no novelty or original design ideas from the viewpoint of a person skilled in the art. The example typically represents a method for determining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

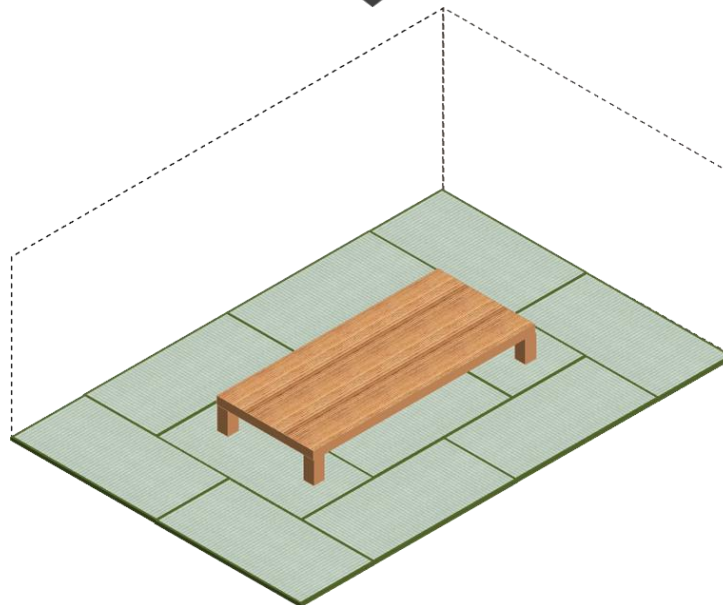
6.3.6.5 Design through change of component ratio

[Case example] “Lounge in a community center”

Design which merely changes the number of tatami mats in a publicly known design for a Japanese-style room



Publicly known design: Japanese-style room



Publicly known design: Interior of a lounge for a community center

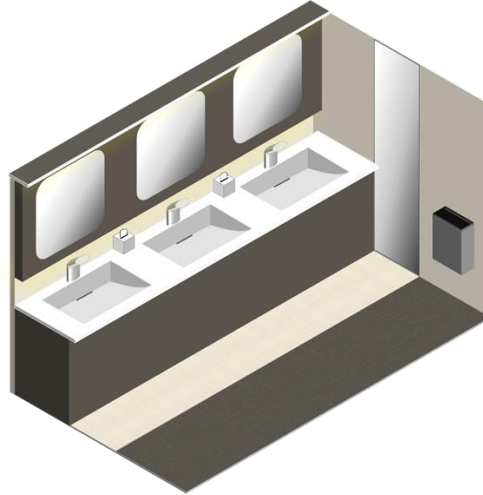
- * For the convenience of explanation, the matters to be stated in the application and any other views are omitted.
- * The purpose of this case example is only to explain the concept of a design through change of component ratio; it is not for the purpose of explaining other requirements for registration, such as novelty.

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

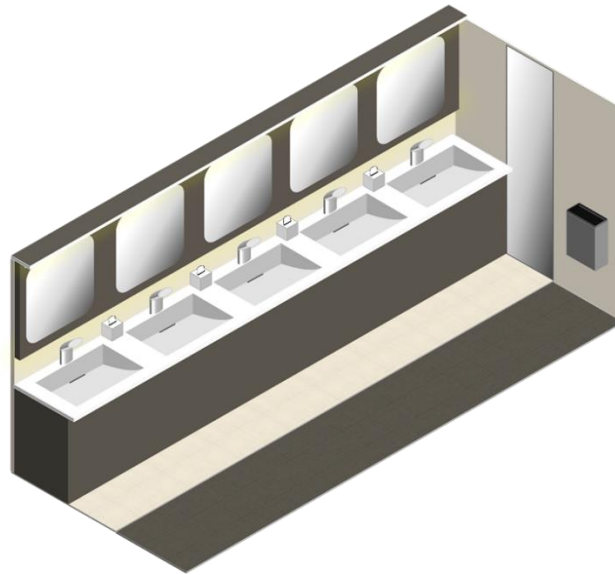
6.3.6.6 Design through change in number of units of a continuous constituent element

[Case example] “Washbasins in an office building restroom”

A design which merely represents washbasins in a publicly known design for an office building restroom almost as they are by increasing the number of washbasins



Publicly known design: A restroom for an office building



Filed design: Interior of washbasins in an office building restroom

- * For the convenience of explanation, the matters to be stated in the application and any other views are omitted.
- * The purpose of this case example is only to explain the concept of design through change in number of units of a continuous constituent element; it is not for the purpose of explaining other requirements for registration, such as novelty.

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

6.3.6.7 Design through use or diversion of a constituent element beyond the framework of the article, etc.

[Case example 1] A design which represents the interior of a room that appears in a publicly known comic as it is

[Case example 2] A design which represents the interior of a room in a publicly known dollhouse as it is

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 designs (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 designs 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 applicants 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 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 and when notifying reasons for refusal.

8. Amendment and division of interior design

8.1 Amendment of interior 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 interior designs. 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 identical to that which 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 building design

Where the subject matter of an application for interior design does not contain multiple articles, buildings or graphic images and is not recognized as an interior design, and if it is recognized that, in essence, it should be filed as a building design, the examiner should determine that an amendment which changes this application to one for design registration for a building 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 interior design complies with the requirements for categorization as an interior design, the examiner should determine that an amendment which changes the application to one for a building design does change the gist of the design. (For the requirements for interior designs, see [6.1.1 “The subject matter constitutes a design” in this Chapter.](#))

Furthermore, when determining whether two designs are the identical, in addition to the shape, etc. of both designs, the examiner should also compare the usage and function, and in the case of designs for which the design registration is requested for 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

Where the subject matter of an application for interior design complies with the requirements for categorization as an interior design, the examiner should determine that an amendment which changes the application to one for a design for a set of articles does change the gist of the design. (For the requirements for interior designs, see [6.1.1 “The subject matter constitutes a design” in this Chapter.](#))

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

8.1.4 Amendment to delete inappropriate constituent objects of an interior design

Where subject matter that is inappropriate as a constituent article, etc. of an interior design is represented together with appropriate subject matter in drawings of an application for design registration for an interior design, the examiner should, in principle, treat an amendment to delete such inappropriate subject matter as not changing the gist of the design.

8.1.5 Amendment to add or delete appropriate constituent objects of an interior design

The examiner should, in principle, treat an amendment to delete or add subject matter that is appropriate as a constituent article, etc. of an interior design as changing the gist of the design.

8.1.6 Amendment to change the layout of appropriate constituent objects of an interior design

The examiner should, in principle, treat an amendment to change the layout of subject matter that is appropriate as a constituent object of an interior design as changing the gist of the design.

8.2 Division of an interior design

Where a design filed as an application for design registration for an interior design does not comply with the requirements provided in Article 8-2 of the Design Act, given that the design as a whole cannot be recognized as one design, division of the design based on the provisions of Article 10-2 of the Design Act is allowed, and the new application for design registration is deemed to have been filed at the time of filing the original application for design registration.

Regarding other determination standards, see [Part VIII, Chapter I “Division of Applications for Design Registration.”](#)

Relevant Provisions

Design Act

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

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

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

(Paragraph (3) omitted)

Article 6 (1) A person seeking to have a design registration made must submit to the Commissioner of the Japan Patent Office an application stating the following matters accompanied by a drawing depicting the design for which the registration is sought:

- (i) the name, and domicile or residence of the applicant for the design registration;
- (ii) the name and domicile or residence of the creator of the design; and
- (iii) the article embodying the design, or the usage of the building or graphic image embodying the design.

- (2) If so provided by Order of the Ministry of Economy, Trade and Industry, the applicant may submit photographs, models, or specimens representing the design for which the registration is sought, in lieu of the drawing referred to in the preceding paragraph. In this case, the applicant must indicate in the application whether they are photographs, models, or specimens that are being submitted.
- (3) If neither the statement concerning the article embodying the design or the usage of the building embodying the design that is referred to in paragraph (1), item (iii), nor the drawings, photographs, or models attached to the application would give a person ordinarily skilled in the art of the design a concept of the material or size of the article or building, and by this reason the person would not be able to discern the design, the material or size of the article or building embodying the design must be stated on the application.
- (4) If the shape, pattern, or color of an article embodying a design, the shape, pattern, or color of a building embodying a design, or a graphic image embodying a design changes due to the way the article, building, or graphic image functions, and the applicant seeks to have a design registration made for the shapes and equivalent features of the article, the shapes and equivalent features of the building, or the graphic image as it appears before, during, and after that change, the applicant must indicate this and give an explanation of that function of the article, building, or graphic image in the application.
- (5) If colors of the design are applied to the drawing, photograph, or model to be submitted pursuant to the provisions of paragraph (1) or (2), the applicant may omit applying either the color black or white.
- (6) When the applicant omits applying the color black or white pursuant to the provisions of the preceding paragraph, the applicant must indicate this in the application.
- (7) If the applicant submits a drawing depicting a design pursuant to paragraph (1) or a photograph or model representing a design pursuant to paragraph (2), and the whole or part of the article embodying the design, building embodying the design, or graphic image embodying the design is transparent, the applicant must state this fact in the application.

Article 8 A design for two or more articles, buildings or graphic images that are used together and that are specifically designated by Order of the Ministry of Economy, Trade and Industry (hereinafter referred to as a "set of articles") may be filed as one design and have a design registration made if the set of articles has a sense of unity as a whole.

Article 8-2 A design for articles, buildings, or graphic images that constitute equipment and decorations inside a store, office, and the other facilities (hereinafter referred to as "interior") may be filed as one design in an application, and have a design registration made if the interior creates a coordinated aesthetic impression as a whole.

Ordinance for Enforcement of the Design Act

Form No. 2 [Notes]

- (8) Where a design registration for a design for an article, building, or graphic image is requested, the following matters shall be stated in the column of "[Article to the Design]".

- (a) Where a design registration for an article design is requested (including cases where a graphic image is displayed on a part of an article), the article shall be stated.
- (b) Where a design registration for a building design is requested (including cases where a graphic image is displayed on a part of a building), the usage of the building shall be stated in the column of “[Article to the Design]”.
- (c) Where design registration for a graphic image design is requested, the usage of the graphic image shall be stated in the column of “[Article to the Design]”.
- (39) Where it is unclear that the purpose of use and the state of the article, building or graphic image, only from the description of the column of the “article to the design”, an explanation which can help in understanding the article, building, or graphic image, such as the purpose of use or the state of use of the article, building, or graphic image, shall be stated in the column of “[Description of Article to the Design]”.
- (40) Where filing an application for design registration for a graphic image, if the usage of that graphic image is unclear from statements in the column of “[Article to the Design]” alone, an explanation indicating that the graphic image is categorized as either those provided for use in the operation of the device or those displayed as a result of the device performing its function shall be stated in the column of “[Description of Article to the Design]”.
- (41) Where filing an application for design registration for a design including a graphic image on a part of an article or building, which is provided for use in the operation of the article or building, the description of the functions and the operations of the said article or building to the graphic image shall be stated in the column of “[Description of Article to the Design]”.

Form No. 6 [Notes]

- (8) A drawing showing a three-dimensional shape is to be indicated by a sufficient number of views for clearly showing the design for which the design registration is requested. If a view is identical to or is a mirror image of another view contained in the drawing, the latter view may be indicated in lieu of the former view by including a statement specifying the latter view which is identical to or is a mirror image of the former view in the column of “[Description of the Design]” of the application.
- (9) Views prepared by the isometric projection method or views prepared by the oblique projection method (limited to cabinet drawings (at a width-height-depth ratio of 1:1:1/2) or cavalier drawings (at a width-height-depth ratio of 1:1:1)) which are set forth in the left-hand column of the following table may be indicated in lieu of all or part of the views set forth in the right-hand column. In this case, if the views are prepared by the oblique projection method, the distinction of cabinet drawings or cavalier drawings and the inclination angle are to be stated in the column of “[Description of the Design]” of the application for each view.

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

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

- (10) A drawing representing a flat and thin article is to be indicated by a sufficient number of views for clearly showing the design for which the design registration is requested from among the surface view and the back side view prepared at the same scale; provided, however, that if the surface view and the back side view are identical or mirror images or if the back side is without any pattern, the surface view may be indicated in lieu of the back side view by including a statement to that effect in the column of "[Description of the Design]" of the application.
- (11) A graphic image prescribed in Article 2, paragraph (1) of the Design Act is to be represented in the graphic image view (meaning the view representing the graphic image for which design registration is requested; the same applies hereinafter). In cases where the graphic image is three dimensional, ○○ graphic image views, such as front graphic image view and right-side graphic image view, are to be used.
- (12) If requesting a design registration for a part of an article, building, or graphic image, and the view prescribed in (8) through (11) includes both the part for which the design registration is requested and any other parts, the part for which the design registration is requested is to be specified, such as by drawing the part for which the design registration is requested with solid lines and any other parts with broken lines, etc. If the part for which the design registration is requested cannot be specified by statements in the drawings alone, the way of specifying that part is to be stated in the column of "[Description of the Design]" of the application. The same shall apply where the design registration is requested for a part of a design for a set of articles prescribed in Article 8 of the Design Act or an interior design prescribed in Article 8-2 of the Design Act.
- (15) Where the drawings in (8) through (10) alone cannot sufficiently represent the design, a development view, sectional view, end elevational view of the cut part, enlarged view, perspective view, graphic image view, or any other necessary views will be added, and where it is necessary to help in understanding the design, a view showing the state of use or any other reference views will be added.
- (24) Above each view, an indication such as "[Front View]," "[Rear View]," "[Left Side View]," "[Right Side View]," "[Top View]," "[Bottom View]," "[Surface View]," "[Back Side View]," "[Development View]," "[Sectional View of ○○]," "[End Elevational View of the Cut Part of ○○]," "[Enlarged View of ○○]," "[Perspective View]," "[View Showing the Front, Top and Right Side]," "[Graphic Image View]," and "[○○ Graphic Image View]" shall be made, corresponding to each kind of view. Where these views are reference views, a statement to that effect shall also be indicated. In these cases, indications for multiple views should not be the same.

Form No. 7 [Notes]

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

Part V

Related Design

Part V	1
Part V Related Design	1
1. Outline	1
2. Basic concept in examining related designs	1
3. Specific determinations in examining related designs	1
3.1 Description of terms pertaining to related designs	1
3.2 Reference date for determination on the provisions of Article 10, paragraph (1) of the Design Act	2
3.3 Requirements for obtaining design registration as a related design	3
3.3.1 The application for design registration is filed by the same applicant for design registration as that for the principal design	3
3.3.2 The application for design registration pertains to a design similar to the principal design	3
3.3.3 The application for design registration should be filed on or after the filing date of the application for design registration for the fundamental design and before a lapse of 10 years from the date	4
3.4 Essential requirements for principal designs, etc.	4
3.4.1 The design right of the principal design has not been extinguished, etc.	5
3.4.2 An exclusive license has not been established on the design right of the principal design	5
3.5 Application of the provisions concerning prior application	6
3.6 Application of the provisions 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	7
3.7 Application of the provisions concerning novelty and creative difficulty	7
3.7.1 Meaning of “applicant’s own design” under Article 10, paragraph (2) and paragraph (8) of the Design Act	7
3.7.2 Timing, etc. of the disclosure of publicly known designs to which the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act apply	7
3.7.3 Application of the provisions of Article 10, paragraph (8) of the Design Act with respect to applicant’s own design that are identical or similar to a related design that has been extinguished, etc.	8
3.7.4 Matters to be considered in applying the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act	9
3.7.5 Application of the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act in cases where the fundamental design of the design for which the design registration is requested as a related design or a related design pertaining to the fundamental design is the design for which the design registration is requested for a part of an article, etc.	11
3.7.6 Application of the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act in cases where other articles created by the applicant (hereinafter referred to as the “applicant’s other articles”) or articles created by others have been added to the applicant’s own publicly known design	11

Relevant Provisions..... 1

Part V Related Design

1. Outline

The reality in design creation is that many design variations are continually created from a single concept. The related design system deals with designs in a group that have been created this way. The system protects the designs as having equivalent value, and enables rights to be enforced on each design, but only where applications for these designs have been filed by the same applicant.

Since a design right is an exclusive right enabling a person to work the design as a business, if overlapped rights are able to be enforced separately, the rights of others may stop a right holder from being able to work a design as a business. The provisions of prior application (Article 9 of the Design Act) have therefore been established to prevent such a situation from happening.

The related design system as provided in Article 10 of the Design Act permits registration as an exception to these provisions of prior application, while eliminating the detrimental effects caused by overlapped rights, by imposing requirements for registration and restrictions on rights.

2. Basic concept in examining related designs

To obtain a design registration as a related design, the filed design must comply with the prescribed requirements for related designs.

Therefore, for applications requesting design registration as a related design, in addition to the ordinary requirements for design registration, the examiner should determine whether the filed design complies with the prescribed requirements for registration as a related design.

3. Specific determinations in examining related designs

3.1 Description of terms pertaining to related designs

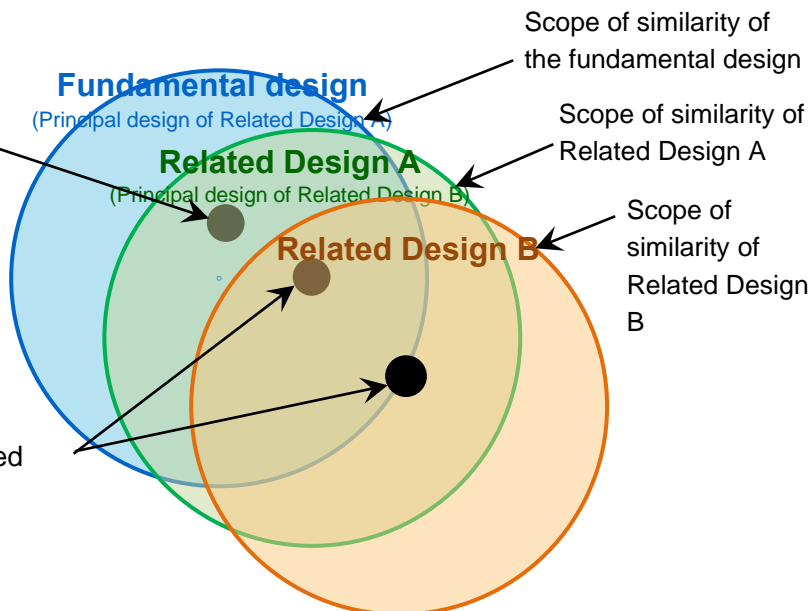
To obtain a design registration as a related design, a single design must be selected from the applicant's own design for which an application for design registration has been filed or for which design registration has been granted. This selected design is called the "principal design" (Article 10, paragraph (1) of the Design Act).

The first selected principal design, that is, a "principal design" that is not a related design of any other design, is called the "fundamental design" (Article 10, paragraph (7) of the Design Act). Furthermore, the related design of the fundamental design and the gradual related designs linked to the related design are called "related designs pertaining to the fundamental design."

In this Part, “fundamental design” shall be stated for matters that apply only to the fundamental design, and “principal design” shall be stated for matters that apply, not only to the fundamental design, but also to other principal designs.

The first single design selected as a principal design is called the “**fundamental design**.”

The related design of the fundamental design and the gradual related designs linked to the related design are called “**related designs pertaining to the fundamental design**.”



3.2 Reference date for determination on the provisions of Article 10, paragraph (1) of the Design Act

With respect to the provisions of Article 10, paragraph (1) of the Design Act, the examiner should determine the filing date for the fundamental design and the filing date for the related design as follows.

(1) Cases where effects of priority claim are recognized

Regarding applications for design registration containing a priority claim under the Paris Convention, etc., if the effects of that claim are recognized (for the approval or disapproval of the effects of priority claim, see [Part VII](#)), as for the filing date for the fundamental design and the filing date for the related design under Article 10 of the Design Act, the filing date of the first application should be the reference date for determination.

(2) Cases complying with the requirements for division of an application for design registration, conversion of an application, or filing of a new application for an amended design

In the case of division of an application for design registration under Article 10-2, paragraph (1) of the Design Act, conversion of a patent application or an application for utility model registration into an application for design registration under Article 13, paragraph (1) or paragraph (2) of the Design Act, or filing of a new application for design registration for an amended design for which a ruling dismissing an amendment has been made under Article 17-3 of the Design Act, if a retroactive effect of the filing date has been recognized, as

for the filing date for the fundamental design and the filing date for the related design under Article 10 of the Design Act, the filing date of the original application or the date of submission of the written amendment of proceedings for which a retroactive effect was recognized will be the reference date for determination.

(3) Cases of an international application for design registration

Regarding international applications for design registration, unless a priority claim under the Paris Convention is recognized to be effective (see [\(1\)](#)), as for the filing date for the fundamental design and the filing date for the related design under Article 10 of the Design Act, the date of the international registration on which an application for design registration was deemed to have been filed under Article 60-6, paragraph (1) of the Design Act will be the reference date for determination.

3.3 Requirements for obtaining design registration as a related design

When examining whether a filed design is a registrable as a related design, the examiner should determine whether it complies with all of the following requirements.

- (1) The application for design registration is filed by the same applicant for design registration as that for the principal design (→ see [3.3.1](#))
- (2) The application for design registration pertains to a design similar to the principal design (→ see [3.3.2](#))
- (3) The application for design registration was filed on or after the filing date of the application for design registration for the fundamental design (or the priority date in cases where effects of priority claim are recognized) and before a lapse of 10 years from the date (→ see [3.3.3](#))

3.3.1 The application for design registration is filed by the same applicant for design registration as that for the principal design

The applicant for design registration for a related design must be the same as that for the principal design (or the same as the holder of the design right of the principal design in cases where establishment of the design right has been registered for the principal design).

The determination on whether or not the applicants for design registration are the same in the examination is made at the time of rendering the examiner's decision, but the applicants for design registration also need to be the same at the time of the registration establishing the design right.

3.3.2 The application for design registration pertains to a design similar to the principal design

To obtain a design registration as a related design, the design in application must be similar to the principal design.

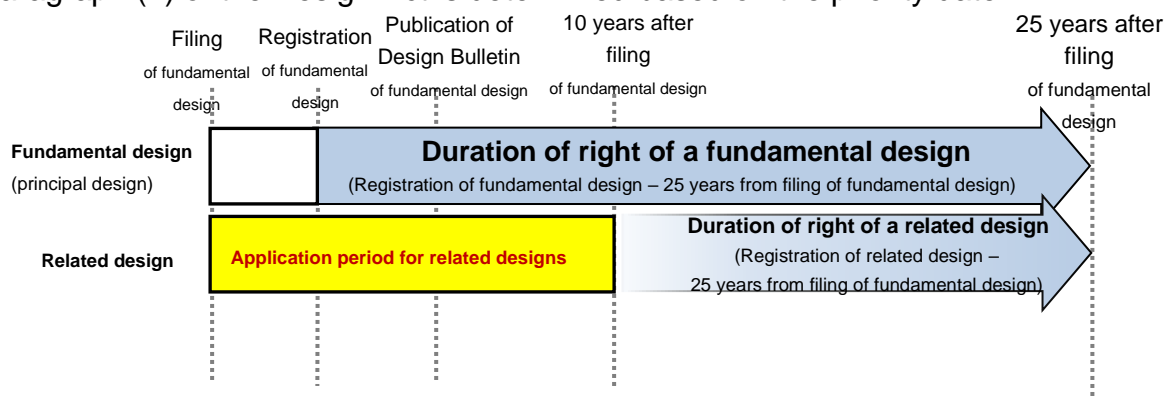
Where the related design is identical to principal design, it cannot be registered as a related design.

(With regard to determination of similarity between two or more whole designs, see [Part III, Chapter V “Prior Application,” 3.1 “Determination of similarity between two or more whole designs”](#); with regard to determination of similarity between two or more designs for which the design registration is requested for a part of an article, etc., see [3.2 “Determination of similarity between two or more ‘designs for which the design registration is requested for a part of an article, etc.’” in the same Chapter](#); and with regard to determination of similarity between a whole design and a design for which the design registration is requested for a part of an article, etc., see [3.3 “Determination of similarity between a whole design and ‘a design for which the design registration is requested for a part of an article, etc.’” in the same Chapter](#).)

3.3.3 The application for design registration should be filed on or after the filing date of the application for design registration for the fundamental design and before a lapse of 10 years from the date

The filing date of an application for design registration of a related design must be on or after the filing date of the application for design registration for the fundamental design and before a lapse of 10 years from that filing date.

Furthermore, in cases where effects of priority claim are recognized with respect to both the filing date of the application for design registration of the fundamental design and the filing date for the related design, application of the provisions of Article 10, paragraph (1) of the Design Act is determined based on the priority date.



3.4 Essential requirements for principal designs, etc.

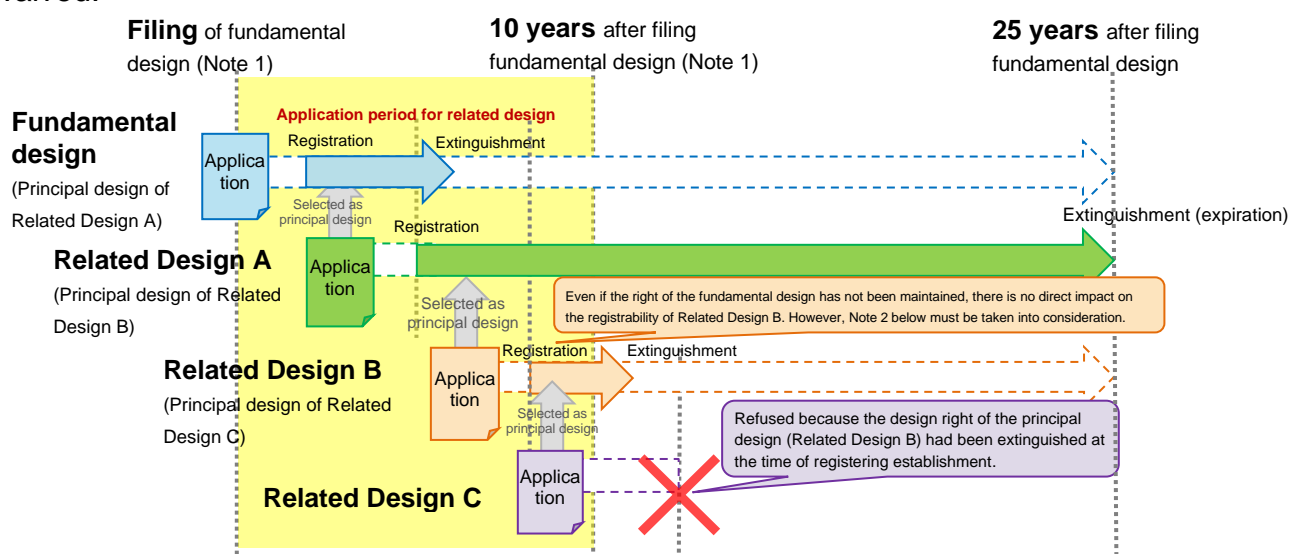
When examining whether a filed design is a registrable as a related design, in addition to the requirements for a related design (see [3.3 above](#)), the examiner should determine whether it complies with all of the following requirements for a principal design, etc.

- (1) The design right of the principal design has not been extinguished, etc. (→ see [3.4.1](#))
- (2) An exclusive license has not been established on the design right of the principal design (→ see [3.4.2](#))

3.4.1 The design right of the principal design has not been extinguished, etc.

Where, at the time of registering establishment of the design right of a related design, the design right of the principal design has been extinguished under the provisions of Article 44, paragraph (4) or Article 60-14, paragraph (2), a trial decision to the effect that it is to be invalidated has become final and binding, or it has been waived, the related design may not be registered in accordance with the provisions of Article 10, paragraph (1) of the Design Act.

Therefore, if the examiner intends to render an examiner's decision to the effect that a related design is to be registered, the examiner should confirm that the design right of the principal design has not been extinguished under the provisions of Article 44, paragraph (4) or Article 60-14, paragraph (2), that a trial decision to the effect that it is to be invalidated has not become final and binding, and that it has not been waived.



(Note 1) In cases where effects of priority claim are recognized, requirements for obtaining a design registration as a related design and prior and later applications are determined based on the priority date.

(Note 2) In this case example, it must be noted that, after the design right of the fundamental design is extinguished, the applicant's own publicly known design that are identical or similar to the fundamental design are not excluded in determination of the novelty and creative difficulty of Related Design B. (For details, see 3.7.3 "Application of the provisions of Article 10, paragraph (8) of the Design Act with respect to applicant's own design that are identical or similar to a related design that has been extinguished, etc." in this Part.)

3.4.2 An exclusive license has not been established on the design right of the principal design

Pursuant to the provisions of Article 10, paragraph (6) of the Design Act, a related design whose principal design is one pertaining to a design right on which an exclusive license has been established may not be registered.

Therefore, if the examiner intends to render an examiner's decision to the effect that a related design is to be registered, the examiner should confirm that an exclusive license has not been established on its principal design.

Furthermore, even if an exclusive license has been established on the principal design, if cancellations (Note) of that exclusive license has been registered, a related design could be registered with respect to that principal design.

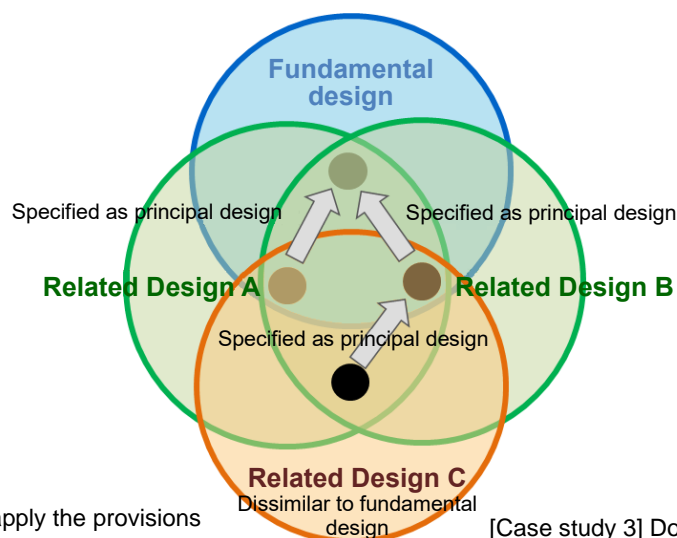
(Note) Pursuant to the provisions of Article 27, paragraph (1) of the Design Act, registering the cancellations of an exclusive license pertaining to the design right of the fundamental design and that of related design pertaining to the fundamental design must be established for all designs at the same time.

3.5 Application of the provisions concerning prior application

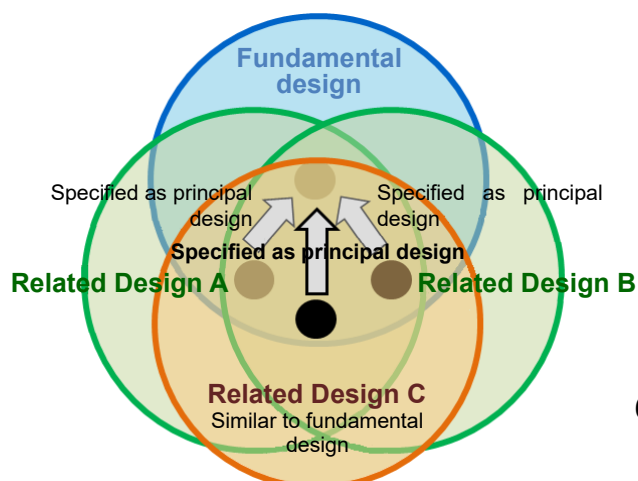
In cases where the fundamental design and a related design pertaining to the fundamental design are similar to each other, the examiner should not apply the provisions of Article 9, paragraph (1) and paragraph (2) of the Design Act to their relationship (Article 10, paragraph (1), paragraph (4) and paragraph (7) of the Design Act).

In addition, the same applies to related designs that continue to exist after their fundamental design has been extinguished as a result of waiver of the design right, a failure to pay registration fees, or a trial decision of invalidation becoming final and binding. Even if two or more related designs pertaining to a single fundamental design are similar to each other, the provisions of Article 9, paragraph (1) and paragraph (2) of the Design Act will not apply.

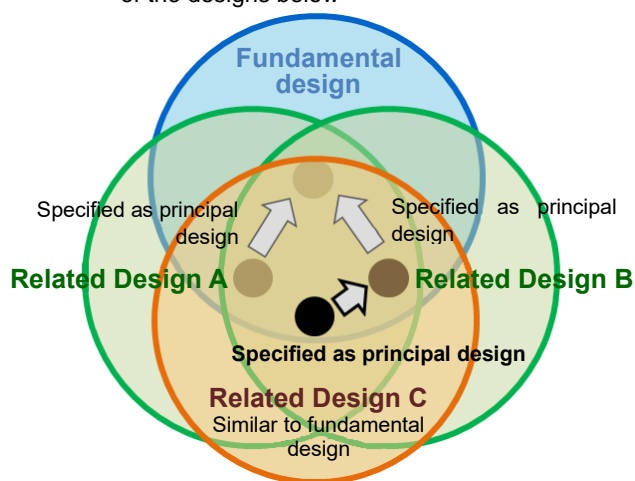
[Case study 1] Do not apply the provisions of prior application (Article 9) between any of the designs below



[Case study 2] Do not apply the provisions of prior application (Article 9) between any of the designs below



[Case study 3] Do not apply the provisions of prior application (Article 9) between any of the designs below



3.6 Application of the provisions 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

In cases where the applicant of an application for design registration for a related design and the applicant of the earlier application are the same person, the examiner should not apply the provisions prescribed in Article 3-2 of the Design Act 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 (Article 10, paragraph (3) of the Design Act).

3.7 Application of the provisions concerning novelty and creative difficulty

Of the designs of an applicant filing an application for design registration for a related design (hereinafter referred to as the “applicant’s own design”), which are publicly known, the examiner should exclude from information that serves as the basis for determination of novelty and creative difficulty of the related design, those designs that are identical or similar to the fundamental design of the design for which the design registration is requested as a related design and to related designs pertaining to that fundamental design (Article 10, paragraph (2) and paragraph (8) of the Design Act).

3.7.1 Meaning of “applicant’s own design” under Article 10, paragraph (2) and paragraph (8) of the Design Act

The term “applicant’s own design” means those designs for which the applicant for design registration for a related design holds the design rights or holds the right to obtain a design registration. It does not include designs for which others hold the design rights or hold the right to obtain a design registration.

3.7.2 Timing, etc. of the disclosure of publicly known designs to which the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act apply

The examiner should apply the provisions of Article 10, paragraph (2) or paragraph (8) of the Design Act only to the applicant’s own design which are publicly known, and which fall under any of the following (1) through (3).

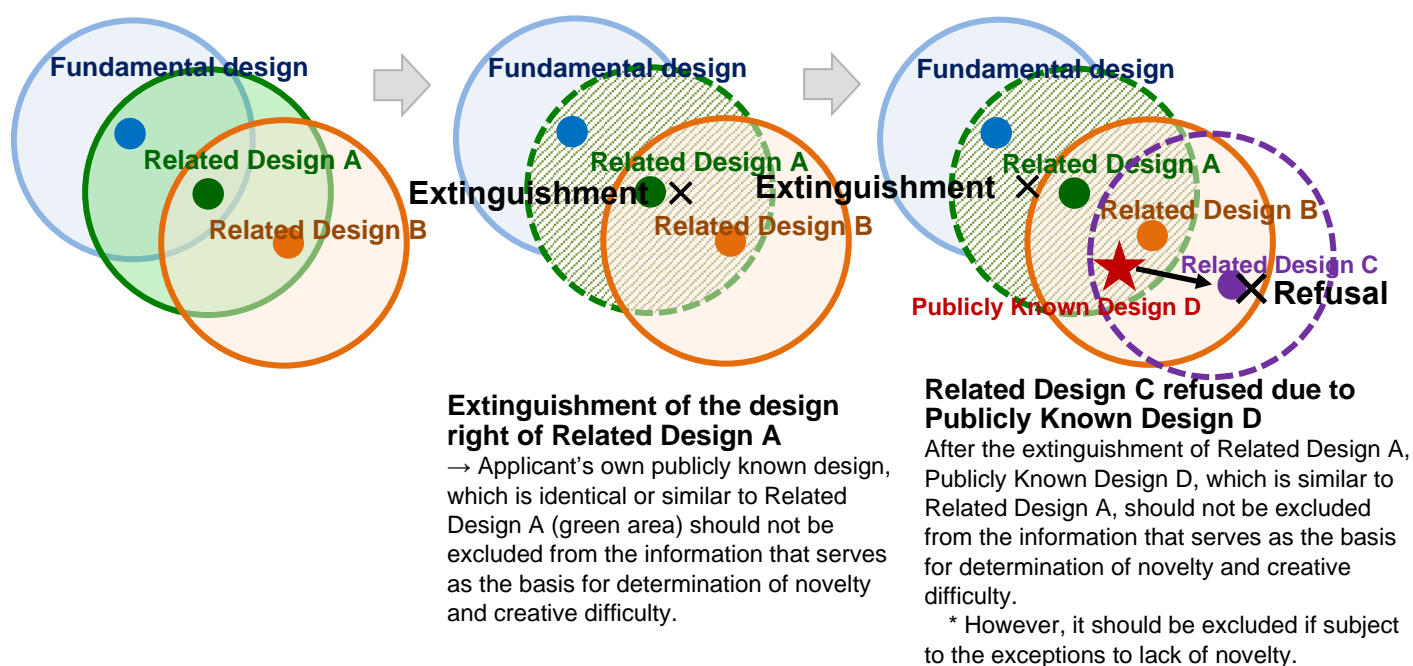
- (1) Designs that are identical or similar to the fundamental design of the design for which the design registration is requested as a related design, and which became publicly known on or after the filing date of the fundamental design (or, if effects of priority claim are recognized, the filing date of the first application that serves as the basis for the priority claim; hereinafter the same shall apply in 3.7.2)
- (2) Designs that are identical or similar to related designs pertaining to the fundamental design of the design for which the design registration is requested as a related design, and which became publicly known on or after the filing date of the respective corresponding related design
- (3) Designs that are identical or similar to the fundamental design of the design for which the design registration is requested as a related design and to related designs pertaining to that fundamental design, and where exceptions to lack of novelty have been applied to that fundamental design or to the related designs pertaining to the fundamental design

(Note) For designs that became publicly known in a foreign country, etc., the examiner should also take any time difference into account when determining (1) or (2) above.

3.7.3 Application of the provisions of Article 10, paragraph (8) of the Design Act with respect to applicant's own design that are identical or similar to a related design that has been extinguished, etc.

If applicant's own design which is publicly known (for example, Publicly Known Design D in the figure below) is identical or similar to a related design (for example, Related Design A or B in the figure below) pertaining to the fundamental design of the design for which the design registration is requested as a related design (for example, Related Design C in the figure below), which falls under any of the following (1) through (7), the examiner should not apply the provisions of Article 10, paragraph (8) of the Design Act, and should treat that applicant's own design as information that serves as the basis for determination of novelty and creative difficulty for the filed related design.

- (1) Where the application for design registration for the related design has been waived
- (2) Where the application for design registration for the related design has been withdrawn
- (3) Where the application for design registration for the related design has been dismissed
- (4) Where an examiner's decision or trial decision to the effect that the application for design registration for the related design is to be refused has become final and binding
- (5) Where the design right of the related design has been extinguished pursuant to the provisions of Article 44, paragraph (4) or Article 60-14, paragraph (2) of the Design Act
- (6) Where a trial decision to the effect that the design right of the related design is to be invalidated has become final and binding
- (7) Where the design right of the related design has been waived



(Note 1) Regarding (1) to (4) above, limited to cases where, at the time leading up to the relevant event, the fundamental design or a related design pertaining to the fundamental design had been stated as the principal design in the column of "Indication of Principal Design" of the application, and notice of the determination at the examination, trial or retrial had been given that the related design is one whose principal design is the fundamental design or a related design pertaining to the fundamental design.

(Note 2) The same treatment shall also apply if the applicant's own publicly known design is identical or similar to the fundamental design of the design for which the design registration is requested as a related design, and if the design right of the fundamental design is extinguished, etc. in the same manner as (5) to (7) above, the examiner should not apply the provisions of Article 10, paragraph (8) of the Design Act, and should treat the applicant's own design as information that serves as the basis for determination of novelty and creative difficulty for the filed related design.

3.7.4 Matters to be considered in applying the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act

(1) Regarding publicly known designs, often the manufacturer or seller of an article, etc. to the design is not clearly stated, or the manufacture is engaged in manufacturing under license to work the design right. For this reason, the examiner should determine whether a publicly known design corresponds to "applicant's own design" under Article 10, paragraph (2) and paragraph (8) of the Design Act, while taking each of the following points (a) through (d) into consideration.

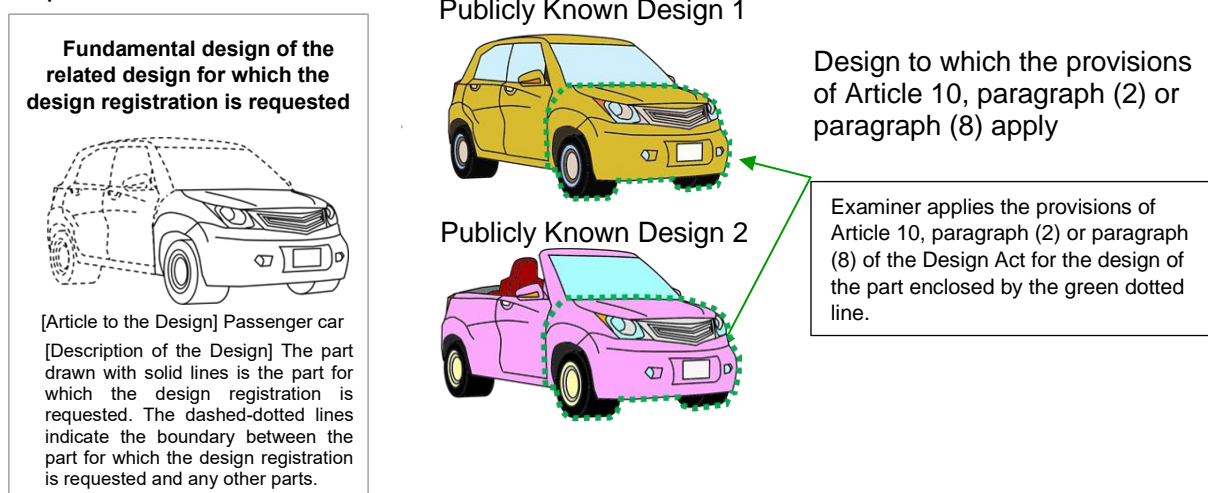
Furthermore, when applying Article 10, paragraph (2) and paragraph (8) of the Design Act, the examiner should determine whether a publicly known design is anyone's design based on the time that the publicly known design became publicly known.

- (a) Where, based on the general knowledge of a person skilled in the art, it is clear that a mark, etc. indicated on a publicly known design is the mark, etc. of the applicant, the examiner should treat the publicly known design as the “applicant’s own design.”
 - (b) In cases of a joint application by multiple applicants for design registration for a related design, where the licensee of a publicly known design is one of those applicants, the examiner should treat the publicly known design as the “applicant’s own design.” However, where a person other than those joint applicants holds a right to obtain design registration for that publicly known design, the examiner should not treat the publicly known design as the “applicant’s own design.”
 - (c) Where it can be inferred that a publicly known design is being used under license to work the design right from the applicant of an application for design registration for a related design, the examiner should treat the publicly known design as the “applicant’s own design.”
 - (d) Where a design right has been transferred, and the holder of the design right prior to the transfer is the same person as the discloser of the publicly known design, the examiner should treat the publicly known design as the “applicant’s own design.”
- (2) Regarding publicly known designs presented by the examiner as a basis for determining novelty or creative difficulty, in cases where a counterargument is made by the applicant to the effect that the publicly known design corresponds to the “applicant’s own design” under Article 10, paragraph (2) and paragraph (8) of the Design Act:
- (a) If the applicant has only brought forward a counterargument merely stating that the publicly known design is the applicant’s own design, with no evidence or other substantiation:
In this case, because no specific evidence has been presented, the examiner should not accept that counterargument.
 - (b) If the applicant has brought forward a counterargument detailing how the publicly known design is the applicant’s own design while presenting specific evidence:
In this case, the examiner should consider the applicants’ counterargument in light of the specific evidence, etc., and if the examiner forms the belief that the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act ought to be applied to the publicly known design, the examiner should exclude that publicly known design from the information that serves as the basis for determination of novelty or creative difficulty.
On the other hand, if the examiner finds evidence which casts doubt on the details of the applicants’ counterargument or specific evidence, the examiner should not accept that counterargument.

3.7.5 Application of the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act in cases where the fundamental design of the design for which the design registration is requested as a related design or a related design pertaining to the fundamental design is the design for which the design registration is requested for a part of an article, etc.

Where the fundamental design of the design for which the design registration is requested as a related design or a related design pertaining to the fundamental design is the design for which the design registration is requested for a part of an article, etc., in applying the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act, the examiner should exclude from information that serves as the basis for determination of novelty and creative difficulty, that part in the applicant's own publicly known design which corresponds to the part in the fundamental design or a related design pertaining to the fundamental design for which the design registration is requested.

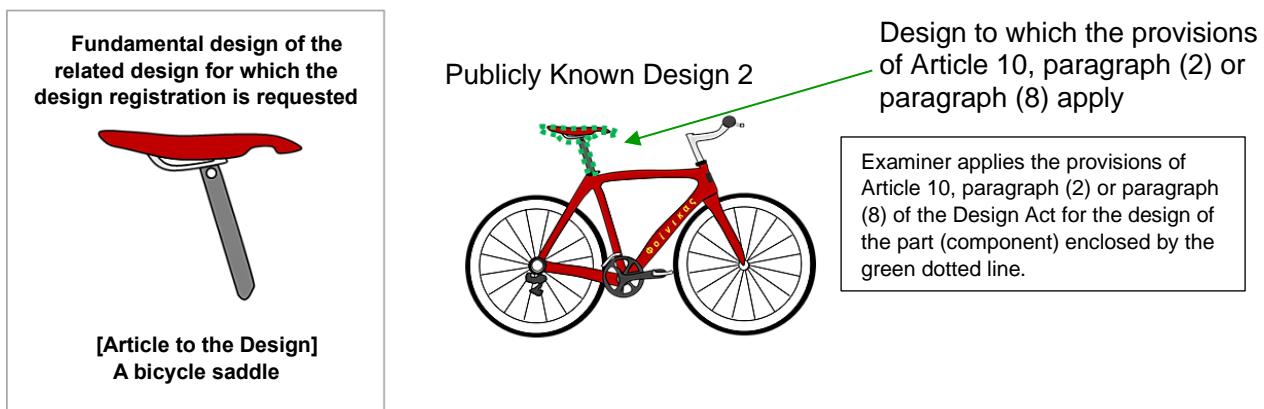
[Case example] Example of a design for which the design registration is requested for a part of an article, etc.



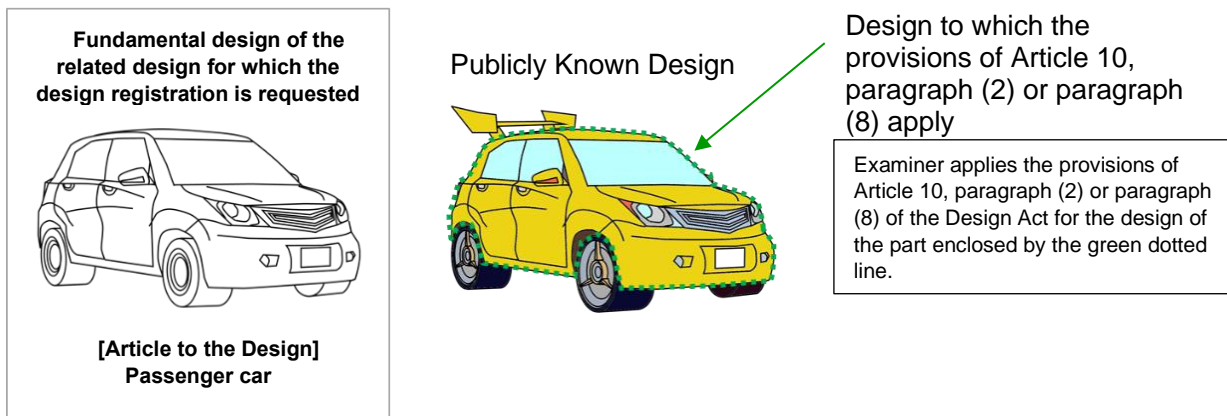
3.7.6 Application of the provisions of Article 10, paragraph (2) and paragraph (8) of the Design Act in cases where other articles created by the applicant (hereinafter referred to as the “applicant’s other articles”) or articles created by others have been added to the applicant’s own publicly known design

Even if one of the applicant's other articles or an article created by others has been added to the applicant's own publicly known design, if the applicant's own design can be distinctively recognized, the examiner should exclude from information that serves as the basis for determination of novelty and creative difficulty, the applicant's own design that is identical or similar to the fundamental design of the design for which the design registration is requested as a related design or a related design pertaining to the fundamental design, exclusive of the applicant's other article or the article created by others which was added.

[Case example 1] Example of a whole design of a component



[Case example 2] Example of a whole design of a finished product



Relevant Provisions

Design Act

Article 10 (1) Notwithstanding the provisions of Article 9, paragraph (1) or (2), an applicant for design registration may have a registration made for a design that is similar to a single design which the applicant has selected either from among the applicant's own designs for which an application for design registration has been filed or from among the applicant's own registered designs (hereinafter the selected design is referred to as the "principal design" and a design similar to it is referred to as a "related design"), but only if the filing date of the application to register the related design (or, if the application to register the related design contains a priority claim under Article 43, paragraph (1), Article 43-2, paragraph (1), Article 43-3, paragraph (1) or Article 43-3, paragraph (2) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1), the filing date of the earliest application, the filing date of an application that is deemed to be the earliest application pursuant to Article 4C.(4) of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, or the filing date of an application that is recognized as the earliest application pursuant to Article 4A.(2) of the Paris Convention; hereinafter the same applies in this paragraph) falls on or after the filing date of the application to register the principal design, and also falls prior to the last day before the lapse of 10 years' time after the filing date of the application to register the principal design; provided, however, that this does not apply if, as of the time of the registration establishing the rights to the related design, the rights to the principal design have ceased to exist pursuant to Article 44, paragraph (4), a trial or appeal decision to invalidate them has become final and binding, or they have been abandoned.

- (2) In applying the provisions of Article 3, paragraphs (1) and (2) to any of the applicant's own designs that have come to fall under Article 3, paragraph (1), item (i) or (ii) and that are identical or similar to the principal design selected for the design that the applicant seeks to have a design registration made pursuant to the preceding paragraph, those designs are deemed not to have come to fall under Article 3, paragraph (1), item (i) or (ii) with regard to the design that the applicant seeks to have a design registration made.
- (3) In applying the proviso to Article 3-2 to a design that an applicant seeks to have a design registration made pursuant to paragraph (1), the phrase "except for a design gazette in which the matters set forth in Article 20, paragraph (3), item (iv) were published pursuant to Article 20, paragraph (4)" in the proviso to Article 3-2 is deemed to be replaced with "if the secrecy is requested for the earlier application for design registration under Article 14, paragraph (1), limited to a design gazette in which the matters set forth in Article 20, paragraph (3), item (iv) were published pursuant to the provisions of Article 20, paragraph (4)".
- (4) A design that is similar only to the related design for which a design registration is granted pursuant to paragraph (1) may be granted a design registration pursuant

to that paragraph by deeming the related design to be the principal design. This also applies for a design that is similar only to the related design for which it is provided that the design registration may be granted, and for a design that is similar only to a further-removed related design which is linked to a related design for which it is provided that a design registration may be granted.

- (5) In a case as referred to the preceding paragraph, to apply the provisions of paragraph (1), the term "the principal design" in that paragraph is deemed to be replaced with "the single design that was first selected in connection with the related design".
- (6) If an exclusive license has been established on the design rights to the principal design, a design registration may not be granted for related designs associated with the principal design, notwithstanding the provisions of paragraphs (1) and (4).
- (7) If applications to register related designs have been filed for two or more designs, each of which constitutes a related design associated with a fundamental design ("fundamental design" means the single design that was first selected in connection with a related design; the same applies hereinafter) ("related designs associated with a fundamental design" means a related design for which a fundamental design has been selected and any further-removed related design that is linked to the related design; the same applies hereinafter), Article 9, paragraph (1) or (2) does not apply to those designs.
- (8) In a case as provided in the preceding paragraph, in applying the provisions of Article 3, paragraphs (1) and (2) to any of the applicant's own designs that have come to fall under Article 3, paragraph (1), item (i) or (ii) and that are identical or similar to a related design associated with the fundamental design in question (excluding the cases in which an application to register the related design has been abandoned, withdrawn, or dismissed, the examiner's decision or trial or appeal decision rejecting the application for design registration associated with the related design has become final and binding, the rights to the related design have ceased to exist pursuant to the provisions of Article 44, paragraph (4), a trial or appeal decision to invalidate the rights to the related design has become final and binding, or the rights to the related design have been abandoned), those designs are deemed not to have come to fall under Article 3, paragraph (1), item (i) or (ii) with regard to the design that the applicant seeks to have a design registration made pursuant to the provisions of paragraph (1).

Article 21 (1) The duration of design rights (excluding rights to a related design) ends 25 years after the filing date of the application for design registration.

- (2) The duration of design rights for a related design ends 25 years after the filing date of the application to register the fundamental design selected for it.

Article 22 (1) The rights to a fundamental design and to its related designs may not be transferred independently of each other.

- (2) If the rights to a fundamental design have been extinguished pursuant to the provisions of Article 44, paragraph (4), a trial or appeal decision invalidating the rights to a fundamental design has become final and binding, or the rights to a fundamental design have been abandoned, the rights to the related designs associated with the fundamental design may not be transferred independently.

- Article 27 (1) A holder of design rights may grant an exclusive license on their design rights; provided, however, that an exclusive license on the rights to a fundamental design or exclusive licenses on the rights to its related designs may be granted only if all the exclusive licenses on the rights to the fundamental design and its related designs are granted to the same person at the same time.
- (2) An exclusive licensee has an exclusive right to work the registered design or designs similar to it in the course of trade to the extent permitted by the act establishing the license.
- (3) If the rights to a fundamental design cease to exist pursuant to the provisions of Article 44, paragraph (4), a trial or appeal decision to invalidate the rights to a fundamental design becomes final and binding, or the rights to a fundamental design have been abandoned, exclusive licenses on the rights to related designs associated with the fundamental design may be granted only if all the exclusive licenses on the rights to related designs are granted to the same person at the same time.
- (4) The provisions of Articles 77, paragraphs (3) through (5) (Transfer), Article 97, paragraph (2) (Waiver), and Article 98, paragraph (1), item (ii), and paragraph (2) (Effect of Registration) of the Patent Act apply *mutatis mutandis* to exclusive licenses.

Part VI
Amendment

Part VI	1
Chapter I Amendment	1
1. Outline.....	1
2. Limitations of amendment	1
2.1 Limitation on the contents of amendment	1
2.2 Limitation on the period for amendment.....	1
Chapter II Dismissal of Amendments.....	1
1. Outline.....	1
2. Basic concept in dismissing amendments.....	1
3. Gist of design	1
3.1 Gist of design	1
3.2 Finding of the gist of design	1
4. Change of the gist of design	1
4.1 Categories of amendments that change the gist.....	1
4.1.1 Where the amendment is found to make a change exceeding the scope identical to that which can be inevitably derived based on the ordinary skill in the art of the design	2
4.1.2 Where the amendment is found to clarify the gist of design that was unclear when originally filed.....	2
4.1.3 Where change is made to the scope for which the design registration is requested.....	2
4.2 Categories of amendments that do not change the gist.....	2
4.2.1 Where a correction is made within the scope identical to that which can be inevitably derived based on the ordinary skill in the art of the design	3
4.2.2 Where correcting an improper description of a part that is minor enough to not affect the finding of the gist of design into a proper description	3
Relevant Provisions	1

Chapter I Amendment

1. Outline

Amendment refers to a procedural act which an applicant performs voluntarily or based on an order issued by the Commissioner of the Patent Office or the chief administrative judge to correct or supplement the filing documents, etc. after the filing so as to remedy improper descriptions, where documents, etc. relating to the filing contain any improper descriptions, such as an error or ambiguous statement, in light of law or the prescribed forms.

In order for procedures to progress smoothly and promptly, it is ideal that the applicant submits a perfectly complete set of documents from the beginning. However, due in part to the need for haste in filing an application under the first-to-file system, in reality, such perfect documents may not always be possible. For this reason, Article 60-24 of the Design Act allows the amendment of procedures.

However, given an amendment has the effect of the documents, etc. being treated as having been submitted in the amended state when originally filed, if the contents that were described when originally filed could be freely amended, it would run contrary to the purport of the first-to-file system and would give unexpected disadvantage to third parties. For this reason, limitations are imposed on the contents of and period for amendment.

If an applicant submits a legitimate written amendment of proceedings (Article 17, paragraph (4) of the Patent Act as applied mutatis mutandis pursuant to Article 68, paragraph (2) of the Design Act), the documents, etc. shall be treated as having been submitted in the amended state when originally filed.

2. Limitations of amendment

2.1 Limitation on the contents of amendment

Since amendment should only be made to correct or supplement any error or ambiguous statement in the documents, etc. as originally filed, amendment made to the statement in the application or any drawings, etc. attached to the application must not change the gist thereof. Where an amendment does change the gist thereof, the examiner should dismiss the amendment by a ruling (Article 17-2, paragraph (1) of the Design Act) (see [Part VI, Chapter II “Dismissal of Amendments”](#)).

2.2 Limitation on the period for amendment

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).

Chapter II Dismissal of Amendments

1. Outline

Dismissal of an amendment under Article 17-2 of the Design Act refers to dismissal of an amendment by a ruling by the examiner where the case is pending in examination, trial or retrial and an amendment that has been made to the statement in the application or any drawings, etc. attached to the application changes the gist thereof.

2. Basic concept in dismissing amendments

Since an amendment has the effect of the documents, etc. being treated as having been submitted in the amended state when originally filed, if the contents that were described when originally filed could be freely amended, it would run contrary to the purport of the first-to-file system and would give unexpected disadvantage to third parties. It would also make it difficult for the examiner to conduct a prompt examination. For this reason, amendments to a statement in the application or drawings, etc. are limited to the extent that they do not change the gist of design, and any amendment that does change the gist shall be dismissed by a ruling by the examiner.

3. Gist of design

3.1 Gist of design

The statement in the application and drawings, etc. attached to the application represent the contents of the design filed as an aesthetic creation, which serves as the basis for specifying the scope of the registered design. On such grounds, 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 is called the gist of design.

3.2 Finding of the gist of design

The process of directly deriving the gist of design from the statement in the application and drawings, etc. attached to the application based on the ordinary skill in the art of the design is called the finding of the gist of design.

4. Change of the gist of design

4.1 Categories of amendments that change the gist

Where an amendment made to the statement in the application or 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.

4.1.1 Where the amendment is found to make a change exceeding the scope identical to that which can be inevitably derived based on the ordinary skill in the art of the design

If an amendment that makes a change exceeding the scope identical to that which can be inevitably derived, based on the ordinary skill in the art of the design, from the statement in the application and drawings, etc. attached to the application as originally filed were allowed, it would run contrary to the purport of the first-to-file system and would give unexpected disadvantage to third parties. On these grounds, the examiner should determine that such amendment changes the gist of the statement in the application or drawings, etc. attached to the application as originally filed.

Meanwhile, identical scope refers to identical scope with regard to the gist of design, and does not include the concept of similarity.

4.1.2 Where the amendment is found to clarify the gist of design that was unclear when originally filed

If an amendment to make subject matter that is not categorized as an industrially applicable design as provided in the main paragraph of Article 3, paragraph (1) of the Design Act, and whose gist of design cannot be identified even by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application as originally filed, into an industrially applicable design were allowed, that is, if an amendment that clarifies the gist of design that was unclear when originally filed were allowed, it would run contrary to the purport of the first-to-file system and would give unexpected disadvantage to third parties. On these grounds and as above, the examiner should determine that such amendment also changes the gist of the statement in the application or drawings, etc. attached to the application as originally filed.

4.1.3 Where change is made to the scope for which the design registration is requested

The examiner should determine that an amendment made to change the scope which was not disclosed in the statement in the application and drawings, etc. attached to the application as originally filed, to the scope for which the design registration is requested, that is, an amendment to change the scope for which the design registration is requested, changes the gist of design.

(However, this excludes the case of an amendment to state that views are omitted since they are identical to or mirror images of other views.)

Where it is suggested by the statement in the application and drawings, etc. attached to the application as originally filed that a certain scope is the scope for which the design registration is requested, and the shape is also indicated, the examiner should determine that adding such scope by making an amendment does not change the gist of design.

4.2 Categories of amendments that do not change the gist

In making determination through comparison of the design as originally filed and the design as amended, if the amendment falls under any of the following upon 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 amendment does not change the gist of the statement in the application or drawings, etc. attached to the application as originally filed.

4.2.1 Where a correction is made within the scope identical to that which can be inevitably derived based on the ordinary skill in the art of the design

Even where the statement in the application or drawings, etc. attached to the application as originally filed contains an improper description, such as an error or ambiguous statement, if it is clear by making comprehensive determination that the improper description has arisen from an error or mishandling in preparing, or from restrictions in constructing the application or drawings attached to the application, and if a proper description can be inevitably and directly derived based on the ordinary skill in the art of the design, the examiner should determine that an amendment to correct it into a proper description does not change the gist of the statement in the application or drawings, etc. attached to the application as originally filed (see [3.1 “Requirement for the design to be specific” in Part III, Chapter I “Industrially Applicable Design”](#)).

4.2.2 Where correcting an improper description of a part that is minor enough to not affect the finding of the gist of design into a proper description

Even where the statement in the application or drawings, etc. attached to the application as originally filed contains an improper description, such as an error or ambiguous statement, and it is not possible to determine the correct contents by making a comprehensive determination, if the improper description is found to be an improper description of a part that is minor enough to not affect the finding of the gist of design, the examiner should determine that an amendment to correct it into a proper description does not change the gist of the statement in the application or drawings, etc. attached to the application as originally filed (see [3.1 “Requirement for the design to be specific” in Part III, Chapter I “Industrially Applicable Design”](#)).

Relevant Provisions

Design Act

Article 60-24 A person that undertakes a procedure with regard to an application for design registration, a request or any other procedures regarding design registration, may make amendments only while the case is pending in examination, trial, appeal, or retrial.

Article 68

(Paragraphs (1) and (3) onward omitted)

(2) The provisions of Articles 6 through 9, Articles 11 through 16, Article 17, paragraphs (3) and (4), Articles 18 through 24, and Article 194 (Procedures) of the Patent Act apply mutatis mutandis to procedures for an application for design registration or a request, and any other procedures related to design registration. In this case, the phrase "appeal against an examiner's decision of refusal" in Article 9 of the Patent Act is deemed to be replaced with "appeal against an examiner's decision of refusal or appeal against an examiner's decision to dismiss amendment" and the phrase "appeal of the examiner's decision of rejection" in Article 14 of that Act is deemed to be replaced with "appeal against an examiner's decision of refusal or trial against an examiner's decision to dismiss amendment".

Patent Act

Article 17

(Paragraphs (1) and (2) omitted)

(3) The Commissioner of the Japan Patent Office may order an amendment to be made with respect to a procedure with an adequate, specified period of time, in the following cases:

- (i) the procedures do not comply with Article 7, paragraphs (1) through (3) or Article 9;
- (ii) the procedure does not comply with the formal requirements specified by this Act or to an order that is based on this Act; and
- (iii) the fees relating to the procedure that are to be paid pursuant to Article 195, paragraphs (1) through (3) have not been paid.

(4) To amend procedures (except in the case of the payment of fees), a written amendment must be submitted, except for cases provided for in Article 17-2, paragraph (2).

Design Act

Article 17-2 (1) If an amendment made to a statement in the application, or to the drawing, photograph, model, or specimen attached to the application has changed its gist, the examiner must dismiss the amendment in a ruling.

(2) The ruling dismissing an amendment pursuant to the provisions of the preceding paragraph must be made in writing with its reasoning.

(3) If the ruling dismissing an amendment pursuant to the preceding paragraph (1) has been rendered, the examiner must not render a decision on the application for design registration until three months have lapsed from the date on which a certified copy of the ruling has been served.

- (4) If an applicant for design registration files a request for trial of an examiner's ruling dismissing an amendment pursuant to the provisions of paragraph (1), the examiner must suspend the examination of the application for design registration until the trial decision becomes final and binding.

Part VII

Advantage of the Priority under the Paris Convention

Part VII	1
Part VII Advantage of the Priority under the Paris Convention	1
1. Outline	1
2. Requirements, etc. of priority claim under the Paris Convention	1
2.1 Person entitled to claim priority under the Paris Convention	2
2.2 Period for filing an application in Japan with a priority claim under the Paris Convention	2
2.3 Applications capable of serving as a basis for priority claim under the Paris Convention	2
2.3.1 The application is a regularly filed application in the first country	2
2.3.2 The application is the first application filed in the first country	3
2.3.3 The application is an application for design registration, an application for utility model registration, or a patent application filed in the first country	3
2.4 Procedure for priority claim under the Paris Convention	4
2.5 Priority recognized under the Paris Convention as provided in Article 43-3 of the Patent Act.....	4
3. Effects of priority claim under the Paris Convention	5
4. Identicalness of design in approval or disapproval of the effects of priority claim	6
4.1 Basic concept of “identicalness of design” in approval or disapproval of the effects of priority claim	6
4.2 Statements in the column of “Article to the Design”	6
4.3 Number of designs included in one application	8
4.4 Combination or separation of parts constituting a design	10
4.5 Where the shape, etc. of the entire article, etc. is not represented in the drawings, etc. of the application filed in the first country	12
4.6 Where the constituent elements of the designs differ	14
Relevant Provisions.....	1

Part VII Advantage of the Priority under the Paris Convention

1. Outline

The priority under the Paris Convention means that, if a person, who has filed an application for design registration in any of the countries of the Union of the Paris Convention (the first country), files an application for design registration in another country of the Union of the Paris Convention (the second country) with respect to the contents described in the application documents of the application in the first country, the application for design registration in the second country shall be treated as if it had been filed on the filing date of the first application in the first country (hereinafter referred to as the “priority date” in this Part) for the purpose of determining novelty, creative difficulty, etc.

In Japan, nationals of a member of the World Trade Organization and nationals of countries designated by the Commissioner of the Patent Office as allowing declarations of priority under the same conditions as in Japan are also allowed to claim priority under the Paris Convention (priority recognized under the Paris Convention).

2. Requirements, etc. of priority claim under the Paris Convention

The requirements of priority claim under the Paris Convention are as follows.

- (1) Person entitled to claim priority under the Paris Convention (→ see [2.1](#))
The person is the national of a country of the Union of the Paris Convention who has regularly filed an application in a country of the Union of the Paris Convention or who is his/her successor
- (2) Period for filing an application in Japan with a priority claim under the Paris Convention (→ see [2.2](#))
The application for design registration in Japan has been filed within six months from the filing date of the first application in the first country
- (3) Applications capable of serving as a basis for priority claim under the Paris Convention (→ see [2.3](#))
 - (i) The application is a regularly filed application in the first country
 - (ii) The application is the first application filed in the first country
 - (iii) The application is an application for design registration, an application for utility model registration, or a patent application

The following procedure must also be followed in claiming priority.

- (4) Procedure for priority claim under the Paris Convention
Declaration of a priority must be made at the same time as filing an application for design registration in Japan, and a “priority certificate, etc.” must be submitted within three months from the filing date of the application (→ see [2.4](#))

In addition to the above, the following requirement must be complied with in order for the priority claim to be effective.

- (5) Approval or disapproval of the effects of priority claim under the Paris Convention (→ see [4. “Identicalness of design in approval or disapproval of the effects of priority claim”](#))

The design filed in Japan is identical to the design in the application on which the priority claim is based

Furthermore, regarding priority recognized under the Paris Convention as provided in Article 43-3 of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act, see [2.5 “Priority recognized under the Paris Convention as provided in Article 43-3 of the Patent Act” in this Part](#).

[2.1 Person entitled to claim priority under the Paris Convention](#)

A person entitled to claim priority under the Paris Convention shall be a national of a country of the Union of the Paris Convention (Note) who regularly filed an application in the first country or who is his/her successor (Article 2 of the Paris Convention, Article 3 of the Paris Convention, Article 4A, paragraph (1) of the Paris Convention).

(Note) Including a person who is deemed to be a national of a country of the Union of the Paris Convention in accordance with Article 3 of the Paris Convention.

[2.2 Period for filing an application in Japan with a priority claim under the Paris Convention](#)

The period for filing an application for design registration in Japan with a priority claim under the Paris Convention (the priority period) shall be six months from the initial filing date in the first country. Similarly, in the case of an application for design registration for which the priority claim is based on an application for utility model registration or patent application, the priority period shall be six months (Article 4C, paragraph (1) and Article 4E, paragraph (1) of the Paris Convention).

With regard to a person that has been unable to file an application for design registration with a priority claim within the period of priority (within six months from the initial filing date in the first country), where the person files the application for design registration as provided by Order of the Ministry of Economy, Trade and Industry within the time limit provided by Order of the Ministry, Trade and Industry (within two months from the lapse of the period of priority), the person may make a priority claim regarding the application for design registration even after the lapse of the period of priority. However, this does not apply to the case which was found as if applicant did not file the application for design registration deliberately within the period of priority.

[2.3 Applications capable of serving as a basis for priority claim under the Paris Convention](#)

The application on which a priority claim under the Paris Convention is based must comply with all of the requirements from 2.3.1 to 2.3.3 below.

[2.3.1 The application is a regularly filed application in the first country](#)

The application in the first country that serves as the basis for the right of priority must be an application that was regularly filed in a country of the Union of the Paris

Convention (including an international application based on the Geneva Act (Note)) (Article 4A, paragraph (1) through (3), Article 4C, paragraph (4), and Article 4D of the Paris Convention, and Article 6, paragraph (2) of the Geneva Act).

(Note) With regard to the “Geneva Act” and “international applications,” see [Part IX “International Application for Design Registration”](#); the same applies hereinafter.

2.3.2 The application is the first application filed in the first country

Only the first application in a country of the Union of the Paris Convention can serve as the basis for a priority claim under the Paris Convention (Article 4C, paragraph (2) and (4), and Article 4D, paragraph (1) of the Paris Convention). This is because the priority period would be substantively extended if the effect of the priority claim were recognized again based on subsequent applications (i.e., cumulatively) for the design disclosed in the first application.

2.3.3 The application is an application for design registration, an application for utility model registration, or a patent application filed in the first country

The application for design registration, application for utility model registration, or patent application that was filed in the first country can serve as the basis for a priority claim under the Paris Convention.

Note that, while the Paris Convention provides that an application for design registration may be filed claiming priority based on an application for utility model registration (Article 4E, paragraph (1) of the Paris Convention), it does not include provisions on whether an application for design registration can be filed claiming priority based on a patent application or an application for trademark registration. The effect of such priority claim not provided for in the Paris Convention should be determined as below, based on whether or not it is possible to convert applications between such legal domains in Japan.

- (1) Where the application that serves as the basis for the right of priority is an application for utility model registration

Under Article 4E of the Paris Convention, an application for design registration may be filed claiming priority based on an application for utility model registration.

- (2) Where the application that serves as the basis for the right of priority is a patent application

In Japan, it is possible to convert an application between the legal domains of the Patent Act and the Design Act. Therefore, where an application for design registration has been filed by claiming priority based on a patent application, the effect of priority claim will be recognized as long as a design identical to the design in the application for design registration filed in Japan is indicated in the “priority certificate, etc.”.

- (3) Where the application that serves as the basis for the right of priority is an application for trademark registration

In Japan, conversion of an application from an application for trademark registration into an application for design registration is not allowed. Therefore, where an application for design registration has been filed by claiming priority based on an application for trademark registration, the effect of priority claim will not be recognized. Also, the effect of priority claim will

not be recognized even if the application for trademark registration filed in the first country that serves as the basis for the right of priority is a three-dimensional trademark.

2.4 Procedure for priority claim under the Paris Convention

When making a priority claim under the Paris Convention, at the time of filing of the application for design registration, a right of priority must be declared based on the first application in the first country. Furthermore, a “priority certificate etc.” must be submitted within three months from the filing date (Article 43, paragraph (1) through (3) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act following the deemed replacement of terms) (With regard to international applications based on the Geneva Act of the Hague Agreement, see [3. “Procedures for claiming right of priority under the Paris Convention” in Part IX, Chapter VIII “Right of Priority under the Paris Convention in International Applications for Design Registration”](#)).

Furthermore, where making a priority claim based on an application for design registration in a country or region where the electronic exchange of priority documents is available utilizing the World Intellectual Property Organization’s Digital Access Service (DAS), instead of submitting a “priority certificate, etc.”, the access code, etc. may be stated on the application, or it may be supplemented using a written amendment of proceedings (Article 43, paragraph (5) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act following the deemed replacement of terms).

Where a “priority certificate, etc.” are not submitted within the prescribed period, the Japan Patent Office will send notice that the “priority certificate, etc.” have not been submitted. The applicant may submit the “priority certificate, etc.” within a period of 2 months from receipt of this notice. Furthermore, during this period, where the applicant is unable to submit the “priority certificate, etc.” for reasons not attributable to the applicant, the applicant may submit the “priority certificate, etc.” within the following periods according to the reason (Article 43, paragraph (6) through (9) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act following the deemed replacement of terms).

- (1) Where the non-submission is due to an administrative delay related to issuance of the “priority certificate, etc.” by the government that should issue them, 1 month from acquisition of the “priority certificate, etc.” (or 2 months in the case of an overseas resident)
- (2) For reasons other than (1) above, until the sooner of the following elapses: (i) 14 days from the date on which the reason for being unable to submit the “priority certificate, etc.” was no longer valid (or 2 months in the case of an overseas resident) or (ii) 6 months from 2 months after the date on which notice that the “priority certificate, etc.” have not been submitted was received (total 8 months from the date on which the notice was received)

2.5 Priority recognized under the Paris Convention as provided in Article 43-3 of the Patent Act

In Japan, not only nationals of a country of the Union of the Paris Convention, but also nationals of a member of the World Trade Organization and nationals of a country that is neither a country of the Union of the Paris Convention nor a member

of the World Trade Organization (limited to a country that allows Japanese nationals to declare priority under the same conditions as in Japan, and that is designated by the Commissioner of the Patent Office) may make a priority claim recognized under the Paris Convention, under Article 43-3 of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act, and the effect of such priority claim is the same as that of a priority claim under the Paris Convention.

<Priority claims recognized under the Paris Convention in accordance with the provisions of Article 43-3 of the Patent Act>

- (1) Rights of priority based on an application filed by a Japanese national or a national of a country of the Union of the Paris Convention (including nationals deemed to be nationals of a country of the Union in accordance with Article 3 of the Paris Convention) in a member of the World Trade Organization (WTO) (Article 43-3, paragraph (1) of the Patent Act)
- (2) Rights of priority based on an application filed by a national of a member of the WTO in a country of the Union of the Paris Convention or a member of the WTO (Article 43-3, paragraph (1) of the Patent Act)
- (3) Rights of priority based on an application filed in a country that is neither a country of the Union of the Paris Convention nor a member of the WTO, allows Japanese nationals to declare a priority under the same conditions as in Japan, and is designated by the Commissioner of the Patent Office (hereinafter, such a country is referred to as a “specified country” in this Chapter) by a national of the specified country (Article 43-3, paragraph (2) of the Patent Act)
- (4) Rights of priority based on an application filed in a specified country by a Japanese national, a national of a country of the Union of the Paris Convention or a national of a member of the WTO (Article 43-3, paragraph (2) of the Patent Act)

These applications with a claim of priority are treated in the same way as for a Japanese application with a priority claim under the Paris Convention, and their effect is the same as for a priority claim under the Paris Convention.

3. Effects of priority claim under the Paris Convention

With regard to the effect of priority claim under the Paris Convention, Article 4B of the Paris Convention provides that any subsequent application shall not be invalidated by reason of another application being filed or a fact becoming publicly known in the interval between the filing date of the first application in a country of the Union of the Paris Convention and the filing date of a subsequent application with a priority claim in another country of the Union of the Paris Convention.

Therefore, in applying this provision in the substantive examination of (i) to (v) below of the Design Act, where the effect of the priority claim is recognized, the examiner should treat the priority date as the date on which the determination is based (hereinafter referred to as the “reference date” in this Chapter).

- (i) Novelty (Article 3, paragraph (1) of the Design Act)
- (ii) Creative difficulty (Article 3, paragraph (2) of the Design Act)
- (iii) Identical or similar to part of a design in a prior application (Article 3-2 of the Design Act)

- (iv) Prior application (Article 9 of the Design Act)
- (v) Related design (Article 10 of the Design Act)

4. Identicalness of design in approval or disapproval of the effects of priority claim

4.1 Basic concept of “identicalness of design” in approval or disapproval of the effects of priority claim

The examiner should recognize the effect of a claim, such as a right of priority under the Paris Convention, only where the examiner determines that the design in the application for design registration filed in Japan is identical to the design in the first application in the first country (hereinafter referred to as the “application filed in the first country”). The basic concept of “identicalness of design” in determining this is as follows.

- (1) It is sufficient for the design in the application filed in the first country and the design in the application for design registration filed in Japan to be identical designs, regardless of the style of representation of the design.
- (2) Whether or not the design in the application filed in the first country and the design in the application for design registration filed in Japan are identical designs should be determined by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application filed in the first country, based on the ordinary skill in the art of the design.
- (3) The finding of the design in the application filed in the first country (the article, etc. to the design, the shapes, patterns and colors of the article, etc., the position, size and scope of the part for which the design registration is requested in the entire design, etc.) should be made by also taking into consideration the laws and regulations, etc. of the first country.

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

In order for the design in an application for design registration filed in Japan to be found to be identical to the design in an application filed in the first country, in principle, the articles, etc. to the design of the two designs must be identical.

However, since the items described in an application and the method of description differ among countries, even if, for example, the statement in the column of “Article to the Design” in the application for design registration filed in Japan differs from the name of the article, etc. to the design of the design in the application filed in the first country, rather than determining whether the two designs are identical based on these statements alone, the examiner should determine whether the articles, etc. to the design of the two designs are identical by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application for design registration filed in Japan and the statement in the application and drawings, etc. attached to the application in the application filed in the first country.

In making this determination, the examiner should also take into consideration differences in the laws and regulations, etc. of the respective countries.

[Example where two designs are found to be similar or identical]

[Case example] Where the name of the article to the design of the design in the application filed in the first country is a generic name, and a statement is included in the column of "Article to the Design" in the application for design registration filed in Japan clarifying the specific usage and function

Application filed in the first country: The name of the article to the design, etc. is "bottle" and the drawings contain the shape, etc. of a general PET bottle for beverages.

Application filed in Japan: The article to the design is stated as a "packaging container." The shape, etc. of the design represented in the drawings is identical to that in the application filed in the first country.

(Explanation) Where the name of the article to the design of the design in the application filed in the first country is a generic name, and one article from among the multiple articles that are derived by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application filed in the first country, is stated in the application for design registration filed in Japan, the two designs should be found to be similar or identical in the approval or disapproval of priority.

[Example where two designs are found to be similar or identical]

[Case example] Where the design in the application filed in the first country is a design including a graphic image and the name of the article to the design, etc. is filed as “screen panel,” and the design in the application for design registration filed in Japan was filed as graphic image design

Application filed in the first country: The name of the article to the design, etc. is “screen panel,” and the drawings do not show the specific article, etc. for displaying graphic images, only the graphic image for displaying the time.

Application filed in Japan: “Graphic image for displaying the time” is stated in the column of “Article to the Design,” and the graphic image represented in the drawings is identical to that in the application filed in the first country.

(Explanation) The method of protecting designs including a graphic image differ in each country. Even if the design in the application filed in the first country relates to “screen panels” and the design in the application for design registration filed in Japan is a “graphic image design,” since the “screen panel” itself has no other conceivable specific usages and functions other than for realizing graphic images, if the overall shape, etc. of the two designs shown in the drawings is identical, the two designs should be found to be similar or identical in the approval or disapproval of priority.

4.3 Number of designs included in one application

In foreign countries, there are various rules of procedure on the number of designs that can be included in one application and how they should be represented, but as in the examples below for instance, where an application is deemed to have been filed for each design that can be found from the statement in the application and drawings, etc. attached to the application in the application filed in the first country based on the design system in Japan, even if the number of designs included in one application is different, the examiner should determine that the two designs are identical in the approval or disapproval of priority.

<Examples where designs are determined to identical in approval or disapproval of priority>

- (1) Where multiple designs are described in the statement in the application and drawings, etc. attached to the application in the application filed in the first country, and one of these designs is specified as the design in the application for design registration filed in Japan
- (2) Where multiple designs are described in the statement in the application and drawings, etc. attached to the application in the application filed in the first country, and all or part of their constituent articles are specified as the design in the application for design registration filed in Japan as a design for a set of articles (a set of articles listed in Appended Table as designated by the Ordinance of the

Ministry of Economy, Trade and Industry as provided in Article 8 of the Design Act)

- (3) Where, despite the shape, etc. of the article, etc. or the graphic image being changeable based on the function possessed by that article, etc., laws and regulations, etc. in the first country mean that the shape, etc. of the article, etc. or the graphic image as it appears before, during, and after the change cannot be included in a single application, and consequently multiple separate applications must be filed for the shape, etc. or graphic image of the same design as it appears before, during, and after the change, and where priority is claimed on the basis of these multiple applications, and the shape, etc. or graphic image as it appears before, during, and after the change is included in a single application for design registration filed in Japan

[Example where two designs are found to be similar or identical]

[Case example] Where a shape, etc. or graphic image as it appears before, during, and after the change is included in a single application for design registration filed in Japan, based on multiple separate applications having been filed in the first country due to laws and regulations, etc. there not permitting the shape, etc. or graphic image as it appears before, during, and after the change to be included in a single application

Application A filed in the first country: Design of a radio receiver showing only the shape, etc. when the antenna is retracted

Application B filed in the first country: Design of a radio receiver showing only the shape, etc. when the antenna is extended

Application filed in Japan: Design filed as a single application for design registration that includes the shape, etc. before the change as represented in Application A filed in the first country and the shape, etc. after the change as represented in Application B filed in the first country

(Explanation) Where the shape, etc. represented in the drawings, etc. of Application A filed in the first country and the shape, etc. represented in the drawings, etc. of Application B filed in the first country are both clearly the shape, etc. or graphic image of the same design as it appears before, during, and after the change, the designs in the applications filed in the first country and the design filed in Japan should be found to be similar or identical.

On the other hand, in the following cases for example, the examiner should determine that the two designs are not identical in the approval or disapproval of priority.

<Examples where designs are determined not to be identical in approval or disapproval of priority>

- (1) Where a design filed in the first country and a design not filed in the first country are, together, specified as the design in the application for design registration filed in Japan as a design for a set of articles

- (2) Where a design that combines designs based on multiple priority claims is specified as the design in an application for design registration filed in Japan

[Example where two designs are not found to be similar or identical]

[Case example] Where a design that combines designs based on multiple priority claims is specified as the design in an application for design registration filed in Japan

Application A filed in the first country: Design of the cap of a ballpoint pen

Application B filed in the first country: Design of the main body of a ballpoint pen

Application filed in Japan: Design of a ballpoint pen (cap + main body), combining Application A filed in the first country and Application B filed in the first country

(Explanation) The design in the application for design registration filed in Japan cannot be derived directly from the designs in the applications filed in the first country. Furthermore, given it is possible to file individual applications for design registration in Japan for each of the designs in the applications filed in the first country, where a design combining these designs in the multiple applications filed in the first country is specified as the design in the application for design registration filed in Japan, the examiner should not determine them to be identical.

4.4 Combination or separation of parts constituting a design

Where the design in an application filed in the first country is found to be one design in light of the provision of Article 7 of the Japanese Design Act, if an application for design registration is filed in Japan for the same unit of design as the said design, only then should the two designs be found to be similar or identical in the approval or disapproval of priority.

- (1) Where the design in an application for design registration filed in Japan is the design of a finished product combining the design of a component in an application filed in the first country and the design of another component that is not described in statement in the application and drawings, etc. attached to the application in the application filed in the first country, the two designs should not be found to be similar or identical designs.
- (2) Where the design in an application filed in the first country is the design of a finished product, and one of the components constituting that finished product is specified as the design in an application for design registration filed in Japan, the two designs should not be found to be similar or identical designs.

[Example where two designs are not found to be similar or identical]

[Case example] Where one of the components constituting a finished product is specified as the design in an application for design registration filed in Japan

Application filed in the first country: Design of a bicycle

Application filed in Japan: Design of a bicycle saddle

(Explanation) Since the application filed in the first country is one for which the design registration is requested for an entire bicycle, which is found to be one design under Article 7 of the Japanese Design Act, and is not found to be one for which the design registration is requested independently for a bicycle saddle constituting the bicycle, the two designs should not be found to be similar or identical.

- (3) Where the design in the application filed in the first country is a finished product combining multiple interchangeable components, and a combination that is not disclosed in the statement in the application and drawings, etc. attached to the application in the application filed in the first country is specified as the design in an application for design registration filed in Japan
- (i) Even after making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application filed in the first country, where it is unclear whether design registration is being requested in the first country for a combination specified as the design in the application for design registration filed in Japan, the two designs are not found to be identical.
 - (ii) After making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application filed in the first country, where it is found that design registration being requested in the first country includes a mode of combination specified as the design in the application for design registration filed in Japan, the two designs are found to be identical in the approval or disapproval of priority.

[Example where two designs are found to be similar or identical]

[Case example] Where the design in the application filed in the first country is a finished product combining multiple interchangeable components, and a combination that is not disclosed in the statement in the application and drawings, etc. attached to the application in the application filed in the first country is specified as the design in an application for design registration filed in Japan

Application filed in the first country: Three designs of the main body of a ballpoint pen (A, B and C), three designs of the cap of a ballpoint pen (a, b and c), and one design of a ballpoint pen with a cap (A + a) are described. In addition, the application contains a statement to the effect that the subject matter is not limited to one design of a ballpoint pen with a cap (A + a), but that the combinations of the main body of a ballpoint pen and the cap of a ballpoint pen can be changed.*

Application filed in Japan: Design of a ballpoint pen with a cap (A + b)

(Explanation) A total of seven designs are illustrated in the application filed in the first country: three designs of the main body of a ballpoint pen (A, B and C), three designs of the cap of a ballpoint pen (a, b and c), and one design of a ballpoint pen with a cap (A + a).

However, by making comprehensive determination based on the statement in the application, the design of a ballpoint pen with a cap (A + a) has been shown as an example, and the application filed in the first country is found to be an application requesting registration for nine designs with regard to designs of a ballpoint pen with a cap, including a design of a combination that has not been illustrated (A + b).

* Even after making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application filed in the first country, where it is unclear whether design registration is being requested in the first country for the combination specified as the design in the application for design registration filed in Japan—such as where the design of a ballpoint pen with a cap (A + a) is not described in the first application, or where it is not clear whether the combinations of the main body of a ballpoint pen and the cap of a ballpoint pen can be changed—the two designs should not be found to be similar or identical.

4.5 Where the shape, etc. of the entire article, etc. is not represented in the drawings, etc. of the application filed in the first country

Where the shape, etc. of the entire article, etc. is not represented in the drawings, etc. in the application filed in the first country, the examiner should treat each case as follows.

- (1) Where only the shape, etc. of a part of an article, etc. is represented in the statement in the application and drawings, etc. attached to the application in the application filed in the first country, whereas the design in the application for design registration filed in Japan is one requesting design registration for the

shape, etc. of the entire article, etc., the examiner should not determine the two designs to be identical designs.

(2) Where only the shape, etc. of a part of an article, etc. is represented in the drawings of the application filed in the first country, whereas the application filed in Japan specifies the said part is the part for which the design registration is requested and includes “other parts” in addition:

(i) Regarding the design represented in the statement in the application and drawings, etc. attached to the application in the application filed in the first country, where it is not possible to derive the position, size, and scope of the part whose shape, etc. is represented, in the entire article, etc., even after making a comprehensive determination based on other statements in the application filed in the first country and on the characteristics of the article, etc., the examiner should not determine that this design is identical to the design in the application for design registration filed in Japan.

[Example where two designs are not found to be similar or identical]

[Case example] Where the position, size, and scope of the part for which the design registration is requested cannot be derived even by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application filed in the first country

Application filed in the first country: The name of the article to the design, etc. is “Package” and the drawings only depict a pattern.

Application filed in Japan: The article to the design is a “Packaging box” and the design for which the design registration is requested is for the pattern part represented on a part of the packaging box.

(Explanation) Where the drawings of the application filed in the first country only depict a pattern, even if the name of the article to which the pattern is to be applied has been described, since the position, size, and scope of the pattern in the entire article cannot be derived from statements such as those in the application and drawings, etc. attached to the application in the application filed in the first country, the examiner should not determine the two designs to be identical designs.

(ii) Regarding the design in the application filed in the first country, where it is possible to derive the position, size, and scope of the part whose shape, etc. is represented, in the entire article, etc., by making a comprehensive determination based on other statements in the application filed in the first country and on the characteristics of the article, etc., and where this is consistent with the position, size, and scope of the part for which the design registration is requested in the application for design registration filed in Japan, the examiner should determine that the two designs are identical.

[Example where two designs are found to be similar or identical]

[Case example] Where parts that were not represented in the application filed in the first country are specified as “parts other than the part for which the design registration is requested”

Application filed in the first country: Design of a foldable mobile phone for which only drawings representing the shape, etc. of the folded state are described, and the shape, etc. hidden in the unfolded state is not described.

Application filed in Japan: An application for which the inside in the unfolded state is represented by broken lines and which specifies the part that is visible in the folded state as the “part for which the design registration is requested”

(Explanation) By making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application filed in the first country, given the application filed in the first country is one for which the design registration is requested for only the part of the mobile phone that is visible in the folded state, and that the position, size, and scope of the part that is visible in the folded state in the entire mobile phone is clear, the examiner should determine that the design and the design in the application for design registration filed in Japan are identical.

4.6 Where the constituent elements of the designs differ

In order for a design filed in Japan to be found to be identical to the design in an application filed in the first country, the shape, patterns, and colors (hereinafter referred to as the “constituent elements of the design”) of the articles, etc. to the design of these two designs must be identical. If the constituent elements of the designs differ, the designs are regarded as different, and in principle, the effect of a priority claim cannot be found valid.

However, even where the constituent elements of the design represented in the drawings, etc. differ, if it is found, based on other statements in the application filed in the first country, etc., that design registration is not requested for constituent elements that are not included in the design in the application for design registration filed in Japan (for example, a color is appended in the drawings of the application filed in the first country, but it is stated in the description that no rights over the color are being claimed), or, even where the methods of expression, such as the drawing methods, of the designs differ, by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application filed in the first country, if it is found that it can be inevitably derived that protection is being sought for a design that is identical to the design described in the application for design registration filed in Japan, the two designs should be found to be similar or identical in the approval or disapproval of priority.

<Examples where the methods of expression differ between designs>

- (i) Where the design in the application filed in the first country and the design in the application for design registration filed in Japan are represented by different drawing methods
- (ii) Where the design in the application filed in the first country is represented by drawings (including computer graphics) and the design in the application for design registration filed in Japan is represented by photographs (monochrome or color), a specimen or a sample
- (iii) Where the design in the application filed in the first country is represented by photographs (monochrome or color), a specimen or a sample and the design in the application for design registration filed in Japan is represented by drawings (including computer graphics)

[Example where two designs are found to be similar or identical]

[Case example] Where the methods of expression differ but a design identical to the design described in the application for design registration filed in Japan can be inevitably derived by making a comprehensive determination based on the statement in the application and on drawings, etc. attached to the application in the application filed in the first country

Application filed in the first country: Design of a nail. It is represented by uncolored drawings, but the application contains a statement that it is made of iron.

Application filed in Japan: Design of a nail. It is represented by photographs, and it has the metallic luster and metallic color that would appear on a general nail made of iron.

(Explanation) Although the design described in the application filed in the first country has no pattern or color, by making comprehensive determination based on the statement in the application that it is made of iron, since it is possible to inevitably derive a design identical to the design of a nail having a metallic luster and metallic pattern which is represented by photographs attached to the application for design registration filed in Japan, the two designs should be found to be similar or identical in the approval or disapproval of priority.

[Example where two designs are found to be similar or identical]

[Case example] Where the design in the application filed in the first country is represented by two perspective views and the design in an application for design registration filed in Japan is represented by six views prepared by the orthographic projection method

Application filed in the first country: The design is represented by a perspective view showing the front, top and right side, and a perspective view showing the rear, bottom and left side.

Application filed in Japan: The design is represented by six views (a front view, rear view, left side view, right side view, top view and bottom view) prepared by the orthographic projection method. The shape, etc. represented by these six views is consistent with the contents that can be inevitably derived from the perspective views in the drawings of the application filed in the first country.

(Explanation) The drawings of the application filed in the first country are two perspective views showing the six sides, and since the contents that can be inevitably derived by making comprehensive determination based on these views and the design in the application filed in Japan are consistent, the mere difference is in the drawing method, so the two designs should be found to be similar or identical in the approval or disapproval of priority.

[Example where two designs are found to be similar or identical]

[Case example] Where the design in the application filed in the first country is represented by photographs and the design in an application for design registration filed in Japan is represented by drawings (colored drawings)

Application filed in the first country: The design is represented by photographs in color.

Application filed in Japan: The design is represented by drawings and they are colored using the same colors as those represented in the application filed in the first country.

(Explanation) Whereas the application filed in the first country uses photographs, since the application for design registration filed in Japan uses drawings, the methods of expression used in the designs are different. However, because the designs shown in each application are consistent, the two designs should be found to be similar or identical in the approval or disapproval of priority.

Relevant Provisions

Design Act

Article 15 (1) Article 38 (Joint Applications) and Articles 43 to 43-3 (Priority Claim Procedures Under the Paris Convention; and Priority Claims as Under the Paris Convention) of the Patent Act apply mutatis mutandis to applications for design registration. In this case, the phrase "within the period provided by Order of the Ministry of the Economy, Trade and Industry" in Article 43, paragraph (1) of that Act is deemed to be replaced with "at the time of filing of the application for design registration"; the phrase "within one year and four months from the earliest of the following dates" in Article 43, paragraph (2) of that Act is deemed to be replaced with "within three months from the date of filing of the application for design registration".

(Paragraph (2) onward omitted)

Patent Act

Article 43 (1) A person desiring to take advantage of the priority under Article 4.D(1) of the Paris Convention regarding a patent application shall submit to the Commissioner of the Patent Office a document stating the same, and specify the country of the Union of the Paris Convention in which the application was first filed, deemed to have been first filed under C(4) of said Article, or recognized to have been first filed under A(2) of said Article, and the date of filing of said application within the period prescribed in the Ordinance of the Ministry of Economy, Trade and Industry.

(2) A person who has made a declaration of priority under the preceding paragraph shall submit to the Commissioner of the Patent Office a certificate showing the date of filing from the country of the Union of the Paris Convention in which the application was first made, or deemed to have been first made under Article 4.C(4) of the Paris Convention, or recognized to have been first made under A(2) of said Article, as well as certified copies of those equivalent to the description, scope of claims for patent or utility model registration, and drawings submitted at the time of the filing of the application, or any bulletin or certificate equivalent thereto issued by the government of said country (including the relevant certificate, certified copies, or bulletin or certificate provided by electronic or magnetic means (meaning by electronic means, magnetic means, or other means that is impossible to perceive through the human senses alone; the same shall also apply to paragraph (5) and Article 44(4).), or copies thereof (hereinafter referred to as "priority certificate, etc." in this article), within one year and four months from the earliest of the following dates:

- (i) the date of filing which was first made, deemed to have been first made under Article 4.C(4) of the Paris Convention, or recognized to have been first made under A(2) of said Article;
- (ii) where such patent application contains a priority claim under Article 41(1), the date of filing of the application on which said priority claim is based; or
- (iii) where such patent application contains other priority claims under 43(1) or 44 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 43- 3(3)) or 43-3(1) or (2), the date of filing of the application on which said priority claim is based.

- (3) A person who has made a declaration of priority under paragraph (1) shall, in addition to a priority certificate, etc. submit to the Commissioner of the Patent Office a document specifying the filing number of the application which was first filed, deemed to have been first filed under Article 4.C(4) of the Paris Convention, or recognized to have been first filed under A(2) of said Article; provided, however, that where such filing number is not available to the person prior to the submission of a priority certificate, etc. in lieu of said document, a document specifying the reason thereof shall be submitted and the document specifying such filing number shall be submitted without delay when such number becomes available to said person.
- (4) Where a person who has made a declaration of priority under paragraph (1) fails to submit a priority certificate, etc. within the time limit provided in paragraph (2), said priority claim shall lose its effect.
- (5) In relation to the application of the preceding two paragraphs, in the case of prescribing Ordinance of the Ministry of Economy, Trade and Industry that a conversion of matters stated in a priority certificate, etc. is allowed between the government of a country of the Union of the Paris Convention or an international organization relating to industrial property by electronic or magnetic means, where a person who having made a declaration of a priority claim provided in paragraph (2) submit to the Commissioner of the Patent Office the document stating the matters prescribed in Ordinate of the Ministry of Economy, Trade and Industry as a required matter for which the other matters including its filing number is converted, the priority certificate, etc. shall be deemed to have been submitted.
- (6) Where a priority certificate, etc. or a document under the preceding paragraph have not been submitted within the time limit under paragraph (2), the Commissioner of the Patent Office shall notify a person who has made a priority claim under paragraph (1) thereof.
- (7) A person who has received a notice provided under the preceding paragraph may submit a priority certificate, etc. or a document under paragraph (5) to the Commissioner of the Patent Office only within the time limit as provided in Ordinance of the Ministry of Economy, Trade and Industry.
- (8) Notwithstanding the preceding paragraph, where, due to reasons beyond the control of a person who has received a notice provided under paragraph (6), the person is unable to submit a priority certificate, etc. or the document as provided in paragraph (5) within the time limit provided under the preceding paragraph, the person may submit to the Commissioner of the Patent Office the priority certificate, etc. or the document within the time limit as provided in Ordinance of the Ministry of Economy, Trade and Industry.
- (9) Where a priority certificate, etc. or the document specified in paragraph (5) are submitted under paragraph (7) or the preceding paragraph, paragraph (4) shall not apply.

Patent Act

Article 43-2 (1) With regard to a person that was unable to file a patent application containing a priority claim within the periods of priority pursuant to Article 4.C.(1) of the Paris Convention (hereinafter referred to in this paragraph as the "periods of priority"), despite requesting to make a priority claim pursuant to Article 4.D.(1) of the Paris Convention regarding a patent application, if the person filed the patent application pursuant to Order of the Ministry, Trade and Industry within the period provided by Order of the Ministry, Trade and Industry, the person may make a

priority claim regarding the patent application under the Article, even after the lapse of the periods of priority; provided, however, that this does not apply if the person is found to have intentionally failed to file the patent application within the periods of priority.

- (2) The preceding Article applies mutatis mutandis when a priority claim is made pursuant to the preceding paragraph.

Patent Act

Article 43-3 (1) When a priority claim is based on a patent application filed by a person specified in the left-hand column of the following table in a country specified in the corresponding right-hand column, the priority claim regarding the patent application may be made in accordance with Article 4 of the Paris Convention.

Japanese nationals or nationals of a country of the Union of the Paris Convention (including nationals deemed to be the nationals of the country of the Union in accordance with Article 3 of the Paris Convention - hereinafter the same applies in paragraph (2))	Member of the World Trade Organization
Nationals of a Member of the World Trade Organization (meaning the nationals of Members provided for in paragraph 3 of Article 1 of the Annex 1C to the Marrakesh Agreement; the same applies in the next paragraph)	Country of the Union of the Paris Convention or Member of the World Trade Organization

- (2) The national of a country that is neither a country of the Paris Convention Union nor a member state of the World Trade Organization (limited to a country that allows Japanese nationals to make a priority claim under the same conditions as in Japan; hereinafter referred to as a "specified country" in this paragraph) may make a priority claim based on an application filed in that specified country, and a Japanese national, the national of a country of the Paris Convention Union, or the national of a member of the World Trade Organization may claim a priority for a patent application based on the application filed in a specified country, pursuant to Article 4 of the Paris Convention.
- (3) The preceding two Articles apply mutatis mutandis if a priority claim is made pursuant to the preceding two paragraphs.

Geneva Act: Article 6(1), (2)

Part VIII
Special Application

Part VIII	1
Chapter I Division of Applications for Design Registration	1
1. Outline.....	1
2. Requirements for division of an application for design registration	1
3. Examples of cases that are not found to be a legitimate procedure for division of an application for design registration	2
4. Handling of new applications for design registration that do not comply with the requirements for division	2
5. Documents to be submitted when requesting application of the provisions on exception to lack of novelty of design or filing a priority claim under the Paris Convention, etc. for a new application for design registration resulting from division	3
Chapter II Conversion of Application	1
1. Outline.....	1
2. Requirements for conversion into an application for design registration	1
3. Examples of cases that are not found to be a legitimate procedure for conversion of an application for design registration	2
4. Conversion of a patent application or an application for utility model registration into an application requesting design registration for part of an article, etc.	2
5. Handling of new applications for design registration that do not comply with the requirements for conversion	2
6. Documents to be submitted when requesting application of the provisions on exception to lack of novelty of design or filing a priority claim under the Paris Convention, etc. for a new application for design registration resulting from conversion	3
Chapter III Special Provisions on Conversion of Application Concerning International Applications under the Patent Cooperation Treaty	1
1. Handling of special provisions on conversion of application concerning international applications under the Patent Cooperation Treaty	1
Chapter IV New Application for Amended Design.....	1
1. Outline.....	1
2. Requirements for a new application for design registration for an amended design for which a ruling dismissing an amendment has been made.....	1
Relevant Provisions	1

Chapter I Division of Applications for Design Registration

1. Outline

Article 10-2 of the Design Act provides that an applicant may extract one or more new applications for design registration from part of a single application for design registration containing two or more designs. Article 10-2 also provides that, if an application for design registration is legitimately divided, the new application for design registration is deemed to have been filed at the same time as the original application for design registration.

The system for dividing applications for design registration is intended to provide redress to applicants in cases where an application for design registration has been filed while erroneously including two or more designs in a single application contrary to the principle of one application per design as provided in Article 7 of the Design Act (see [Part II, Chapter II “Filing an Application for Each Design”](#)).

The term “new application for design registration” here includes new applications for design registration resulting from division of an international application for design registration.

2. Requirements for division of an application for design registration

In order for a new application for design registration resulting from division to be deemed to have been filed at the time of the original application for design registration, it must comply with all of the following requirements.

- (1) Examination, trial or retrial of the application for design registration is pending
The procedure for division can only be taken where the examination, trial or retrial of the application for design registration is pending.
- (2) The applicants for design registration are the same
The applicant of the new application for design registration resulting from division must be the same as the applicant of the original application for design registration. However, where the new applicant for design registration has legitimately succeeded to the right to obtain a design registration from the original applicant for design registration, the examiner should determine that the applicants are the same.
- (3) An application for design registration containing two or more designs is divided
An application for design registration containing two or more designs refers to the case where two or more designs are represented in the statement in the application and drawings, etc. attached to the application. It is for example the case where two or more articles are stated together in the column of “Article to the Design” of the application, or where two or more shapes, etc. are represented in drawings, etc. attached to the application (see [Part II, Chapter II “Filing Applications for Each Design”](#)), or the case where the article to the design for which the design registration is requested for part of a single article, etc. contains two or more “parts for which the design registration is requested” that are

physically separate and for which no unity in shape, etc. or unity in function is recognized.

- (4) The design in a new application for design registration resulting from division is a design identical to any of the two or more designs contained in the original application for design registration

3. Examples of cases that are not found to be a legitimate procedure for division of an application for design registration

- (1) Where an application for design registration that has been filed for each design and that complies with the requirements as provided in Article 7 of the Design Act is divided by each component constituting the article
- (2) Where an application for design registration for a design for a set of articles that complies with the requirements as provided in Article 8 of the Design Act is divided by each constituent article, etc.
- (3) Where an application for design registration for an interior design that complies with the requirements as provided in Article 8-2 of the Design Act is divided by each constituent article, etc.
- (4) Where a new application for design registration resulting from division has a gist that is outside the scope of the design represented by the statement in the initial application and drawings, etc. attached to the application of the original application for design registration, that is, where the design represented in the new application for design registration changes the gist from the viewpoint of each of the two or more designs contained in the original application for design registration
- (5) Where an application for design registration for a whole design that is found to be one design, or for a design for which the design registration is requested for part of an article, etc. that is treated as one design, is divided into one or more new applications for design registration for designs for which the design registration is requested for part of an article, etc.

4. Handling of new applications for design registration that do not comply with the requirements for division

The examiner should not regard a new application for design registration as having been filed at the time of the original application for design registration, but should treat it as having been filed at the time of the division.

5. Documents to be submitted when requesting application of the provisions on exception to lack of novelty of design or filing a priority claim under the Paris Convention, etc. for a new application for design registration resulting from division

Where a new application for design registration resulting from division is filed, any statements or documents which have been submitted in relation to the original application for design registration (including any of those which were provided by an electronic or magnetic means) and are required to be submitted for the procedure to request application of the provisions on exception to lack of novelty of design (the documents required to be submitted under Article 4, paragraph (3) of the Design Act), or are required to be submitted for filing a priority claim under the Paris Convention, (including a priority claim recognized under the Paris Convention) (which are required to be submitted under Article 43, paragraphs (1) and (2) of the Patent Act (including the cases where these provisions are applied mutatis mutandis in Article 43-2, paragraph (2) of the Patent Act and Article 43-3, paragraph (3) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act) as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act) should be deemed to have been submitted to the Commissioner of the Patent Office along with the new application for design registration under Article 10-2, paragraph (3) of the Design Act.

Chapter II Conversion of Application

1. Outline

Article 13 of the Design Act provides that an applicant may convert a patent application or an application for utility model registration into an application for design registration. Article 13 also provides that, if an application for design registration is legitimately converted, the new application for design registration is deemed to have been filed at the same time as the original application.

The system for converting applications for design registration is intended to provide a remedy to applicants such as in cases where an applicant has selected an incorrect form of application (application for design registration, a patent application or an application for utility model registration), or, for example, where a patent application was filed for invention of a new shape which was considered technically effective but the application was refused so the applicant is requesting design registration for the aesthetic aspect of the shape.

2. Requirements for conversion into an application for design registration

In order for a new application for design registration resulting from conversion to be deemed to have been filed at the time of the original patent application or application for utility model registration, it must comply with all of the following requirements.

- (1) In the case of conversion from a patent application into an application for design registration, that it is within three months from the date on which the certified copy of the examiner's initial decision to the effect that the original patent application is to be refused was served
- (2) In the case of conversion from an application for utility model registration into an application for design registration, that the original application for utility model registration is pending before the Japan Patent Office
- (3) The applicant of the new application for design registration resulting from conversion and the original applicant for the patent or utility model registration are the same
However, where the new applicant for design registration has legitimately succeeded to the right to obtain a design registration from the original applicant for the patent or utility model registration, the examiner should determine that the applicants are the same.
- (4) The initial description and drawings of the original patent application or application for utility model registration contain a concrete description based on which the design in the new application for design registration resulting from conversion can be clearly recognized
- (5) The design in the new application for design registration resulting from conversion is identical to the design represented in the initial description and drawings of the original patent application or application for utility model registration

3. Examples of cases that are not found to be a legitimate procedure for conversion of an application for design registration

- (1) Where the initial description and drawings of the original patent application or application for utility model registration do not contain a concrete description based on which the design in the new application for design registration resulting from conversion can be clearly recognized
- (2) Where the design in the new application for design registration resulting from conversion is not found to be identical to the design that is represented in the initial description and drawings of the original patent application or application for utility model registration by a concrete description based on which the design can be clearly recognized
- (3) Where the design in the new application for design registration resulting from conversion has added anything other than the contents of the initial description and drawings of the original patent application or application for utility model registration

4. Conversion of a patent application or an application for utility model registration into an application requesting design registration for part of an article, etc.

Where the initial description and drawings of the patent application or application for utility model registration contain a concrete description based on which the new design for which the design registration is requested for part of an article, etc. resulting from conversion can be clearly recognized, and the contents before and after the conversion of the application are found to be identical, the examiner should deem that the new application for design registration resulting from conversion was filed at the time of the original patent application or application for utility model registration.

5. Handling of new applications for design registration that do not comply with the requirements for conversion

The examiner should not regard a new application for design registration as having been filed at the time of the original patent application or application for utility model registration, but should treat it as having been filed at the time of the conversion.

6. Documents to be submitted when requesting application of the provisions on exception to lack of novelty of design or filing a priority claim under the Paris Convention, etc. for a new application for design registration resulting from conversion

Where a new application for design registration resulting from conversion is filed, any statements or documents which have been submitted in relation to the original patent application or application for utility model registration (including any of those which were provided by an electronic or magnetic means) and are required to be submitted for the procedure to request application of the provisions on exception to lack of novelty of design (the documents required to be submitted under Article 4, paragraph (3) of the Design Act) or are required to be submitted for filing a priority claim under the Paris Convention (including a priority claim recognized under the Paris Convention) (which are required to be submitted under Article 43, paragraphs (1) and (2) of the Patent Act (including the cases where these provisions are applied mutatis mutandis in Article 43-2, paragraph (2) of the Patent Act and Article 43-3, paragraph (3) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act) as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act) should be deemed to have been submitted to the Commissioner of the Patent Office along with the new application for design registration (Article 10-2, paragraph (3) of the Design Act as applied mutatis mutandis pursuant to Article 13, paragraph (6) of the Design Act).

Chapter III Special Provisions on Conversion of Application Concerning International Applications under the Patent Cooperation Treaty

1. Handling of special provisions on conversion of application concerning international applications under the Patent Cooperation Treaty

An international application for which the international filing date has been recognized under the provisions of the Patent Cooperation Treaty and which includes Japan in its designated States is deemed to be a patent application or an application for utility model registration filed on the international filing date.

Such application can only be converted into an application for design registration only after the applicant has submitted a document containing such information as the name and address of the applicant, the name and address of the inventor (creator) and the international filing date and has paid the prescribed fees where the original application is an international patent application (international application for utility model registration) filed in Japanese language, or only after the applicant has submitted the abovementioned document and the Japanese translations of the description and the scope of claims and has paid the prescribed fees where the original application is an international patent application (international application for utility model registration) filed in a foreign language.

Chapter IV New Application for Amended Design

1. Outline

An applicant may file a new application for design registration for an amended design within three months from the date on which the certified copy of the ruling dismissing an amendment was served. In this case, the new application for design registration is deemed to have been filed at the time when the written amendment of proceedings was submitted (Article 17-3, paragraph (1) of the Design Act). In addition, the original application for design registration is deemed to have been withdrawn (Article 17-3, paragraph (2)).

2. Requirements for a new application for design registration for an amended design for which a ruling dismissing an amendment has been made

In order for a new application for design registration for an amended design for which a ruling dismissing an amendment has been made to be deemed to have been filed at the time when the written amendment of proceedings for the said amendment was submitted, it must comply with all of the following requirements.

- (1) The subject matter of the new application for design registration is the amended design for which a ruling dismissing an amendment was made
- (2) The new application for design registration is filed within three months from the date on which a certified copy of the ruling dismissing an amendment was served
- (3) The new application for design registration is filed according to the Form No. 5 as provided in Article 2, paragraph (4) of the Ordinance for Enforcement of the Design Act

Relevant Provisions

Design Act

Article 10-2 (1) An applicant for design registration may extract one or more new applications for design registration out of a single application for design registration containing two or more designs only while examination, appeal and trial or retrial of the application for design registration is pending.

(2) Where an application for design registration is divided under the preceding paragraph, the new application(s) for design registration shall be deemed to have been filed at the time of the filing of the original application; provided, however, that this shall not apply for the purposes of applications of Article 4, paragraph (3) of this Act and Article 43, paragraphs (1) and (2) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of this Act (including the cases where they are applied mutatis mutandis pursuant to Article 43-2, paragraph (2) of the Patent Act (including cases where they are applied mutatis mutandis pursuant to Article 43-3, paragraph (3) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of this Act) and Article 43-3, paragraph (3) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of this Act).

(3) Where a new application for design registration is filed under paragraph (1), any statements or documents which have been submitted in relation to the original application for design registration (in case statements or documents were submitted under Article 43, paragraph (2) of the Patent Act (including the cases where it is applied mutatis mutandis pursuant to Article 43-2, paragraph (2) of the Patent Act (including the cases where it is applied mutatis mutandis pursuant to Article 43-3, paragraph (3) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act. Hereinafter the same applies in this paragraph.) and Article 43-3, paragraph (3) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act) as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act, any of such which were provided by an electronic or magnetic means (meaning an electronic means, a magnetic means, or any other means that it is impossible to perceive through the human senses alone) would be included.) and are required to be submitted in relation to the new application under Article 4, paragraph (3) of this Act or Article 43, paragraphs (1) and (2) of the Patent Act as applied mutatis mutandis under Article 15, paragraph (1) of this Act (including cases where they are applied mutatis mutandis pursuant to Article 43-2, paragraph (2) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of this Act and Article 43-3, paragraph (3) of the Patent Act) shall be deemed to have been submitted to the Commissioner of the Patent Office along with the new application for design registration.

Article 13 (1) An applicant of a patent application may convert the patent application into an application for design registration; provided, however, that this does not apply after three months have lapsed from the date the certified copy of the examiner's initial decision to reject the patent application has been served.

(2) An applicant of an application for utility model registration may convert the application for utility model registration into an application for design registration.

- (3) If the period provided in Article 121, paragraph (1) of the Patent Act is extended pursuant to Article 4 of that Act, the period provided in the proviso to paragraph (1) is deemed to have been extended only for that extended period.
- (4) If an application is converted pursuant to the provisions of paragraph (1) or (2), the original application is deemed to have been withdrawn.
- (5) When there is a person that has a provisional exclusive license on a patent application, an applicant of the patent application may convert the patent application pursuant to the provisions of paragraph (1) only if the consent of the person is obtained.
- (6) The provisions of Articles 10-2, paragraphs (2) and (3) apply *mutatis mutandis* to the conversion of an application pursuant to the provisions of paragraph (1) or (2).

Article 13-2 (1) An international application that has been deemed to be a patent application pursuant to Article 184-3, paragraph (1) or Article 184-20, paragraph (4) of the Patent Act may be converted into an application for design registration, only after the fees payable pursuant to the provisions of Article 195, paragraph (2) of that Act have been paid (or, in the case of an international application that is deemed to be a patent application pursuant to the provisions of Article 184-20, paragraph (4) of the Act, after the ruling as provided in Article 184-20, paragraph (4) has been rendered), and, in the case of a patent application in the Japanese language under Article 184-6, paragraph (2) of the Act, the procedures under Article 184-5, paragraph (1) of the Act have been completed, or, in the case of a patent application in a foreign language under Article 184-4, paragraph (1) of the Act, the procedures under Article 184-4, paragraph (1) or paragraph (4) and Article 184-5, paragraph (1) of the Act have been completed.

- (2) An international application that has been deemed to be an application for utility model registration under Article 48-3, paragraph (1) or Article 48-16, paragraph (4) of the Utility Model Act (Act No. 123 of 1959) may be converted into an application for design registration, only after the fees payable under Article 54, paragraph (2) of that Act have been paid (or, in the case of an international application that is deemed to be an application for utility model registration under Article 48-16, paragraph (4) of the Act, after the ruling as provided in Article 48-16, paragraph (4) has been rendered), and, in the case of the Japanese language application for utility model registration under Article 48-5, paragraph (4) of the Act, the procedures under Article 48-5, paragraph (1) of the Act have been completed, or, in the case of a foreign language application for utility model registration under Article 48-4, paragraph (1) of the Act, the procedures under Article 48-4, paragraph (1) or (4) and Article 48-5, paragraph (1) of the Act have been completed.

Article 17-3 (1) If an applicant for design registration files a new application for design registration for the amended design within three months from the date on which the certified copy of the ruling dismissing an amendment pursuant to the provisions of paragraph (1) of the preceding Article has been served, the new application is deemed to have been filed at the time when the written amendment of procedures for the amendment was submitted.

- (2) If a new application for design registration under the preceding paragraph is filed, the original application for design registration is deemed to have been withdrawn.
- (3) The provisions of the preceding two paragraphs apply only when the applicant for design registration has submitted to the Commissioner of the Japan Patent Office

a document stating a request for the application of the provisions of paragraph (1) to the new application for design registration under paragraph (1), at the time of filing a new application.

Part IX

International Application for Design Registration

Part IX	1
Chapter I International Application Which Is Deemed to Be an Application for Design Registration.....	1
1. Outline	1
Chapter II Finding of the Design in an International Application for Design Registration	1
1. Relationship of the matters recorded on the International Register with the matters to be stated in an application or drawings of an application for design registration	1
2. Handling of an international application for design registration requesting design registration for part of an article, etc.	3
3. Finding of the design in an international application for design registration	3
Chapter III Filing an Application for Each Design in an International Application for Design Registration.....	1
1. Provisions of Article 60-6, paragraph (2) of the Design Act	1
2. Determination as to whether applications have been filed for each design	1
Chapter IV Requirements for Design Registration of International Applications for Design Registration	1
1. Novelty and creative difficulty	1
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	1
Chapter V Exception to Lack of Novelty concerning International Application for Design Registration.....	1
1. Provisions of Article 60-7 of the Design Act	1
2. Specific procedures for receiving application of the provisions of Article 4, paragraph (2) of the Design Act in case of an international application for design registration	1
Chapter VI Design for a Set of Articles in International Application for Design Registration	1
1. Requirements to be found as a design for a set of articles.....	1
Chapter VII Amendments in International Application for Design Registration	1
1. Change of the gist	1
Chapter VIII Right of Priority under the Paris Convention in International Applications for Design Registration.....	1
1. Provisions of Article 60-10 of the Design Act	1
2. Effects of priority claim under the Paris Convention	1
3. Procedures for priority claim under the Paris Convention	1
4. Requirements for a priority claim under the Paris Convention to be effective ..	2
Relevant Provisions.....	1

Chapter I International Application Which Is Deemed to Be an Application for Design Registration

1. Outline

Article 60-6, paragraph (1) of the Design Act provides that an international application under Article 1(vii) of the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs (hereinafter referred to as the “Geneva Act”) (hereinafter referred to as an “international application”), designating Japan as a designated Contracting Party under Article 1(xix) of the Geneva Act (hereinafter referred to as “designated Contracting Party”), where publication (hereinafter referred to as “international publication”) has been made under Article 10(3)(a) of the Geneva Act, shall be deemed to be an application for design registration filed with Japan on an international registration date under Article 10(2) of the Geneva Act (hereinafter referred to as the “date of the international registration”). Paragraph (2) of this Article provides that an international application containing two or more designs based on the provision of Article 5(4) of the Geneva Act shall be deemed to be an application for design registration filed for each design that is the subject of an international registration under Article 1(vi) of the Geneva Act (hereinafter referred to as an “international registration”) (hereinafter, an international application deemed to be an application for design registration under these provisions shall be referred to as an “international application for design registration”).

As Article 14(1) of the Geneva Act provides that the international registration shall, from the date of the international registration, have at least the same effect as a regularly-filed application in each designated Contracting Party, paragraph (3) and paragraph (4) of this Article provide that as matters necessary for proceeding with the international application for design registration as the Japanese application for design registration, matters recorded on International Register as provided in Article 1(viii) of the Geneva Act (hereinafter referred to as the “International Register”) shall be deemed to be the matters stated in an application and the matters depicted in drawings as provided in Article 6, paragraph (1) of the Design Act.

(Note) Examination of the international application for design registration

The Geneva Act provides that the international registration under the same Act shall, from the date of the international registration, have at least the same effect in each designated Contracting Party as a regularly-filed application for the grant of protection of the industrial design under the law of that Contracting Party (Article 14(1) of the Geneva Act), while providing that the Office of any Contracting Party designated under the Geneva Act may, where the industrial designs that are the subject of an international registration do not meet the conditions for the grant of protection under the law of that designated Contracting Party (excluding requirements relating to the form of or matters stated in the application), refuse the effects of the international registration (Article 12(1) of the Geneva Act).

As the Japanese Design Act provides that applications for design registration shall be examined as a premise of the grant of protection by the design right (Article 16 of the Design Act), the international registration designating Japan under the Geneva Act shall be also examined by examiners based on the provision of the Design Act that is the Japanese law.

When examining an international application for design registration, the examiner shall basically conduct the examination in the common manner as a domestic application for design registration.

This Chapter focuses on specific matters when examining international application for design registration. For other matters not described in this Chapter, see other relevant parts of the examination guidelines.

Chapter II Finding of the Design in an International Application for Design Registration

1. Relationship of the matters recorded on the International Register with the matters to be stated in an application or drawings of an application for design registration

With regard to the matters to be stated in an application of the application for design registration under Article 6, paragraph (1) of the Design Act, prescribed matters recorded in the International Register shall be treated as matters to be stated in an application of the application for design registration pursuant to Article 60-6, paragraph (3) of the Design Act (→ see [\[Table 1\]](#)).

With regard to the matters to be stated in an application other than those as provided in Article 6, paragraph (1) of the Design Act, as the international application for design registration shall be regarded as the domestic application for design registration, among the matters recorded in the International Register for the said international application for design registration, the matters whose specific relationship is not explicitly provided in the Design Act shall also be treated as equivalent to the matters that are to be stated in an application of the application for design registration (→ see [\[Table 2\]](#)).

A person requesting a design registration in Japan should attach “drawing depicting the design for which registration is requested” to an application under Article 6, paragraph (1) of the Design Act. Article 60-6, paragraph (4) of the Design Act provides that the “design recorded on the International Register” for the international application for design registration shall be regarded as the “design for which registration is requested” depicted in drawings submitted under Article 6, paragraph (1) of the Design Act, so in the case of the international application for design registration, the drawings depicting the design recorded in the International Register namely “a reproduction of the design recorded in the International Register” shall be treated as equivalent to “drawing depicting the design for which registration is requested” (→ see [\[Table 3\]](#)).

[Table 1] Relationship of matters provided in Article 6, paragraph (1) of the Design Act

Matters recorded on the International Register	Matters stated in an application of the application for design registration
one or more products that constitute a design that is the subject of an international registration, or one or more products that will use a design that is the subject of an international registration; (Article 5(1)(iv) of the Geneva Act)	[Article to the Design]

the name, and domicile of the registered holder of an international registration; (Article 5(1)(ii) of the Geneva Act, Rule 7(3)(i) and (ii) of the Common Regulations of the Hague Agreement)	the name, and domicile or residence of [Applicant for Design Registration]
the name and the domicile of a person who created a design that is the subject of an international registration; (Article 5(2)(b)(i) of the Geneva Act, Rule 7(5)(a) of the Common Regulations of the Hague Agreement)	the name, and domicile or residence of [Person Who Created the Design]

[Table 2] Relationship of matters other than those provided in Article 6, paragraph (1) of the Design Act

Matters recorded on the International Register	Matters stated in an application of the application for design registration
a concise description of the reproduction or of the characteristic features of the design that is the subject of that application; (Article 5(2)(b)(ii) of the Geneva Act, Rule 7(5)(a) of the Common Regulations of the Hague Agreement)	[Description of the Design] or [Description of Article to the Design]; * Both of them are stated without distinction in the column of [Description of the Design] in an international application for design registration.
the reference to the principal application or registration, or to the principal design; (Article 5(1)(vii) of the Geneva Act, Rule 7(5)(f) of the Common Regulations of the Hague Agreement, Section 407(a) of the Administrative Instructions of the Hague Agreement)	[Indication of Principal Design];
declaration concerning exception to lack of novelty; (Article 5(1)(vii) of the Geneva Act, Rule 7(5)(f) of the Common Regulations of the Hague Agreement, Section 408(c)(i) of the Administrative Instructions of the Hague Agreement)	the statement of “an application for design registration seeking the application of the provision of Article 4, paragraph (2) of the Design Act” in the column of [Special Matter];
a declaration claiming the priority of an earlier application;	[Priority Claim under the Paris Convention, etc.];

(Article 6(1)(a) of the Geneva Act, Rule 7(5)(c) of the Common Regulations of the Hague Agreement)	
--	--

[Table 3] Relationship of reproductions of the design with drawings

any reproduction of the design recorded on the International Register; (Rule 15(2)(ii) of the Common Regulations of the Hague Agreement)	drawing depicting the design for which registration is requested;
---	---

Hereinafter, in an international application for design registration, matters which are found to be stated in an application submitted under Article 6, paragraph (1) of the Design Act shall be referred to as a “statement in an application of an international application for design registration,” and matters which are found to be stated in drawings submitted under Article 6, paragraph (1) of the Design Act shall be referred to as a “statement in drawings of an international application for design registration.”

2. Handling of an international application for design registration requesting design registration for part of an article, etc.

In an international application, indicating “the matter” which is shown in drawings but “for which protection is not sought” is allowed to be indicated in the description or by means of dotted or broken lines or coloring (Rule 9(2)(b) of the Common Regulations of the Hague Agreement, Section 403 of the Administrative Instructions of the Hague Agreement). This expression of “the matter for which protection is not sought” is not explicitly provided in the Japanese Design Act but on the premise of the purport of the international registration system based on the Geneva Act, among an international application for design registration which represents “the matter for which protection is not sought”, the said “matter for which protection is not sought” corresponds to “the parts other than the part for which the design registration is requested” of the article, etc. to the design, as a result of which the subject matter which can clearly identify “the part for which the design registration is requested,” namely shapes, patterns or colors, or any combination thereof of a part of an article, etc. which is reasonably found as an application seeking design registration shall be treated by the examiner as an application requesting design registration for part of an article, etc. in Japan.

3. Finding of the design in an international application for design registration

The finding of the design in an international application for design registration shall be made taking into consideration the above-described handling of a statement in an

application and drawings of an international application for design registration and applying standards for finding of the design in a domestic application for design registration (see [Part II, Chapter I “Finding of the Design in an Application for Design Registration”](#)).

Additionally, a statement in an application of an international application for design registration shall be found based on a statement written in English.

Chapter III Filing an Application for Each Design in an International Application for Design Registration

1. Provisions of Article 60-6, paragraph (2) of the Design Act

Article 60-6, paragraph (2) of the Design Act provides that an international application containing two or more designs shall be regarded as an application for design registration filed for each design which is the subject of an international registration in Japan. “A design which is the subject of an international registration” shall, however, mean a unit of designs in the international registration based on determination by the International Bureau and does not directly mean a unit of designs based on Article 7 of the Japanese Design Act.

Accordingly, an international application for design registration which does not comply with the requirements as provided in Article 7 of the Design Act shall be treated as falling under reasons for refusal under Article 7 of the Design Act.

2. Determination as to whether applications have been filed for each design

If the international 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) Where two or more articles, etc. are stated together in the column of “Article to the Design” in the application

However, this excludes the notation of the entire types in a plurality form (for example, “Desks”) or an international application for design registration which can be found to be filed for a design for a set of articles.

(2) Where two or more articles, etc. are represented in the statements in drawings of an international application for design registration (including cases where multiple articles are arranged in the drawings.)

However, this excludes cases where an international application for design registration can be found to be filed for a design for a set of articles or for an interior design.

With regard to any other determination standards concerning the filing of applications for each design, see [Part II, Chapter II “Filing an Application for Each Design.”](#)

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.”](#)

Chapter V Exception to Lack of Novelty concerning International Application for Design Registration

1. Provisions of Article 60-7 of the Design Act

In order that an international application for design registration may also receive application of the provisions of Article 4, paragraph (2) of the Design Act, procedures that can be employed in case of an international application for design registration are provided.

2. Specific procedures for receiving application of the provisions of Article 4, paragraph (2) of the Design Act in case of an international application for design registration

- (1) Submit a document stating a request for the application of the provisions of Article 4, paragraph (2) of the Design Act to the Commissioner of the Patent Office within 30 days as provided in Article 1-2 of the Ordinance for Enforcement of the Design Act after the date of an international publication (Article 4, paragraph (3) of the Design Act, Article 60-7, paragraph (1) of the Design Act), or a declaration to that effect in an international application (Section 408(c) of the Administrative Instructions of the Hague Agreement, Article 27-4 of the Ordinance for Enforcement of the Patent Act as applied mutatis mutandis pursuant to Article 19, paragraph (3) of the Ordinance for Enforcement of the Design Act)
- (2) Submit a document proving that the design which has fallen under the category of a publicly known design is a design that is subject to application of the provisions of Article 4, paragraph (2) of the Design Act (hereinafter referred to as the "Proving document") within 30 days as provided in Article 1-2 of the Ordinance for Enforcement of the Design Act after the date of an international publication (Article 4, paragraph (3) of the Design Act, Article 60-7, paragraph (1) of the Design Act)
- (3) Applicants need to submit "Provingd document" with a document of submission of a certificate for requesting the exception to lack of novelty prepared according to the Form No. 1 as provided in Article 1 of the Ordinance for Enforcement of the Design Act
- (4) Where applicants submit "Proving document" along with an international application to the International Bureau, the application is deemed to have been submitted the "Proving document" on the date of international publication to the Commissioner of the Japan Patent Office (Article 60-7, paragraph (2) of the Design Act)

With regard to any other determination standards for application of the exception to lack of novelty, see [Part III, Chapter III "Exception to Lack of Novelty."](#)

Chapter VI Design for a Set of Articles in International Application for Design Registration

1. Requirements to be found as a design for a set of articles

In order for an international application for design registration to be registered as a design for a set of articles, the subject matter stated in the column of “Article to the Design” must be designated by an Ordinance of the Ministry of Economy, Trade and Industry, that is, it must fall under any of the categories of a set of articles listed in the Appended Table.

However, the language of an international application for design registration shall be English, so the subject matter that coincides with any of set of articles listed in the Appended Table may be stated as “a set of ...” in the column of “Article to the Design.”

Where the subject matter stated in the column of “Article to the Design” is not designated by an Ordinance of the Ministry of Economy, Trade and Industry, it is not found to be a set of articles, and the examiner should give notice of reasons for refusal under Article 8 of the Design Act.

With regard to any other determination standards for a design for a set of articles, see [Part IV, Chapter III “Design for a Set of Articles.”](#)

Chapter VII Amendments in International Application for Design Registration

1. Change of the gist

With regard to amendments made to statements in an application of an international application for design registration, whether or not the gist has been changed shall, in principle, be determined based on a comparison of statements in English, but with respect to an international application for design registration in which a language other than English (i.e., French or Spanish) is used as the language of the international application, if there is an explanation based on the statement in the language of the international application when originally filed, this shall be taken into consideration in determining if the gist is changed or not.

For other matters concerning amendments, see [Part VI “Amendment.”](#)

Chapter VIII Right of Priority under the Paris Convention in International Applications for Design Registration

1. Provisions of Article 60-10 of the Design Act

The procedure for the priority claim concerning an international application for design registration is unified to the procedure through the International Bureau under Article 6(1) of the Geneva Act, so the procedure for priority claim to the Japan Patent Office shall not apply to an international application for design registration under paragraph (1) of this Article.

As the procedure for submitting a “priority certificate, etc.” does not need to accompany an international application under the Geneva Act, the provisions of the procedure for submitting a “priority certificate, etc.” under the Patent Act shall also apply mutatis mutandis to “a person who claimed a priority under Article 6(1)(a) of the Geneva Act.”

A priority claim to a “specified country” provided in Article 43-3, paragraph (2) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act is not permitted under Article 6(1)(a) of the Geneva Act, and shall not thus apply to an international application for design registration pursuant to paragraph (1) of this Article.

2. Effects of priority claim under the Paris Convention

Pursuant to Article 60-10, paragraph (1) of the Design Act, a priority claim recognized under the Paris Convention for a citizen of a “specified country” provided in Article 43-3, paragraph (2) of the Patent Act as applied mutatis mutandis pursuant to Article 15, paragraph (1) of the Design Act shall not be permitted for an international application for design registration.

3. Procedures for priority claim under the Paris Convention

A person who intends to make a priority claim for an international application for design registration under Article 4D, paragraph (1) of the Paris Convention must include the priority claim to the international application provided in Article 6(1)(a) of the Geneva Act and submit the “priority certificate, etc.” to the Commissioner of the Japan Patent Office within 3 months from the date of the international publication provided in Article 43, paragraphs (2) and (3) of the Patent Act as applied mutatis mutandis pursuant to the provisions of Article 60-10, paragraph (2) of the Design Act following the deemed replacement of terms. Furthermore, within a same period, applicant may complete the prescribed procedure for the World Intellectual Property Organization’s Digital Access Service (DAS) instead of submitting a “priority certificate, etc.” (Article 43, paragraphs (5) of the Patent Act as applied mutatis

mutandis pursuant to the provisions of Article 60-10, paragraph (2) of the Design Act following the deemed replacement of terms).

Note that, where an applicant of an international application submits the “priority certificate, etc.” to the International Bureau along with an international application and also offers to provide the contents which are stated in the “priority certificate, etc.” by an electronic or magnetic means to the Commissioner of the Japan Patent Office, the applicant will be deemed to have submitted the “priority certificate, etc.” to the Commissioner of the Japan Patent Office (Article 27-3-3, paragraphs (2), item(i) and (iii) of the Regulation for Enforcement of the Patent Act as applied mutatis mutandis pursuant to the provisions of Article 19, paragraph (3) of the Regulation for Enforcement of the Design Act following the deemed replacement of terms).

4. Requirements for a priority claim under the Paris Convention to be effective

A priority claim to an international application for design registration with a priority claim based on the domestic application for design registration shall not be effective.

With regard to any other determination standards concerning a priority claim under the Paris Convention, see [Part VII “Advantage of the Priority under the Paris Convention.”](#)

Relevant Provisions

Design Act: Article 60-6, paragraphs (1) to (3), Article 60-6, Article 60-7, Article 60-10, Article 60-24, Article 68, paragraph (2)

Ordinance for Enforcement of the Design Act: Article 1-2, Article 1-3, Article 2, Article 2-3, Article 2-4, Article 2-5, Article 3, Article 4, Article 5, Article 7, Article 8, Article 12-2, Article 15, Article 19, Notes, Appended Table, Form No. 1, Form No. 1-2, Form No. 2, Note (39), Form No. 2, Note (41), Form No. 6, Notes (7) to (17), Notes (19)–to (23), Note (24), Note (27), Form No. 8, Note (3), Form No. 14

Patent Act: Article 17, paragraphs (3) and (4), Article 17-2, Article 43, Article 43-3

Geneva Act: Article 1(vi) to (viii), (xix), Article 5(1), (2), (4), Article 6, Article 10(2), (3), Article 12(1), Article 13(1), Article 14(1)

Common Regulations of the Hague Agreement (Note): Rule 7 to Rule 11

Administrative Instructions of the Hague Agreement (Note): Section 401 to Section 408

(Note)

These are abbreviations of the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement and the Administrative Instructions for the Application of the Hague Agreement.

Part X

Others

Part X.....	1
Chapter I Feature Statement.....	1
1. Outline.....	1
2. Feature statement.....	1
3. Submission procedure	1
4. Publication in the Design Bulletin.....	2
Relevant Provisions	1

Chapter I Feature Statement

1. Outline

The term “feature statement” is a document containing features of the design for which the design registration is requested or the design in an application for design registration. The person requesting design registration or the applicant for design registration may submit the feature statement when submitting an application or while the case is pending in examination, trial or retrial.

2. Feature statement

The examiner must not use the contents of the feature statement as the direct basis for the finding of the design in an application for design registration (see [Part II “Finding of the Design & Filing an Application for Each Design”](#)), for the determination of similarity in determining novelty requirement, etc., or for the determination of other reasons for refusal.

On the other hand, since the contents of the feature statement can be used as reference information for deciding an accurate scope for the search in examination, they are expected to expedite examination.

Where a design is registered, publication of the contents of the feature of the design and the explanation view in the Design Bulletin makes it possible to let third parties know the subjective intention of the applicant with regard to creation of the registered design.

Since the contents of the feature statement are not used as the basis for specifying the scope of the registered design provided in Article 24 of the Design Act, they do not have any direct influence on the scope of the right.

3. Submission procedure

Submission of a feature statement is not an obligation, but it is a voluntary procedure whereby a person requesting a design registration or an applicant for design registration may choose to submit the statement.

The person requesting design registration or the applicant for design registration may only submit the feature statement when submitting an application or while the case is pending in examination, trial or retrial.

Furthermore, although the features of a design are to be included in a feature statement (Article 6 of the Ordinance for Enforcement of the Design Act), a feature statement cannot be submitted at the same time as filing an international application for design registration based on the Geneva Act of the Hague Agreement. Therefore, even if a statement on the features of the design is included in the column of “Description” (treated as equivalent to the column of “Description of the Design” and the column of “Description of Article to the Design” in applications for design registration in Japan), provided that it is not a statement corresponding to a particular reason for refusal, like one that makes the design unclear for example, the examiner should not regard it as an object of reason for refusal.

In addition, as far as ordinary applications filed in Japan are concerned, similarly, cases where a statement on the features of the design is included in the column of “Description of the Design” should also be treated the same.

4. Publication in the Design Bulletin

The contents of the feature of the design and the explanation view of a feature statement are, in principle, published in the Design Bulletin exactly as they have been submitted by the applicant. If a new feature statement has been submitted, only the contents of the latest feature statement are published.

Meanwhile, such contents are not published in the Design Bulletin based on the provisions of Article 66, paragraph (3) of the Design Act (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).

In addition, where a feature statement contains any expression, etc. that is improper to be published in the Design Bulletin, such part is not to be published in the Design Bulletin.

Relevant Provisions

Ordinance for Enforcement of the Design Act

- Article 6 (1) A person requesting a design registration or an applicant for design registration may submit a feature statement containing features of the design for which the design registration is requested or the design in the application for design registration when submitting the application (except for the application of the multiple designs in an application) or while the case is pending in examination, trial or retrial.
- (2) Where submitting a feature statement, it shall be submitted according to the Form No. 9.
- (3) Where specifying the scope of a registered design, the contents of a feature statement must not be taken into consideration.

Appendix: Examples of Constituent Articles, etc. of Design for a Set of Articles

	Set of Articles	Constituent Articles, etc.
1	A set of Processed Foods	• Chocolates (2 or more)
2	A set of Tobacco or other similar articles (including related items)	• Tobacco, Lighter, Ashtray
3	A set of Clothing	• Jacket, Vest, Slacks
4	A set of Personal Belongings	• Ring, Necklace, Bracelet, Earring, Cuff link, Tie clip
5	A set of Instruments for Beauty Treatment	• Makeup brush (2 or more)
6	A set of Textiles for Interior Decoration	• Pillow, Comforter, Mattress • Cushions (2 or more)
7	A set of Interior Ornaments	• Ornaments (2 or more)
8	A set of Cleaning Appliances	• Broom, Dustpan
9	A set of Laundry Appliances	• Electric washing machine, Clothes dryer
10	A set of Health and Hygiene Articles	• Toothbrush stand, Cup • Electric toothbrush, Electric toothbrush holder
11	A set of Tableware (Not including a set of Cutlery (Cl.13))	• Electric toothbrush, Electric toothbrush holder
12	A set of Cooking Articles	• Pot, Frying pan
13	A set of Cutlery	• Spoon, Fork, Knife
14	A set of Ceremonial Articles	• Funeral vase, Incense burner
15	A set of Lighting Apparatus	• Ceiling light, Wall light
16	A set of Air Conditioning Equipment	• Air conditioner, Fan • Air conditioner, Air conditioner outdoor equipment
17	A set of Kitchen Equipment	• Cookstove, Countertop, Sink cabinet, Storage rack
18	A set of Sanitary Equipment	• Bathroom vanity, Toilet mirror, Storage rack
19	A set of Storage Articles	• Hanger, Skirt hanger
20	A set of Furniture	• Table, Chair, Child chair • Book shelves (2 or more)

Appendix: Examples of Constituent Articles etc. of Design for a Set of Articles

21	A set of Pet Articles	• Clothes for pet, Collar for pet
22	A set of Amusement and Entertainment Articles	• Go board, Shogi board
23	A set of Athletic Implements	• Golf clubs (2 or more) • Baseball glove, Baseball mitt
24	A set of Musical Instruments	• Drum, Cymbal, Music stand, Chair
25	A set of Instructional Instruments	• Globes (2 or more)
26	A set of Office Equipment	• Mechanical pencil, Ballpoint pen, Fountain pen
27	A set of Merchandising Equipment (including Packaging Supplies, Advertising Apparatus or Display Racks etc.)	• Packaging containers (2 or more)
28	A set of Conveying Equipment	• Elevator, In-house elevator
29	A set of Transportation Equipment	• Passenger car, Motorcycle • Interior panel, Head lamp • Car floor mat (2 or more)
30	A set of Electronic Appliances or Devices	• Light bulbs (2 or more) • Connector
31	A set of Information Processing Appliances	• Smartphone, Battery charger for smartphone • Wireless earphone, Keyboard, mouse
32	A set of Measuring Equipment	• Thermometer, Hygrometer
33	A set of Optical Equipment	• Camera, Camera case
34	A set of Office Equipment	• Facsimile, Copy machine, Printer
35	A set of Merchandising Machinery	• Beverage vending machine, Tobacco vending machine
36	A set of Security Equipment	• Fire extinguisher, Fire extinguisher stand
37	A set of Medical Equipment	• Surgical scalpels (2 or more)
38	A set of Desktop Instruments or Industrial Tools	• Screwdrivers (2 or more) • Hairdressing scissors, Hairdressing thinning scissors
39	A set of Industrial Machinery	• Industrial robots (2 or more)
40	A set of Construction Equipment	• Concrete formwork, Exterior material panel • Tile carpet, Wallpaper
41	A set of General Purpose Components or Materials	• Plate materials (2 or more) • Valve, Solenoid valve

Appendix: Examples of Constituent Articles etc. of Design for a Set of Articles

42	A set of Buildings	• Kindergarten, Elementary school, Junior high school, High school
43	A set of Graphic Images	• Screen image for bank transfer, Screen image for teller machine operation