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Your Key to Success: for Obtaining a Design Right in Japan
January 2024

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Your Key to Success

for Obtaining a Design Right in Japan



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Disclaimer:

- As this booklet focuses on providing easy-to-understand information, please note that some of the descriptions and representations used here may not accurately or completely represent what the Japanese laws and regulations contain.

- The names of the articles in all cases of design registration in this booklet, which are originally filed in Japanese, are provisional translations by the JPO. Only the original Japanese have legal effect. For the names of the articles in original Japanese, please refer to the Design Gazette.

- The date shown next to [UPDATE!] is the effective date of the revision of the rules (the Design Act , the Examination Guidelines for Design, etc.)

INTRODUCTION

As designs are expected to play an increasingly important role for innovation and brand building, it is important to plan a strategy to file applications for design registration with an eye on the global market and obtain design rights in each country to develop business.

In fact, the number of applications for design registration filed from abroad in Japan is increasing every year.

However, the procedures for obtaining design rights abroad is not easy, as design systems differ greatly from country to country. You may have felt difficulty in understanding the differences between the design systems in your country and Japan.

When you tried to obtain a design right in Japan, have you ever received an unexpected notice of reasons for refusal, or have you ever been unable to obtain a design registration as you intended?

This booklet will tell you the key to success when filing an application in Japan, based on an analysis of common errors seen in applications for design registration filed by overseas applicants in recent years.

In addition, major updates to the Design Act and the Examination Guidelines for Design in Japan that have been made in recent years are also included.

We hope that this booklet will be helpful to those who are considering filing an application for design registration in Japan.

Overview of Design System in Japan



One of the major characteristics of the design system in Japan is that all applications are subject to substantive examination. Going through an examination process makes it possible to obtain a stable right.

In case of receiving a notice of reasons for refusal as a result of the examination, it is important to understand well the flow of procedures (from application to registration) and the recent revisions of the Design Act in Japan.



Advantages of filing an application for design registration with the JPO

1 Substantive examination prior to grant of rights

The Japan Patent Office (JPO) conducts substantive examination of applications for design registration (such as novelty, creative difficulty, etc.). The advantage is that the design right would be solid and be difficult to become invalid once the design has been registered.

2 High-quality examination based on thorough Prior Design Search

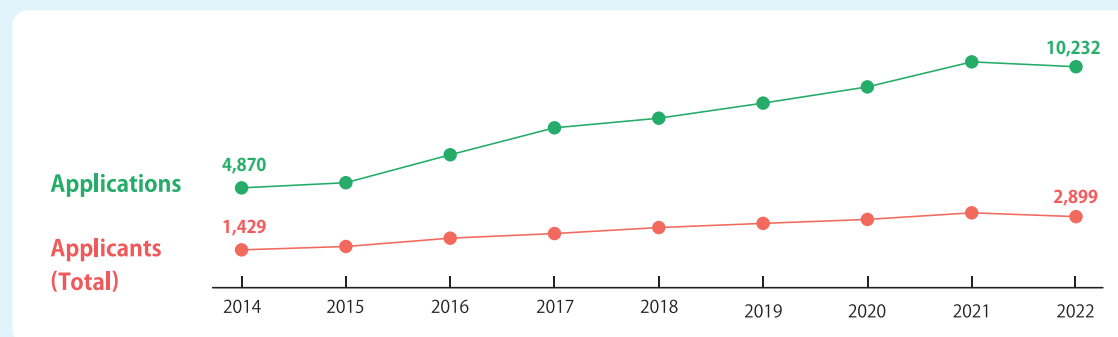
In order to determine whether the filed design meets the requirements for registration, the JPO conducts a Prior Design Search covering a large number of materials published in the world, including domestic and foreign design gazettes, Internet information, catalogs and magazines. High-quality examination results of Japan may support the validity of rights in other countries, especially in non-substantive examination countries.

3 Prompt examination

While maintaining high-quality substantive examination, the average period from application to the first notice of examination results sent from the JPO to the applicant is only about 6 months.

Increase in applications by foreign nationals

Since Japan's accession to the Hague Agreement in 2015, the number of filing applications for design registration in Japan by foreign nationals has been increasing every year.



Design applications and applicants by foreign nationals

*The number of applicants is the sum of foreign nationals who filed directly with the JPO and those who filed under the Hague System. Therefore, if there are applicants who filed through both routes, they are accounted for in duplicate.

For More Details...



Revision of the Design Act in Japan

← Click!

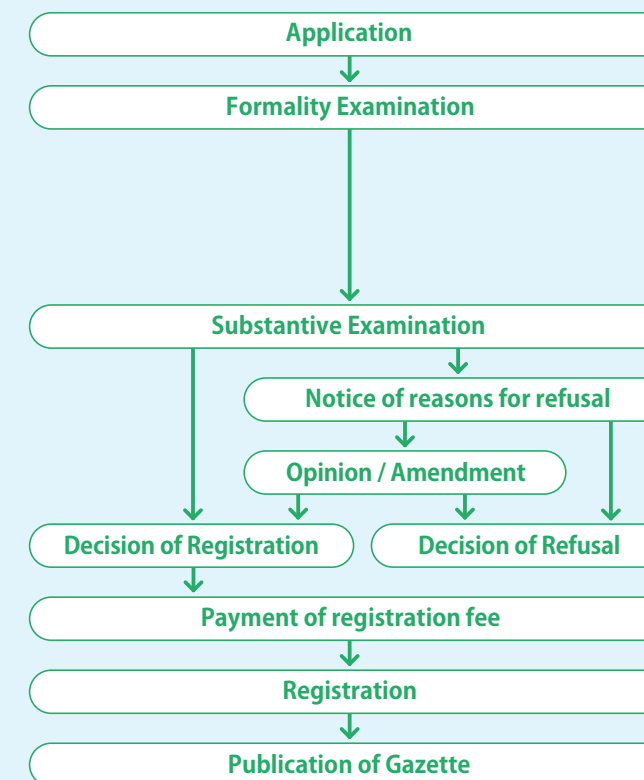


The JPO Key Features

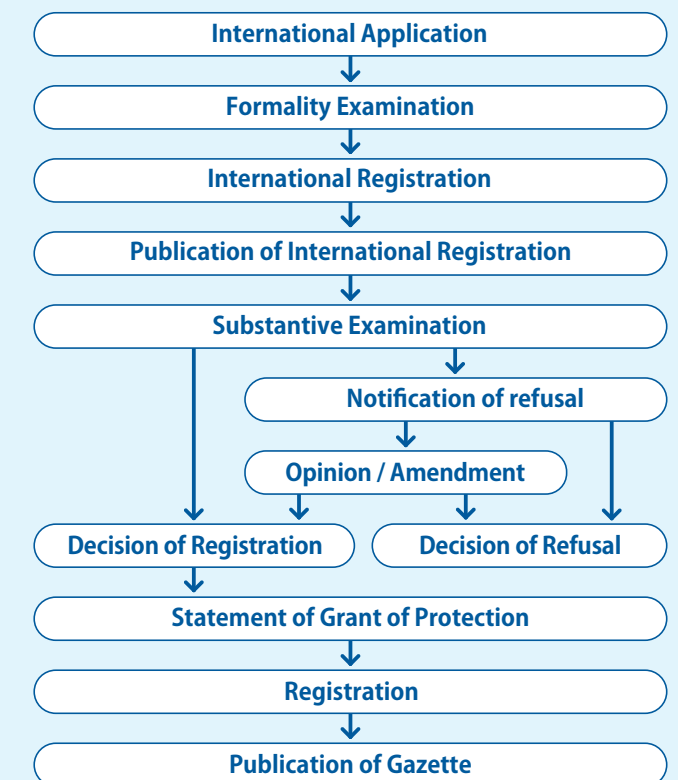
← Click!

Flow : The process of obtaining a design right in Japan

Filing directly with the JPO

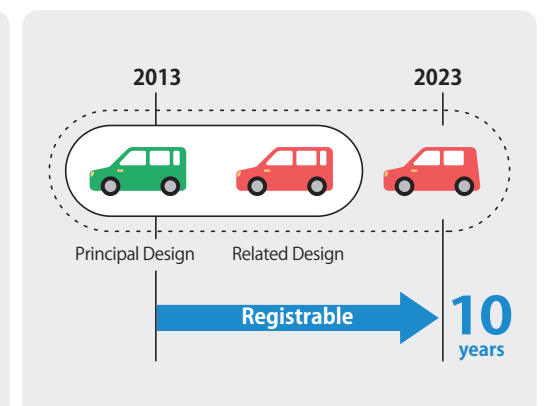
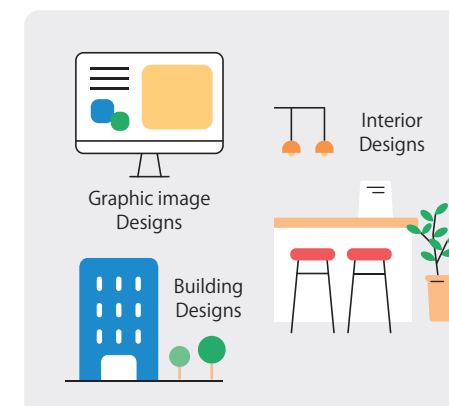


Filing under the Hague System



UPDATE ! April 2020

The Design Act in Japan was revised with the aim of contributing to innovation and brand building. The revision includes the expansion of the scope of protection, extension of the maximum duration of protection, and the enhanced related design system, etc.



INTRODUCTION

Difference between Direct Filing and Filing under the Hague System



There are two ways to obtain design rights in Japan: filing directly with the JPO or designating Japan under the Hague System.

It is important to understand that each way has its advantages and disadvantages in terms of translation costs, agent's fee and ease of processing.



Language of Application / Agent

Direct Filing

The application must be written in Japanese. Overseas applicants must appoint an agent in Japan to complete application and subsequent procedures.

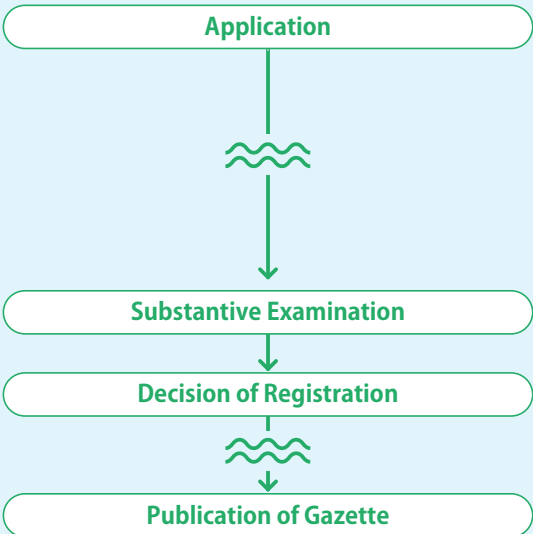
Hague System

The application must be completed in one of the following languages: English, French, or Spanish. It is not necessary to have an agent in Japan at the time of filing the application. Please note that it is necessary to appoint an agent in Japan for a procedure before the JPO.

Publication of the Design

Direct Filing

Once the design is registered, the gazette will be published. If the design is refused, it will not be published.



Hague System

Regardless of whether the design is registered in Japan or not, the international registration will be published on the WIPO website before the examination in Japan. In principle, it takes one year for the contents of the international registration to be published. If the design is registered in Japan after the substantive examination, the contents of the registration will be published in the Design Gazette.



For More Details...



Notes for the Designation of Japan in an International Design Application under the Geneva Act of the Hague Agreement

Click!

First notice from the JPO

Direct Filing

On average, you will receive the first notice within about 6 months after filing.

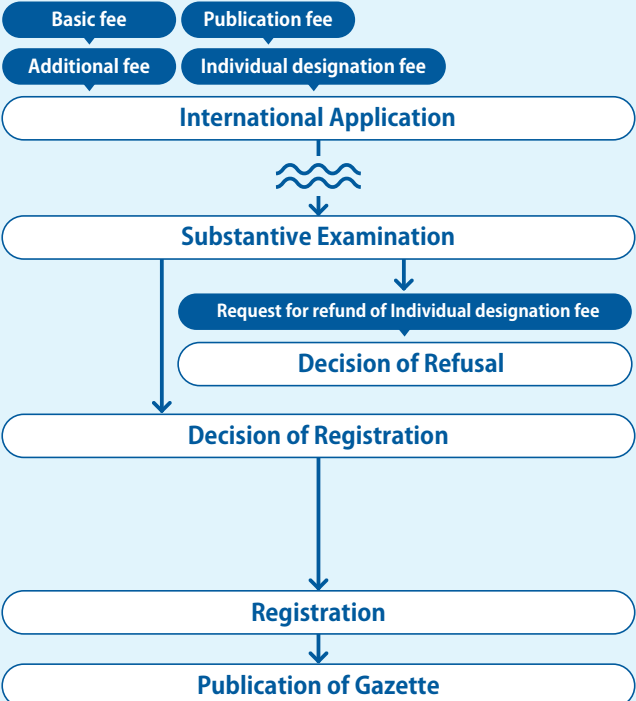
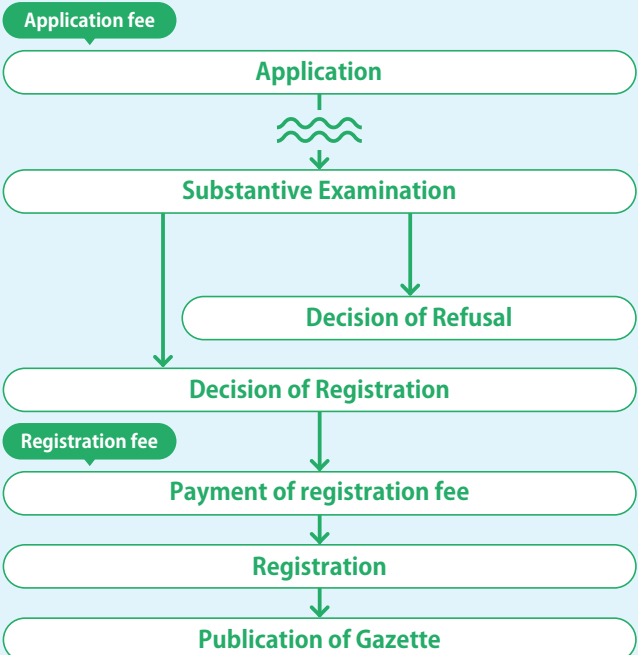
Hague System

You will receive the first notification within 12 months from the publication of the international registration as prescribed in the Hague agreement.

Fee *As of January 2024

Direct Filing	
Application fee	16,000 JPY
Registration fee	
the 1st to the 3rd year	8,500JPY / year
the 4th to the 25th year	16,900JPY / year

Hague System	
Basic fee	
For one design	397 CHF
For each additional design included in the same international application	50 CHF
Publication fee	
For each reproduction to be published	17 CHF
<small>*150 CHF for each additional page, counting from the second page (where the reproductions are submitted by paper)</small>	
Additional fee	
where the description exceeds 100 words per word exceeding 100 words	2 CHF
Individual designation fee	
For each design	507 CHF



Designs which can be registered in Japan

Is the design in the application within the scope of the definition of a "design" under the Design Act in Japan?

For More Details...



Examination Guidelines for Design
Design to be protect (Article)
Design to be protect (Graphic Image)
Design to be protect (Building)
Design to be protect (Interior)

Part III Chapter12.1
Part IV Chapter13
Part IV Chapter13
Part IV Chapter13



Case examples of registered designs of newly added subject for protection

Click!

Article

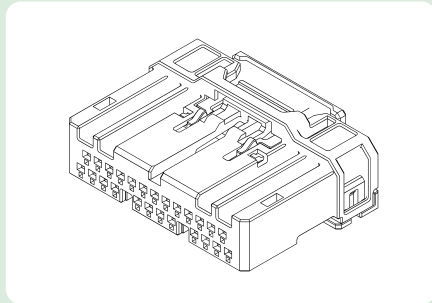
A tangible object which is a movable distributed in the market.



Registration No. 1690992
[Chair]



Registration No. 1537264
[Front bumper for automobiles]



Registration No. 1703941
[Connector]

Parts (including internal parts that are not visible from outside) can also be registered.

Graphic Image

A graphic image used for the operation of the device or displayed as a result of the device performing its functions can be protected.

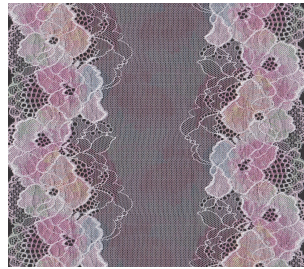


Registration No. 1693484
[Graphic image for information displays]



Registration No. 1675446
[Electronic calculator with rope tension measuring function]

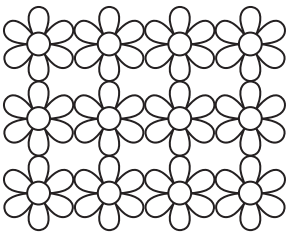
A graphic image can also be protected as part of an article



Registration No. 1695433
[Narrow width lace]

CAUTION !

A "Fabric" containing a pattern is an article. However, a "Pattern," which can be applied to any articles, is not recognized as an article, a building, or a graphic image. Therefore, it is not within the scope of protection under the Design Act in Japan.



[Pattern]

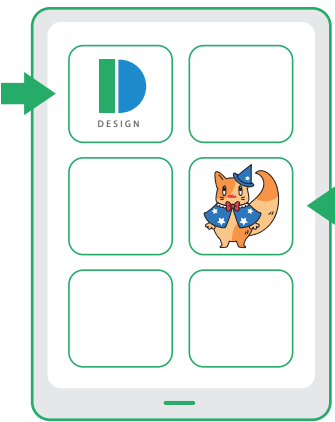


Registration No. 1677889
[Graphic image for icons]

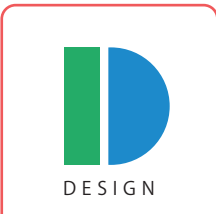
CAUTION !

Logos and Mascot characters themselves can't be protected. Icons for launching software that represent a company's logo or mascot character can be protected.

Within the scope of a "design"



Out of the scope of a "design"



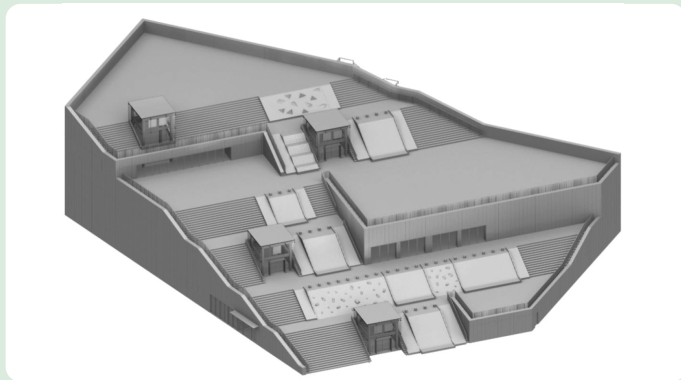
[Logo]



[Mascot character]

Building

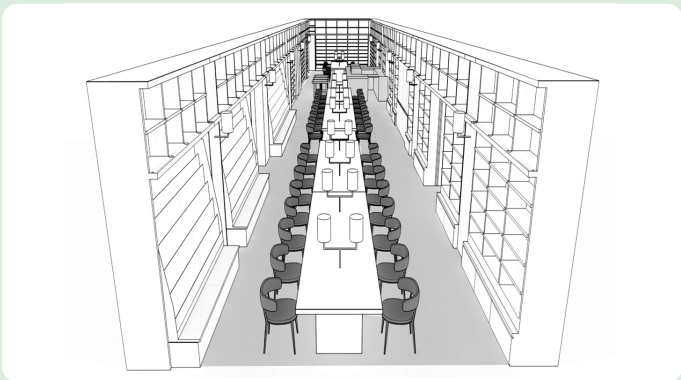
An artificial structure (including a civil engineering structure) fixed on land



Registration No. 1671773
[Building for commerce]

Interior

An interior of a store, office, or other facility, consisting of multiple articles, etc.



Registration No. 1671152
[Interior of bookstore]

UPDATE ! April 2020

For a long time, the Design Act in Japan only protected designs for "articles," but it is now possible to register designs for graphic images, buildings, and interior as well.

To avoid a refusal on lack of clarity ①

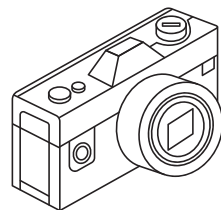
Is it clear what you are seeking to register as a design?



In order to obtain a design right in Japan, **the usage and function of the article, building, or graphic image embodying the design**, as well as **the subject for which design registration is sought, the shape, pattern, and color of the article, building, or graphic image for which a design registration is sought**, must be able to be specifically derived from the application form and drawings.



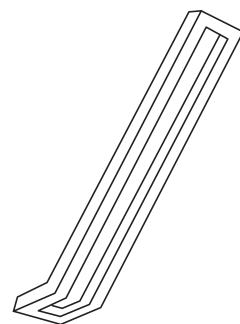
Clarity of the usage and function of the design



CLEAR

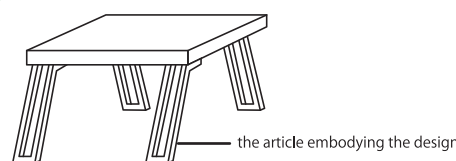
- Article embodying the design
Digital camera
- Description of Article embodying the design
(Not stated)

The usage and function are clear by the title of the article (digital camera) and the drawing.



CLEAR

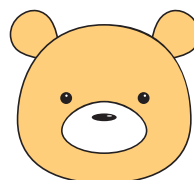
- Article embodying the design
Table Leg
- Description of Article embodying the design
(Not stated)
- Reference view showing conditions of use



NOT CLEAR

- Article embodying the design
Furniture part
- Description of Article embodying the design
(Not stated)

"Furniture part" can be used for a variety of purposes, such as chair leg, shelf handle, chair armrest, etc., so its usage and function are not clear.



CLEAR

- Article embodying the design
GUI
- Description of Article embodying the design
This GUI is used to launch the application software used on the smartphone.

NOT CLEAR

- Article embodying the design
GUI
- Description of Article embodying the design
(Not stated)

"GUI" can be used for various purposes, such as icon images, information display images, screen operation images for content viewing, etc., so its usage and function are not clear.

For More Details...



Examination Guidelines for Design
Part III Chapter I

← Click!



Guide for Making Applications and
Drawings for Design Registration

← Click!

Clarity of the subject matter for which the design registration is sought



CLEAR

- Article embodying the design
Shoe
- Description of the design
(Not stated)



NOT CLEAR

- Article embodying the design
Shoe
- Description of the design
Colors are not claimed. Any color other than those represented in the figure shall be acceptable.

Colors and patterns represented in the drawing cannot be excluded by the description. If color is not claimed, it can be represented, for example, by a line drawing such as the one on the left.



CLEAR

- Article embodying the design
Pot
- Description of the design
Any part other than the part colored in red is the part for which the design registration is requested.



NOT CLEAR

- Article embodying the design
Pot
- Description of the design
No design registration is requested for the lower part.

It is not clear where the "lower part" of the description is. When you want to obtain design rights for a part of an article, a building, or a graphic image, you can clearly represent the design by differentiating the appearance of the drawing such as the one on the left.

UPDATE ! April 2019



Registration No. 1722837
[Tunic]

The drawing requirement for application for design registration in Japan have been relaxed to allow objects other than the article for which a design registration is sought (such as mannequins) to be represented in the drawings. This type of representation is allowed if objects other than the article for which the design registration is sought are clearly specified in the drawings and described in the description.

To avoid a refusal on lack of clarity 2

Is it clear what you are seeking to register as a design?

For More Details...



Examination Guidelines for Design
Part III Chapter I

Click!



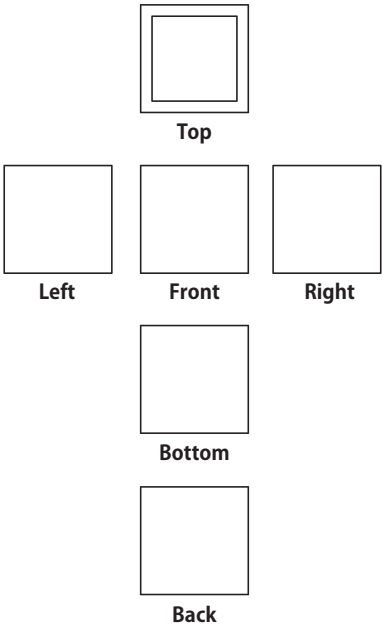
Guide for Making Applications and
Drawings for Design Registration

Click!

Clarity of the shape of the design

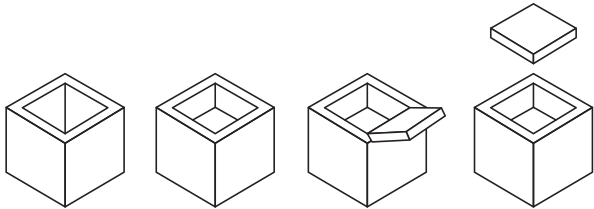
Even if six views are provided, the shape may not be clear.

NOT CLEAR

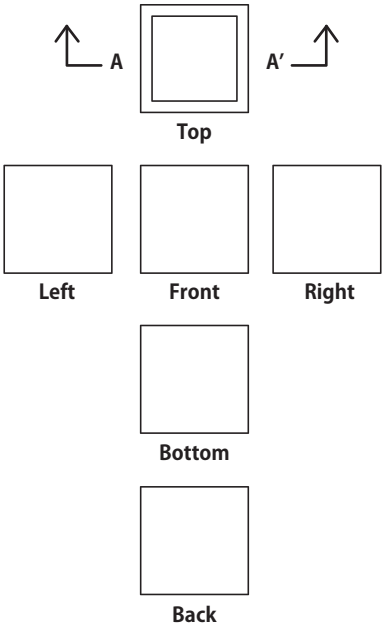


Accessory case

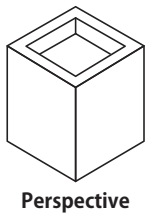
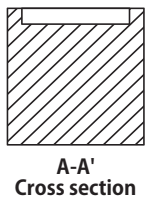
With six views only, it is not clear whether the inner square line shown in the top view represents a lid or an inward-concave container part and how deep it is.



CLEAR



Accessory case



In addition to the six views, a perspective view or cross-sectional view will clarify the inner shape.

Insufficient description may result in a lack of clarity of the shape.

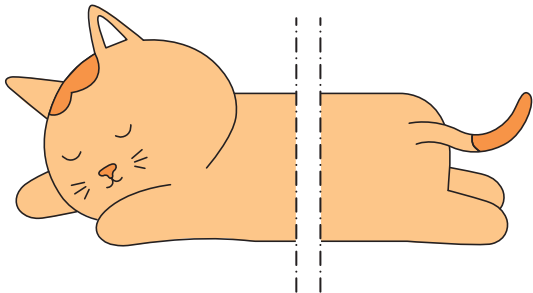
CLEAR

Article embodying the design

Stuffed toy

Description of the design

In the drawing, the omitted portion is
10 cm long on the drawing.



NOT CLEAR

Article embodying the design

Stuffed toy

Description of the design

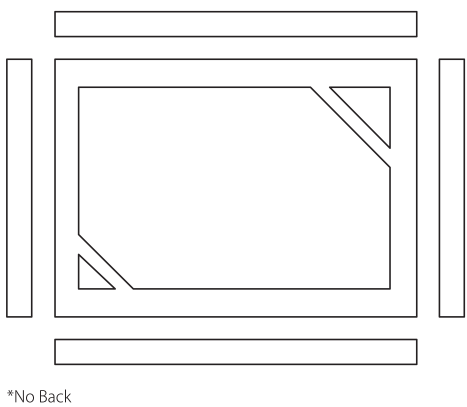
(Not stated)

If the length omitted in the middle part is unknown, the overall composition ratio, which could be a feature of the design, cannot be identified. This design is not clear because it is not possible to properly identify the design or determine whether it is similar to other designs.



UPDATE !

April 2019



*No Back

Article embodying the design

Frame

Description of the design

(Not stated)

The drawing requirement for application for design registration in Japan has been relaxed, and the submission of the six views is no longer mandatory. However, please note that if the shape, etc. of the part represented in the submitted drawings is not clear, a design right cannot be obtained.

Related Designs 1

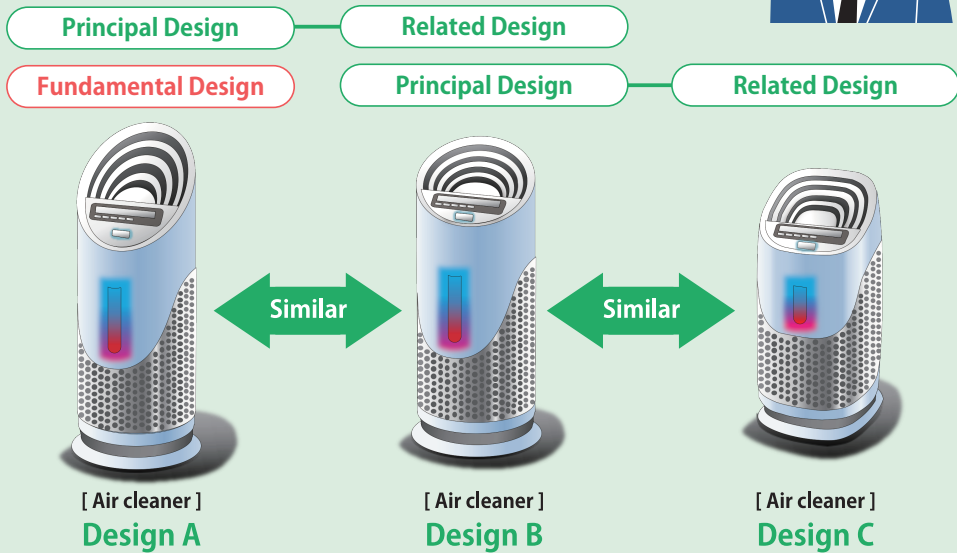
Do you have a design of your own that is similar to the design you have filed?

Under the design system in Japan, in principle, a design right cannot be obtained if a similar design which was filed earlier exists before the filing of the application for design registration. However, if a similar design is the applicant's own earlier-filed or earlier-registered design (*Note), it is possible to obtain a design right by designating it as the "principal design." This is called the "related design system." **The greatest advantage of the related design system is that a design that has lost its novelty due to a previously registered design of the applicant can still be registered.**

*Note: For detailed conditions, please refer to "Examination Guidelines for Design Part V."



The first principal design is called the "Fundamental design."



Requirements for obtaining a design right as a related design

- 1 The applicant of the principal design and the related design must be the same.
- 2 The principal design and the related design must be similar.
- 3 The related design must be filed **within 10 years from the filing date of the fundamental design (or the priority date if a priority claim has been effective).**

*The related design may not be registered, when the design right of the principal design has been extinguished, or when an exclusive license has been established on the design right of the principal design.

When combining the effect of the priority with the related design system



For More Details...



Examination Guidelines for Design Part V

Click!



Case examples of related designs which were registered as whole design and partial design of an article etc.

Click!



Case examples of related designs which were registered as designs including a graphic image

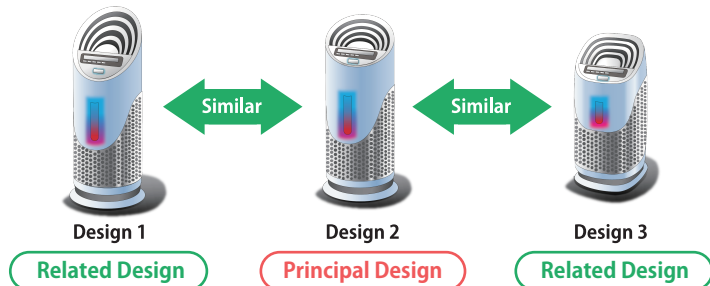
Click!

Procedures for filing an application as a related design

In order to file your own design as a related design, you must fill in the necessary information on the application form (DM / 1 document in the case of filing under the Hague System). The following is an example of how to fill in the DM / 1 .

Case

You file an application under the Hague System designating Japan, including three designs. Design 1 - Design 2 and Design 2 - Design 3 are similar, so you would like to file Design 2 as the principal design and Design 1 and Design 3 as its related designs.



DM / 1 Sample

16. Main or Principal Design (if applicable)
(omitted)

NO.16. is related to the related design system

Japan and / or the Republic of Korea: principal and related designs

If designating Japan and / or the Republic of Korea, designs may be registered as related to a principal design.

(a) Contracting Party(ies) concerned:

☒ Japan

☐ Republic of Korea

Select Japan

(b) The applicant requests that the following designs contained in the present application be registered as related designs:

☐ all designs, or

☒ the following designs (e.g. design 1, design 2):

Indicate which of the designs in the application are "Related Designs."

Design 1, Design 3

(c) Information concerning the principal design to which the designs indicated under item (b) are related (Note: The principal design must be subject of an application or a registration with the Office of the Contracting Party concerned):

(i) The principal design is the subject of:

☒ the present international application

Select "the present international application."

☐ a prior international application designating Japan and / or the Republic of Korea

☐ a prior international registration designating Japan and / or the Republic of Korea

☐ a prior national application filed with the Office of Japan and / or the Republic of Korea

☐ a prior national registration at the Office of Japan and / or the Republic of Korea

(ii) If the above national or international application or registration contains several designs, indicate the number of the design to be considered as the principal design:

Design 2

Fill in the "principal design" of the related design indicated in (b).

CAUTION !

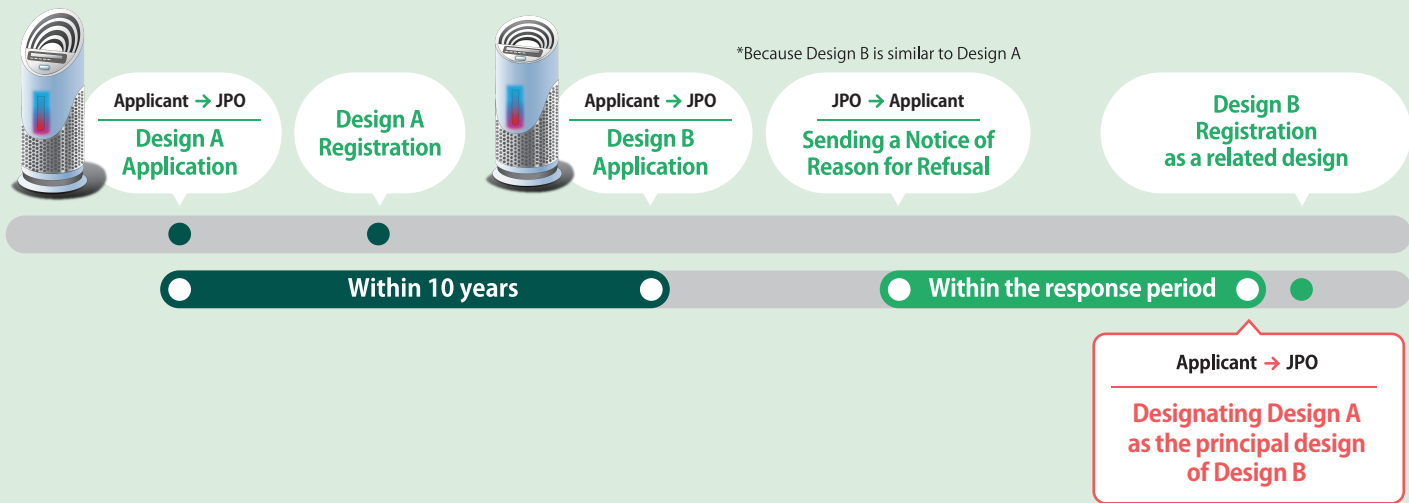
Only a design in an application filed directly with the JPO or a registration at the JPO, or an application / registration under the Hague System designating Japan can be designated as the principal design. For example, an application filed with a country other than Japan as the basis for a priority claim cannot be designated as the principal design.

Related Designs 2

Do you have a design of your own that is similar to the design you have filed?

If the principal design is not designated in the application

Even if receiving a notice of reasons for refusal stating that the design is similar to the applicant's own earlier-filed or registered design, the applicant may obtain a design right by making an amendment to designate principal design. If the design that is found to be similar to the design in the application is your own earlier-filed or registered design, we recommend that you check if you can use the related design system!



UPDATE ! April 2020

The related design system in Japan has been enhanced.

- 1 The period for filing a related design has been extended from "before the publication of the design gazette for the principal design" (approximately 8 months) to "before the date which has elapsed 10 years from the filing date of the principal design."
- 2 Registration has been allowed for a design similar only to the related design (e.g. Design C shown on p. 14).

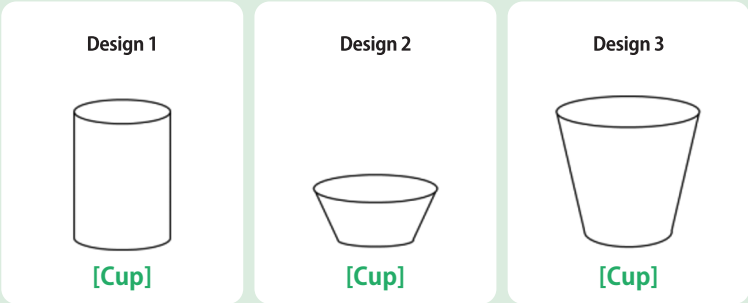
Filing an application for each Design

Does the design in your application contain more than one design?

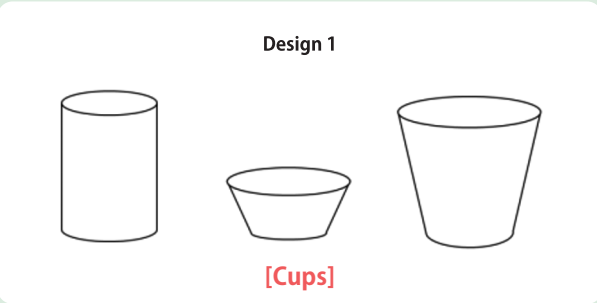
In Japan, an application for design registration may contain multiple designs, but each design in the application must constitute "one design."



APPROPRIATE



NOT APPROPRIATE



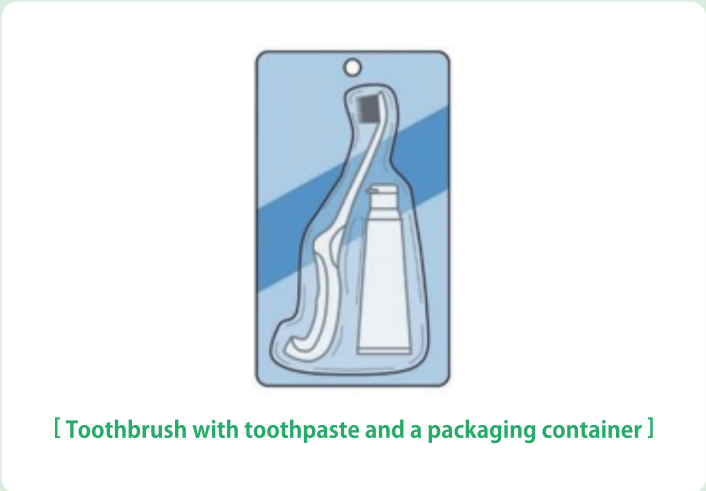
If the design in the application contains more than one design

The procedural requirements for obtaining relief are as follows.

- 1 Make an amendment to delete all but one design.
- 2 Make the amendment in 1 above, and at the same time, divide the deleted design(s) into other new application(s).

Even if multiple components are represented in the drawing, it may be recognized as a single design. Please note that in this case, the application cannot be divided!

As in the example below consisting of a toothbrush, toothpaste, and packaging, 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., such subject matter will be recognized as a single article.



For More Details...



Examination Guidelines for Design Part II Chapter II

Click!



Examination Guidelines for Design Part VIII Chapter I

Click!

Priority claim under the Paris Convention

Does the design in the application benefit from the priority under the Paris Convention?



By claiming a priority under the Paris Convention when filing an application for design registration in Japan, the applicant will not be treated unfavorably due to other applications filed within the period from the filing date of the earlier application to the filing date in Japan or publicly known designs. There are some procedural requirements to be met in order for a priority claim to be effective. In addition,

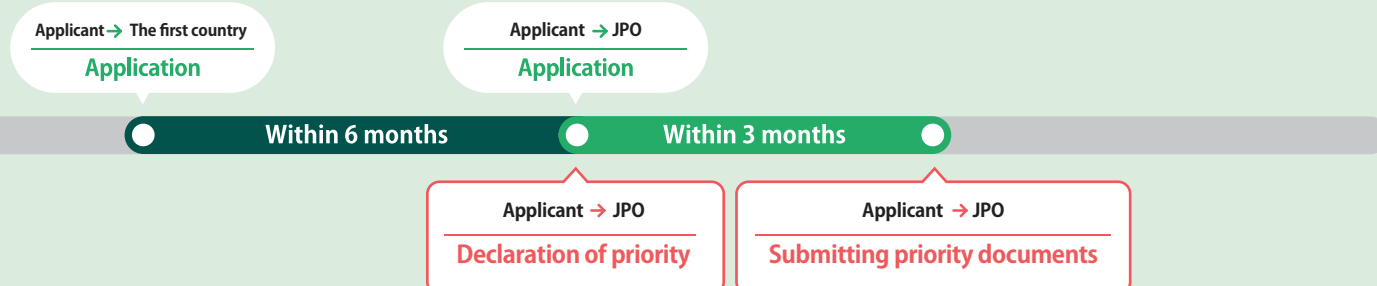
the design filed in Japan must be identical to the design filed in the first country.



Procedural requirements for claiming a priority

Direct Filing

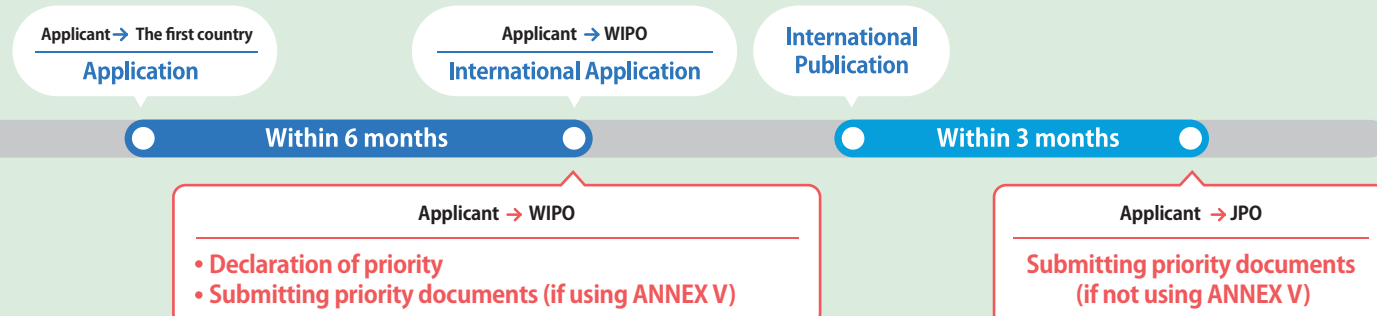
- 1 An application for design registration must be filed in Japan **within 6 months from the filing date of the application for design registration, etc. in the first country.**
- 2 Declaration of priority must be made **at the time of filing the application in Japan.**
- 3 Priority documents must be submitted **within 3 months from the date of filing the application in Japan. (A DAS code may be provided instead of submitting a copy of the priority document.)**



Hague System

- 1 An international application designated Japan must be filed **within 6 months from the filing date of the application for design registration, etc. in the first country.**
- 2 Declaration of priority must be made **at the time of filing the international application.**
- 3 Priority documents must be submitted **to WIPO at the time of filing the international application if ANNEX V is used, or directly to the JPO within 3 months from the international publication.**
(A DAS code may be provided instead of submitting a copy of the priority document.)

*Timing for submitting priority documents depends on whether ANNEX V is used or not.



For More Details...



Examination Guidelines for Design Part VII

← Click!



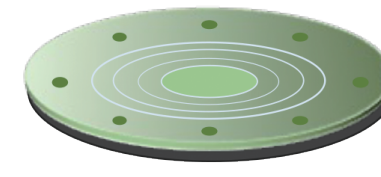
Notes when submitting documents of exception in regard to lack of novelty, and when submitting priority documents, at the time of filing international design applications

← Click!

Requirements for the priority claim to be effective

For a priority claim to be effective, **the design filed in Japan must be identical to the design filed in the first country.**

Application filed in the first country

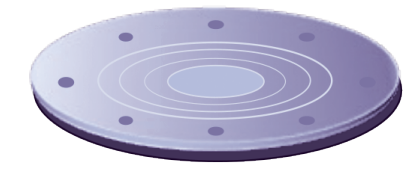


[Dining dish]

NOT IDENTICAL



Application filed in Japan



[Dining dish]

Since the colors are different, the designs are not considered identical.

Application filed in the first country



[Packaging Bottle]

NOT IDENTICAL



Application filed in Japan



[Packaging Bottle]

Since the scope of the part for which the design registration is sought is different, these designs are not considered identical.

UPDATE !

January 2020

Electronic exchange of priority documents through the **WIPO Digital Access Service (DAS)** is now available in Japan.

Applicants may use DAS to electronically exchange priority documents when filing an application in Japan on the basis of a priority claim to an application filed in the first country (DAS participant) , thereby eliminating the need to submit written priority documents to Japan.


UPDATE !

October 2021


For international applications, ANNEX V can now be used to submit priority documents at the time of filing the international application.

Exceptions to Lack of Novelty

Has the design in the application already been published before filing?



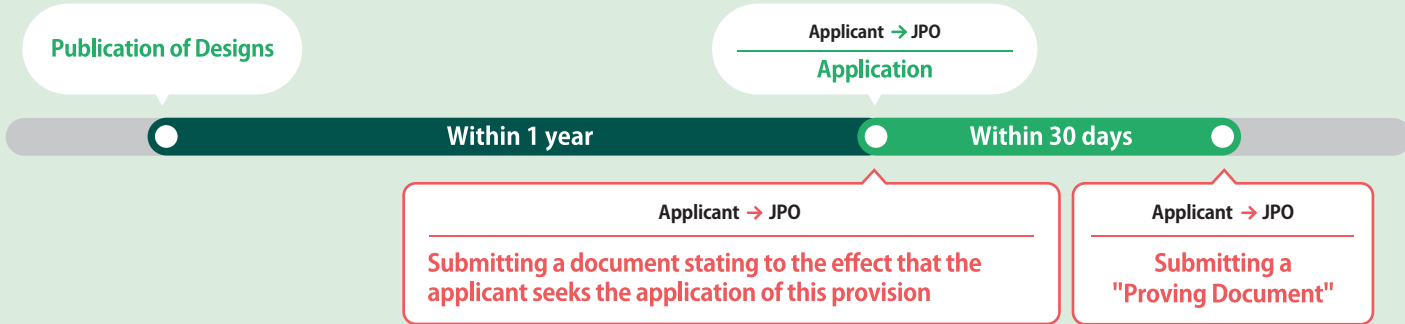
The Design Act in Japan provides that if an application for design registration is filed after a design has been published under certain conditions, the earlier publication of the design is treated as not causing lack of novelty. It is called "exceptions to lack of novelty." In order to qualify for the application of this provision, several requirements must be met, and several procedures must be followed.



Main requirements for application of the Provision on Exceptions to Lack of Novelty

Direct Filing

- 1 An application for design registration must be filed **with the JPO within 1 year from the date of publication resulting from an act of the right holder(s).**
- 2 **At the time of filing the application with the JPO**, a document stating to the effect that the applicant intends to seek the application of provision on the exceptions to lack of novelty must be submitted or indication to that effect must be made in the application form.
Note: Unless this procedure is followed at the time of application, this provision will not apply even if a "Proving Document" is submitted!
- 3 A document proving that the requirements in 1 ("Proving Document") are met must be submitted **within 30 days from the date of filing the application with the JPO.**



CAUTION !

- In order for this provision to apply in Japan, the application must be filed with the JPO within 1 year from the date of the publication of the design. Please be noted NOT with the "first country" even when priority is claimed.
- Designs lose their novelty due to various publications, such as exhibits at trade fairs, postings on social medias, and sales on e-commerce sites. Check carefully to see if there is any publication that you may have missed.
- The exceptions to lack of novelty does not apply to publication of the gazette. Check carefully to see if any gazettes have already been published in Japan or abroad.

For More Details...



Examination Guidelines for Design Part III Chapter III

← Click!



Notes when submitting documents of exception in regard to lack of novelty, and when submitting priority documents, at the time of filing international design applications

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Exceptions to Lack of Novelty of Design and "Proving Document"

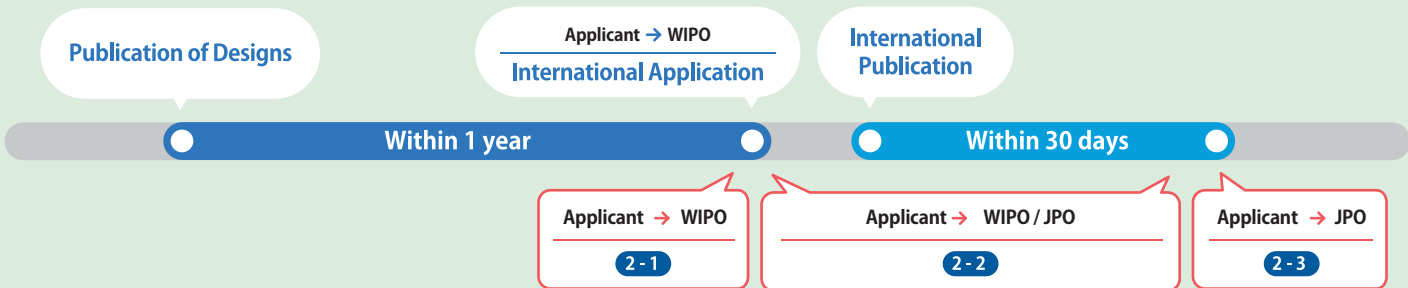
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Hague System

- 1 An international application must be filed **with WIPO within 1 year from the date of publication resulting from an act of the right holder(s).**

The applicant can choose one of the following procedures, assuming that the conditions in 1 are met.

- 2-1 **At the time of filing the international application**, it may be indicated **in the DM / 1** that the applicant intends to seek the application of the provision on exceptions to lack of novelty; and **with ANNEX II**, a document certifying the fact of publication must be submitted.
- 2-2 **At the time of filing the international application**, it may be indicated **in the DM / 1** that the applicant intends to seek the application of the provision on exceptions to lack of novelty, and a document certifying the fact of publication must be submitted **to the JPO within 30 days from the date of international publication.**
- 2-3 **Within 30 days from the date of international publication**, a document stating that the applicant intends to seek the application of the provision on exceptions to lack of novelty and a document certifying the fact of publication may be submitted **to the JPO.**



UPDATE ! October 2021

For international applications, it is now possible to submit a certificate of exceptions to lack of novelty when filing an international application with ANNEX II.

UPDATE ! January 2024

The procedures to seek for the application of the provision on exceptions to lack of novelty of design have been relaxed. Previously, it was necessary to prove all acts of publication of the design that resulted from the acts of the person entitled to obtain a design registration (including the successor of the right). With the revision, the provision on exceptions to lack of novelty can now also be applied to identical or similar designs published after the date of the earliest publication by proving the act of publication as of the date of the earliest publication.

Reference: Remedial Procedures



Various procedures are required to file an application for design registration in Japan, including claiming a priority under the Paris Convention, seeking the application of the provision on exceptions to lack of novelty, and responding to a notice of reasons for refusal. **Even if you miss the deadline for submission of relevant documents, you may still be able to obtain relief.**

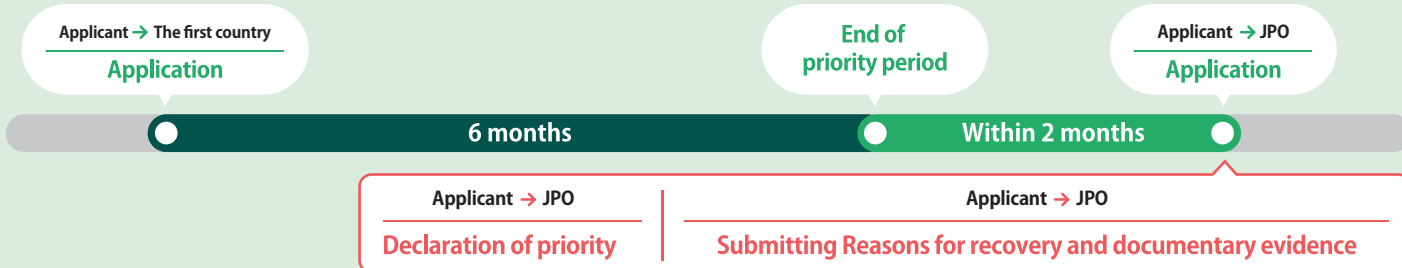


If the priority period has passed

The procedural requirements for obtaining relief are as follows.

- 1 It must be proved that failure to file an application in Japan within the priority period was **not intentional**.
- 2 The application must be filed in Japan **within 2 months after the expiration of the priority period**.
- 3 Reasons for recovery and documentary evidence must be submitted **within 2 months after the expiration of the priority period**.

*A recovery fee of 24,500 JPY must be paid.



UPDATE !

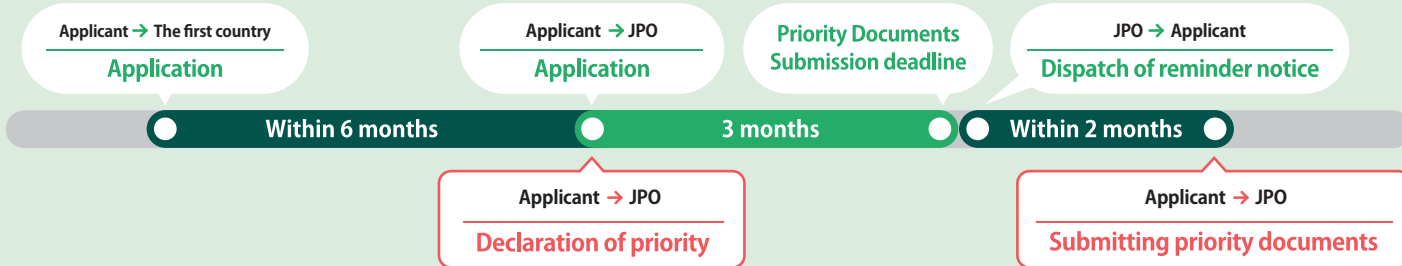
April 2023

The requirement for obtaining this relief has been relaxed from "there are legitimate grounds" to "failure to file was unintentional."

If the deadline for submitting priority documents has passed

The procedural requirement for obtaining relief is as follows.

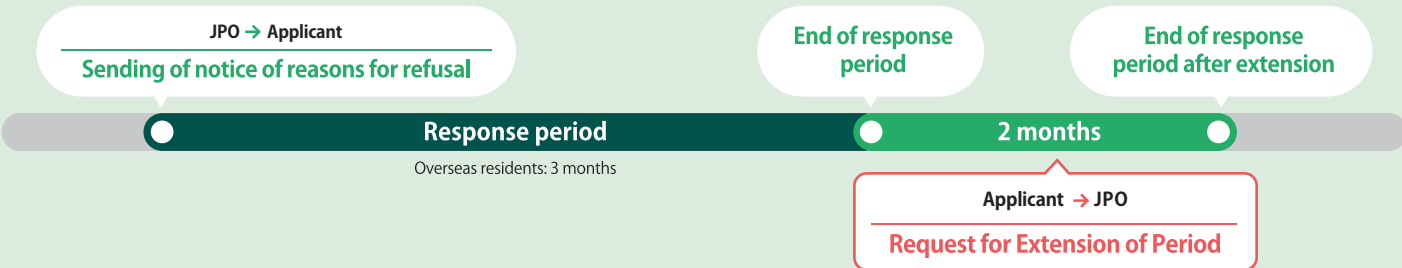
- 1 Priority documents must be submitted **within 2 months from the dispatch date of the reminder notice**.



If you wish to extend the period for responding to a notice of reasons for refusal

Within the response period or within 2 months from the day following the last day of the response period, the response period can be extended for 2 months from the last day of the response period upon request (one time only).

*The fee is 2,100 JPY for an application within the response period and 7,200 JPY for an application after the response period has elapsed.



UPDATE !

April 2021

The scope of remedial procedures in cases where the priority period has expired, the deadline for submitting priority documents has passed, or the period for responding to a notice of reasons for refusal needs to be extended has been expanded.

If the Procedures for Seeking the Application of the Provision on Exceptions to Lack of Novelty were not taken correctly

- **If there is a mistake in the "Proving Document", the applicant may resubmit it within 30 days from the date of filing.** Even if 30 days have passed, if the mistake is obvious, the explanation can be supplemented with a written opinion or a written report.
- **Note that the "document stating that the applicant intends to seek application of the provision on exceptions to Lack of Novelty of Design" submitted at the time of filing the application with the JPO cannot be added later!**
- If unable to submit the "Proving Document" due to reasons beyond its control, the applicant may submit it within 2 months (for overseas residents) from the date when such reasons ceased to exist, and within 6 months after the expiration of the period for submitting the "Proving Document".

