

## Points of Design Act Revision 2019

### **-Exterior and Interior Designs of Building-**

#### **1. Overview**

Before the revision, buildings that can be applied for design registration were limited to articles regarded as tangible movable estates such as “prefabricated house” and “prefabricated shop” for example.

This has been changed by the revision, and now any type of building, including civil engineering structures such as bridges, can be registered as a design. The revision has also enabled the interiors of shops and the like to be registered. Before the revision, the registerable interior had been limited to those in cars and the like.

#### **2. Scope of protection of building etc.**

##### **Building: Land fixtures and artificial construction including civil engineering structure**

Schools, hospitals, and plants such as a complex including a plurality of buildings can be registered as a single design.

Golf courses cannot be registered as a design because the main element is the landscape.

##### **Interior: Equipment and decoration in shops, offices, or other facilities**

The interior design comprises a plurality of components and the like, such as furniture and utensils, and can be registered as an exception of one application for one design. A range recognizable as a single space is regarded as a single design. A range to be registered may be limited to be registered as a partial design.

When the elements of the interior include lighting, the contrast of the space illuminated by the lighting and the like are also examined and included in the scope of rights.

#### **3. Examination**

##### **(1) Observation**

“For observation of a design of a building, observation of the exterior of the building is made by the naked eye of a person standing on the ground, and observation of the interior is comprehensively made through a plurality of viewpoints, instead of being limited to a single viewpoint, in which close observation is further made on a detailed part. For example, the observation of the interior is based on an observation by the naked eye on the normally used state” (Examination Guidelines for Design Part IV Chapter 4, 6.2.2).

##### **(2) Article name**

A description enabling identification of purpose and function of an article must be written in the section “Article according to Design”. A description such as “Interior of hotel guest room and of hospital room” including multiple purposes would be regarded as including two or more designs (to be the reason for refusal).

##### **(3) When article constituting interior moves**

Arrangement of articles constituting an interior does not always remain the same. Thus, a design having a shape, pattern, or coloring change based on one purpose and function is deemed as a single interior design including the shapes and the like before and after the change.

For example, the following case describes states where a bed is folded down and where the bed is stored on the wall surface. In this case, the examination is performed for a single design, on the interior including the states before and after the change.

[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.

※Excerpt from Examination Guidelines for Design Part IV Chapter 4, 4.3

#### 4. International Comparison

•Countries where exterior of building can be registered as design

Japan	US	Europe	China	Korea
○	○	○	○	×

•Countries where interior of building can be registered as design

Japan	US	Europe	China	South Korea
○	○	○	×	×

As can be seen above, due to the revision, the situation regarding the protection of the exterior/interior of a building in Japan is now the same as those in Europe and the US.

#### 5. Caution

The revision thus now enabling an interior of a building to be registered as a design cannot be regarded as being equivalent to the trade dress protection in the US and other countries.

This is because, for example, a third party making sales with an interior that is substantially the same as a registered design interior with a characteristic arrangement of utensils would not be held responsible for trademark infringement, since the action would not involve discussion on the identification function or the like.

**-Protection on Graphic Image-**

**1. Overview**

Before the revision, graphic images protected by the Design Act were graphic images displayed on an article or an article used together with the article. Such graphic images were protected only when they were recorded on the article. Thus, graphic images stored on a server, or graphic images projected on something other than an article or an article used together with the article were not protected.

With the revision, the scope of protection of the Design Act now encompasses the design of a graphic image, regardless of whether the graphic image is recorded/displayed on an article.

**2. New provision for graphic image design**

**(1) Design protected by Design Act**

With the revision, a graphic image design type (a) listed below is newly included in the scope of protection. The design type (b) has been protected before the revision.

- (a) Protected as an image itself separated from the article (graphic design)
- (b) Protected as design including a graphic image displayed as a part of an article, on a display part of the article

**(2) Requirement for graphic image design registration**

A graphic image can be registered as a design when the graphic image according to the design is used for the operation of equipment (Fig. 1(a) below), or is displayed as a result of a function of equipment (Fig. 1(b) below), regardless of where the graphic image data is stored or where the graphic image is displayed.

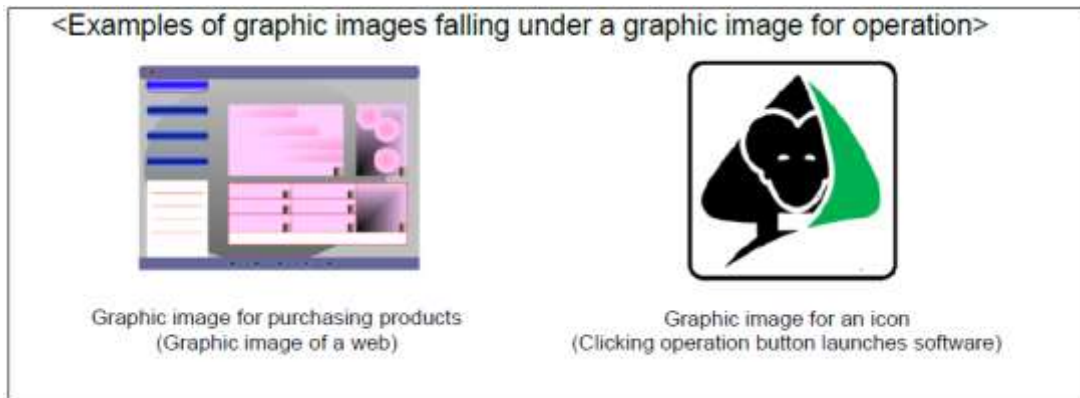


Fig. 1(a)

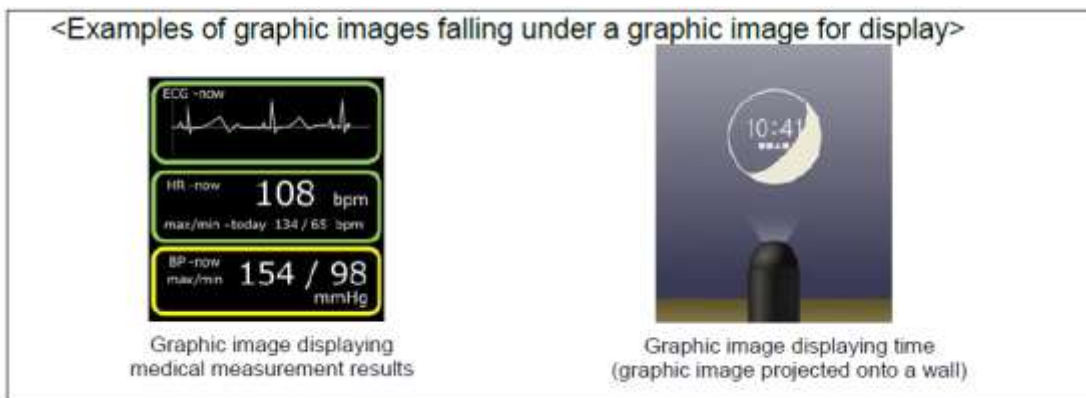


Fig. 1(b)

※ Excerpt from Examination Guidelines for Design Part IV Chapter 1, 3.1

### (3) Graphic image not protected by the Design Act

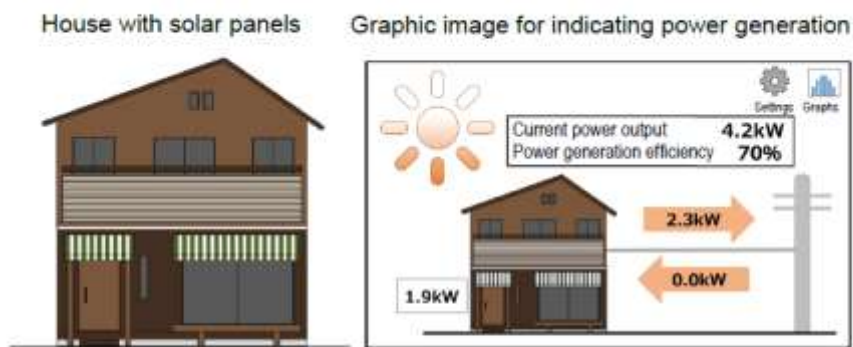
Even after the revision, graphic images (what are known as content images) of a movie or a game screen cannot be protected under the Design Act as the same as before the revision.

### (4) Design of set of articles

When the requirements for the design for a set of articles are satisfied, (1) a design of a set of graphic images, (2) a design (case 1 in the following diagram) of a set of a graphic images and a building, and (3) a design (case 2 in the following diagram) of a set of a graphic images and an article can be registered, as long as the set is coordinated as a whole.

[Case 1]

[Case example 1] A set of buildings

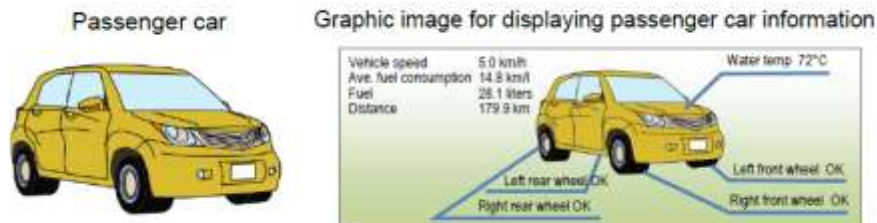


#### [Description of Article to the Design]

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 2]

[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.

※ Excerpt from Examination Guidelines for Design Part IV Chapter 3, 3.3.1



### 3. Cautions regarding examination

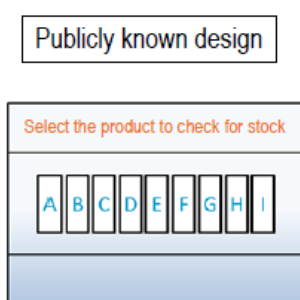
Similarity between the graphic images displayed on the display parts of articles is determined through comparison in the purpose and function not only between the graphic images but also between the articles as a whole.

Meanwhile, for a graphic image (design of graphic image itself) that is newly protected after the revision, the comparison is made in the purpose and the function between the graphic image only, meaning that the purpose and the function of the article and the like on which the graphic image is displayed are not taken into consideration.

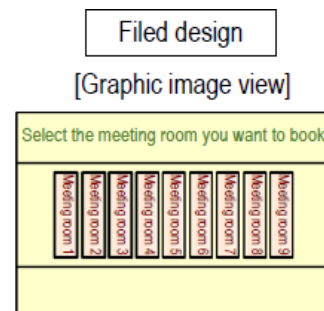
For example, in case 3 below, there is a difference in whether a product is selected or a conference room is selected. However, this difference is not taken into consideration for the determination of similarity. Since the designs are common in that they both issue an instruction for displaying information, the designs are determined to be similar to each other in the purpose and function, and the case may be cited as a reference in determining novelty and prior application.

Similarly, in case 4, there is a difference between graphic images in that one is for entering a password for entrance/exit control and the other is for entering a phone number. However, this difference is not taken into consideration for the determination of similarity. Since the graphic images are common in that they are both used for entering numerical values, the designs are determined to be similar to each other in the purpose and function, and the case may be cited as a reference in determining novelty and prior application.

[Case 3]



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



[Article to the Design] Graphic image for 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.

[Case 4]

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.

※ Excerpt from Examination Guidelines for Design Part IV Chapter 1, 6.2.2.1

**-Change in Related Design System-**

**1. Overview**

Before the revision, (1) a related design was applicable after the date of application of the principal design and before the date of publication of the registered design gazette of the principal application, and (2) a design similar only to the related design was not applicable as a related design.

With the revision, a system was changed to enable (1) a related design to be filed **before the date which has elapsed 10 years from the application of the principal design**, and (2) application of a **design similar only to a related design** as a related design.

**2. Description on new related design system**

**(1) Period of application and duration of related design**

Notwithstanding the provision of prior application, an applicant may obtain design registration of a design (related design) similar to another design (principal design) selected from the applicant's own designs either for which an application for design registration has been filed or for which design registration has been granted, if the filing date of the application for design registration of the related design is on or after the filing date of the application for design registration of the principal design and before the date which has elapsed 10 years from the application of the principal design. (Design Act Article 10 (1))

Still, if the design right of the principal design has been terminated, been invalidated, or been abandoned before the registration of the related design, the related design cannot be registered (the provision in the same section).

The duration of a related design (as well as a related design similar only to another related design described later) shall expire after a period of 25 years from the filing date of its basic design (Design Act Article 21 (2)).

**(2) Application of design similar only to another related design**

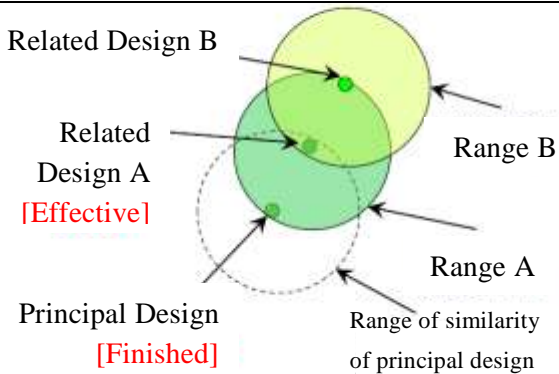
A design similar only to a related design may be granted design registration, if, with the related design being regarded as principal design, the design is filed before the date which has elapsed 10 years from the first application of the principal design (basic design) (Design Act Article 10(4)).

In this case, if the application for the registration of a design similar only to a related design A is filed before the date which has elapsed 10 years from the application of the basic design, and the related design A has not finished at that timing, the design can be registered as a new related design B even when the basic design has been extinguished at that timing, as can be seen in the example illustrated in the left one of the diagrams below.

On the other hand, even during the duration of the basic design, when the related design A has been extinguished, the design B similar only to the related design A cannot be registered as a related design.

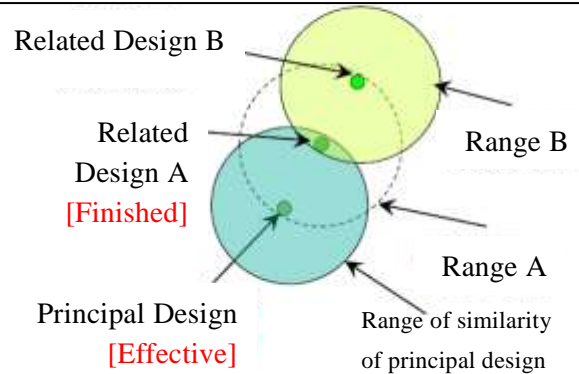
Example where related design B can be registered

Related Design B can be registered during the duration of related Design A, even if the principle design has finished



Example where related design B cannot be registered

Even during the duration of the principal design, related Design B cannot be registered if related design A has finished.



- Related Design A: Design similar to principal Design
- Related Design B: Design similar only to Related Design A
- Range A: Range of similarity of related Design A
- Range B: Range of similarity of related Design B

※Excerpt from text distributed in JPO Design Examination guideline orientation meeting

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