

Dispatch Number: 041447
Dispatch Date: 2020/08/28



**HAGUE AGREEMENT CONCERNING
THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS**

- NOTIFICATION OF REFUSAL -

Rule 18(2) of the Common Regulations

I. Office sending the notification:

Japan Patent Office (JPO)
3-4-3 Kasumigaseki, Chiyoda-ku Tokyo 100-8915, Japan

II. International Registration Number: DM/204166

Design Number: 4

Holder of the international registration:

UAB "Kūrybinis žingsnis"

III. Grounds for refusal:

The design in the application for design registration does not fall under the industrially applicable design as provided in the main paragraph of Article 3(1) of the Japan's Design Act, as noted below.

Note

(1) The subject of this application is not found to constitute a design eligible for protection. A protectable design under the Japanese Design Act is, as provided in Article 2(1) of the Act, the shape, patterns or colors, or any combination thereof of an article.

Therefore, a creation, which consists only of patterns and/or colors and is not based on any specific shape of an article, such as "Graphical user interface (computer screen layout)" is not found to constitute a protectable design.

(2) Even if a legitimate amendment is made, that allows this creation to be a design of a specific article, the design in this application is not found to be a specific design for the following reasons:

(i) The form of the article is not sufficiently provided in the reproduction.

Since a graphic image may be registered as long as they constitute an appearance of a part of an article that is understood as a tangible object, sufficient number of views for clearly showing the design of the article which contains such graphic image is required.

(ii) Specific usage and function of the graphic image is not clear.

Please note that an amendment that changes the gist of the statements/entries of the originally filed application and/or drawings will be dismissed.

IV. Information relating to subsequent procedures:

The holder of the international registration may submit a written opinion to the JPO against the “III. Grounds for refusal” within 3 months from the Dispatch Date of this notification.

The examiner will decide whether to grant protection by taking the details of the written opinion into consideration.

An applicant domiciled or residing (or, in the case of a juridical person, with a business office) outside Japan shall not undertake procedures before the JPO except through a representative domiciled or residing in Japan.

V. Date on which the refusal was pronounced (yyyy/mm/dd): 2020/08/21

Examiner: KOGA Toshiaki

Telephone: +81-3-6257-3079

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発送番号 041447

(参考和訳)

発送日 令和 2年 8月28日

意匠の国際登録に関するハーグ協定

-拒絶の通報-

共通規則第18規則(2)

I. 通報を行う官庁

日本国特許庁 (JP0)

100-8915 東京都千代田区霞が関3丁目4番3号

II. 国際登録番号

DM/204166

意匠番号

4

国際登録の名義人

UAB "Kūrybinis žingsnis"

III. 拒絶の理由

この意匠登録出願の意匠は、下記に示すように、意匠法第3条第1項柱書に規定する工業上利用することができる意匠に該当しません。

記

(1) この意匠登録出願の対象は意匠法の保護対象となる意匠を構成するものとは認められません。

意匠法の保護対象となる意匠とは、「物品の形状、模様若しくは色彩又はこれらの結合」であると意匠法第2条第1項において規定されており、「Graphical user interface (computer screen layout)」のような具体的な物品の形状に基づかない模様又は色彩のみの創作は、意匠とは認められません。

(2) 適法な補正等により当該創作が具体的な物品に係る意匠とされた場合であっても、この意匠登録出願の対象は、以下の理由により、意匠が具体的なものと認められません。

(i)複製物において、意匠に係る物品の形態が十分に表されておらず、意匠が具体的なものと認められません。画像は、有体物と解される物品の一部の外観形態を構成するものである限り、登録を受けることができますので、画像を含む物品の形態について、意匠を明確に表すために十分な数の図面が必要です。

(ii)画像の具体的な用途及び機能が不明確です。

なお、手続補正書を提出される場合、その内容が出願当初の願書の記載又は願書に添付した図面等の要旨を変更するものであるときは、その補正は却下されますのでご注意ください。

IV. 以後の手続に関する情報

国際登録の名義人は、この通報を発送した日から 3 か月 以内に、III. 拒絶の理由について、意見書を提出することができます。

審査官は意見書の内容を考慮し、保護を付与するかどうかについて決定いたします。

なお、日本国内に住所又は居所（法人にあっては、営業所）を有しない者は、日本国内に住所又は居所を有する代理人によらなければ、日本国特許庁に対して手続をすることはできません。

V. この拒絶の通報の起案日 2020年 8月21日

審査官 古賀 稔章

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Appendix

注意書

1. Subsequent procedures as the response to the Grounds for Refusal:

拒絶の理由に対する応答の手続きについて

The holder of the international registration may submit a written opinion to the JPO against the “III Grounds for refusal” within 3 months from the dispatch date of this notification.

A written opinion may be submitted within 60 days from the dispatch date of this notification when the holder of the international registration is a domestic resident in Japan.

The examiner will decide whether to grant protection by taking the details of the written opinion into consideration.

An applicant domiciled or residing (or, in the case of a juridical person, with a business office) outside Japan (overseas resident) shall not undertake procedures before the JPO except through a representative domiciled or residing in Japan. In this case, the appointed representative must be notified to the JPO.

国際登録の名義人は、この通報を発送した日から 3 月以内に、III 拒絶の理由について、日本国特許庁に意見書を提出することができます。

国際登録の名義人が国内居住者の場合は、この通報を発送した日から 60 日以内に、意見書を提出することができます。※1

審査官は意見書の内容を考慮し、保護を付与するかどうかについて決定いたします。

なお、日本国内に住所又は居所（法人にあっては、営業所）を有しない者（在外者）は、日本国内に住所又は居所を有する代理人によらなければ、日本国特許庁に対して手続をすることはできません。代理人を通じて手続を行う場合には、日本国特許庁に対して当該代理人を届け出る必要があります。

※1 ただし、下記表に掲げる地に居住する場合においては、75 日とする。（「方式審査便覧」04.10 参照）

東京都	伊豆諸島・小笠原諸島
石川県	輪島市海士町（舳倉島）
鹿児島県	南西諸島
沖縄県	沖縄本島を除く周辺諸島
北海道	北海道周辺諸島

2. Reference information relating to various kinds of Grounds for Refusal:

各種の拒絶の理由に関する参考情報

(1) About the classification of articles

物品の区分について

Please refer to the link below for the classification of articles as provided by an Ordinance of the Ministry of Economy, Trade and Industry.

経済産業省令で定められている物品の区分については、以下をご参照下さい。

URL: https://www.jpo.go.jp/e/system/laws/rule/other/design/ishou_kisoku_betuhyo.html

(2) About the set of articles

組物について

Please refer to the link below for the set of articles as exemplified by an Ordinance of the Ministry of Economy, Trade and Industry. (Appended Table 2 of the Ordinance for Enforcement of the Design Act)

経済産業省令で定められている組物については、以下をご参照下さい。（意匠法施行規則別表第二）

URL: https://www.jpo.go.jp/e/system/laws/rule/other/design/ishou_kisoku_betuhyo.html

3. Extract from the Japan's Design Act (until March 31, 2020)

The following provisions are applied to international registrations designating Japan under the Geneva Act that are registered until March 31, 2020.

(Definition, etc.)

Article 2 (1) "Design" in this Act shall mean the shape, patterns or colors, or any combination thereof, of an article (including a part of an article, the same shall apply hereinafter except in Article 8), which creates an aesthetic impression through the eye.

(2) The shape, patterns or colors, or any combination thereof, of a part of an article as used in the preceding paragraph shall include those in a graphic image on a screen that is provided for use in the operation of the article (limited to the operations carried out in order to enable the article to perform its functions) and is displayed on the article itself or another article that is used with the article in an integrated manner.

(3) "Use" of a design in this Act shall mean the manufacturing, using, assigning, leasing, exporting or importing, or offering for assignment or lease (including displaying for the purpose of assignment or lease, the same shall apply hereinafter) of an article to the design.

(4) "Registered design" in this Act shall mean a design for which a design registration has been granted.

(Conditions for design registration)

Article 3 (1) A creator of a design that is industrially applicable may be entitled to obtain a design registration for the said design, except for the following:

(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 described in a distributed publication, or designs that were made publicly available through an electric telecommunication 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) Where, 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 shape, patterns or colors, or any combination thereof that were publicly known in Japan or a foreign country, a design registration shall not be granted for such a design (except for designs prescribed in any of the items of the preceding paragraph), notwithstanding the preceding paragraph.

Article 3-2 Where a design in an application for design registration is identical with or similar to part of a design described in the statement 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 said application and published after the filing of the said application in the design bulletin under Article 20(3) or Article 66(3) (hereinafter referred to in this Article as the "earlier application"), a design registration shall not be granted for such a design, notwithstanding paragraph (1) of the preceding Article; provided, however, that this shall not apply where the applicant of the said application and the applicant of the earlier application are the same person and the said application was filed before the date when the design bulletin in which the earlier application was published under Article 20(3) (except for a design bulletin in which the matters listed in Article 20(3)(iv) were published under Article 20(4)) was issued.

(Unregistrable designs)

Article 5 Notwithstanding Article 3, the following designs shall not be registered.

(i) a design which is liable to injure public order or morality;

(ii) a design which is liable to create confusion with an article pertaining to another person's business; or

(iii) a design solely consisting of a shape that is indispensable for securing functions of the article.

(One application per design)

Article 7 An application for design registration shall be filed for each design in accordance with a classification of articles as provided by an Ordinance of the Ministry of Economy, Trade and Industry.

(Design for a set of articles)

Article 8 Where two or more articles are used together and are specifically designated by an 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 for one design, and the applicant may obtain a design registration, for designs for the articles that constitute the Set of Articles.

(Prior application)

Article 9 (1) 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 shall be entitled to obtain a design registration for the design.

(2) Where two or more applications for design registration have been filed for identical or similar designs on the same date, only one applicant, who was selected by consultations between the applicants who filed the said applications, shall be entitled to obtain a design registration for the design. Where no agreement is reached by consultations or consultations are unable to be held, none of the applicants shall be entitled to obtain a design registration for the design.

(3) Where an application for design registration has been waived, withdrawn or dismissed, or where the examiner's decision or trial decision to the effect that an application for design registration is to be refused has become final and binding, the application for design registration shall, for the purpose of the preceding two paragraphs, be deemed never to have been filed; provided, however, that this shall not apply to the case where the examiner's decision or trial decision to the effect that the application for design registration is to be refused has become final and binding on the basis that the latter sentence of the preceding paragraph is applicable to said application for design registration.

(4) The Commissioner of the Patent Office shall, in the case of paragraph (2), order the applicants to hold consultations as specified under paragraph (2) and to report the result thereof, designating an adequate time limit.

(5) Where no report under the preceding paragraph is submitted within the time limit designated under said paragraph, the Commissioner of the Patent Office may deem that no agreement under paragraph (2) has been reached.

(Related designs)

Article 10 (1) Notwithstanding Article 9(1) or (2), an applicant for design registration may obtain design registration of a design that is similar to another 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 (hereinafter the selected design is referred to as the "Principal Design" and a design similar to it is referred to as a "Related Design"), if the filing date of the application for design registration of the Related Design (or when the application for design registration of the Related Design contains a priority claim under Article 43(1), 43-2(1) or 43-2(2) of the Patent Act as applied mutatis mutandis under Article 15 of this Act, the filing date of the earliest application, the filing date of an application that is deemed to be the earliest application under Article 4.C(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 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 under Article 4.(A)2 of the Paris Convention, hereinafter the same shall apply in this paragraph) is on or after the filing date of the application for design registration of the Principal Design and before the date when the design bulletin in which the application for design registration of the Principal Design is published under Article 20(3) (except for a design bulletin in which the matters listed in Article 20(3)(iv) were published under Article 20(4)) is issued.

(2) Where an exclusive license has been established for the design right of the Principal Design, a design registration shall not be granted to its Related Designs, notwithstanding the preceding paragraph.

(3) A design registration shall not be granted to a design that is similar only to a Related Design to be registered under paragraph (1).

(4) Where applications for design registration are filed for two or more Related Designs pertaining to the Principal Design, Article 9(1) or (2) shall not apply to these Related Designs.

4. Extract from the Japan's Design Act (on or after April 1, 2020)

The following provisions are applied to international registrations designating Japan under the Geneva Act that are registered on or after April 1, 2020.

(Definition, etc.)

Article 2 (1) "Design" in this Act shall mean 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, the same shall apply hereinafter excluding Article 3(2), Article 37(2), Article 38(vii) and (viii), Article 44-3(2)(vi) and Article 55(2)(vi)), which creates an aesthetic impression through the eye.

(2) "Working" of a design in this Act shall mean the following acts;

(i) Manufacturing, using, assigning, leasing, exporting or importing, or offering for assignment or lease (including displaying for the purpose of assignment or lease, the same shall apply hereinafter) of the article to the design;

(ii) Building, using, assigning or leasing, or offering for assignment or lease of the building to the design;

(iii) Acts falling under any of the following performed for the graphic image to the design (including Computer Program, etc. (refers to Computer Programs, etc. provided in Article 2(4) of the Patent Act (Act No.121 of 1959); the same shall apply hereinafter) that have a function to display the graphic image and the same shall apply in the following items);

(a) Creating, using, or providing through an electric telecommunication line or offering for the provision (including displaying for the purpose of provision, the same shall apply hereinafter) of the graphic image to the design;

(b) Assigning, leasing, exporting or importing, or offering for assignment or lease of a recording medium that has recorded the graphic image to the design or device incorporating the graphic image to the design (hereinafter referred to as a "graphic image recording medium, etc.");

(3) "Registered design" in this Act shall mean a design for which a design registration has been granted.

(Conditions for design registration)

Article 3 (1) A creator of a design that is industrially applicable may be entitled to obtain a design registration for the said design, except for the following:

(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 described in a distributed publication, or designs that were made publicly available through an electric telecommunication 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) Where, 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 the 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, a design registration shall not be granted for such a design (except for designs prescribed in any of the items of the preceding paragraph), notwithstanding the preceding paragraph.

Article 3-2 Where a design in an application for design registration is identical with or similar to part of a design described in the statement 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 said application and published after the filing of the said application in the design bulletin under Article 20(3) or Article 66(3) (hereinafter referred to in this Article as the "earlier application"), a design registration shall not be granted for such a design, notwithstanding paragraph (1) of the preceding Article; provided, however, that this shall not apply where the applicant of the said application and the applicant of the earlier application are the same person and the said application was filed before the date when the design bulletin in which the earlier application was published under Article 20(3) (except for a design bulletin in which the matters listed in Article 20(3)(iv) were published under Article 20(4)) was issued.

(Unregistrable designs)

Article 5 Notwithstanding Article 3, the following designs shall not be registered.

(i) a design which is liable to injure public order or morality;

(ii) a design which is liable to create confusion with an article, building or graphic image pertaining to another person's business; or

(iii) a design solely consisting of a shape that is indispensable for securing functions of the article or a shape that is indispensable for usage of the building, or a design solely consisting of a display that is dispensable for usage of the graphic image.

(One application per design)

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

(Design for a set of articles)

Article 8 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.

Article 8-2 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.

(Prior application)

Article 9 (1) 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 shall be entitled to obtain a design registration for the design.

(2) Where two or more applications for design registration have been filed for identical or similar designs on the same date, only one applicant, who was selected by consultations between the applicants who filed the said

applications, shall be entitled to obtain a design registration for the design. Where no agreement is reached by consultations or consultations are unable to be held, none of the applicants shall be entitled to obtain a design registration for the design.

(3) Where an application for design registration has been waived, withdrawn or dismissed, or where the examiner's decision or trial decision to the effect that an application for design registration is to be refused has become final and binding, the application for design registration shall, for the purpose of the preceding two paragraphs, be deemed never to have been filed; provided, however, that this shall not apply to the case where the examiner's decision or trial decision to the effect that the application for design registration is to be refused has become final and binding on the basis that the latter sentence of the preceding paragraph is applicable to said application for design registration.

(4) The Commissioner of the Patent Office shall, in the case of paragraph (2), order the applicants to hold consultations as specified under paragraph (2) and to report the result thereof, designating an adequate time limit.

(5) Where no report under the preceding paragraph is submitted within the time limit designated under said paragraph, the Commissioner of the Patent Office may deem that no agreement under paragraph (2) has been reached.

(Related designs)

Article 10 (1) Notwithstanding Article 9(1) or (2), an applicant for design registration may obtain design registration of a design that is similar to another 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 (hereinafter the selected design is referred to as the "Principal Design" and a design similar to it is referred to as a "Related Design"), if the filing date of the application for design registration of the Related Design (or when the application for design registration of the Related Design contains a priority claim under Article 43(1), 43-2(1), 43-3(1) or 43-3(2) of the Patent Act as applied mutatis mutandis under Article 15(1) of this Act, the filing date of the earliest application, the filing date of an application that is deemed to be the earliest application under Article 4.C(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 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 under Article 4.(A)2 of the Paris Convention, hereinafter the same shall apply in this paragraph) is on or after the filing date of the application for design registration of the Principal Design and before a lapse of 10 years from the date of filing of the application for design registration of the Principal Design; provided, however, that this shall not apply to a case where the design right of the Principal Design has been extinguished under the Article 44(4), a trial decision to the effect that the design right of the Principle Design is to be invalidated has become final and binding, or the design right of a Principal Design has been waived at the time of the establishment of the design right of the Related Design.

(2) Among the applicant's own designs which has fallen under item (i) or (ii) of Article 3, paragraph (1), those which are identical with or similar to the Principal Designs of the design for which the registration is requested under the preceding paragraph shall be deemed not to have fallen under item (i) or (ii) of the said Article, paragraph (1), for the purposes of the said Article, paragraph (1) and (2) for such a design for which the registration is requested.

(3) The design for which the registration is requested under paragraph (1), for the purpose of application of the proviso to Article 3-2, the term "except for a design bulletin in which the matters listed in Article 20(3)(iv) were published under Article 20(4)" in the proviso to Article 3-2 shall be deemed to be replaced with "where the secrecy is requested for the earlier application for design registration under Article 14(1), limited to a design bulletin in which the matters listed in Article 20(3) (iv) were published under Article 20(4)."

(4) With respect to a design similar only to a Related Design to be registered under paragraph (1), the Related Design shall be deemed to be the Principal Design and a design registration may be granted to the design under the said paragraph. The same shall apply to a design that is similar only to

the Related Design for which the design registration above may be granted and to a design that is similar only to the gradual Related Design linked to the Related Design.

(5) In the case of the preceding paragraph, for the purpose of application of the paragraph (1), the term "the Principal Design" in the said paragraph shall be deemed to be replaced with "the primarily selected design pertaining to the Related Design".

(6) Where an exclusive license has been established for the design right of the Principal Design, a design registration shall not be granted to its Related Designs, notwithstanding the paragraph (1) and (4).

(7) Where applications for design registration of the Related Design are filed, if the applications for design registration are for two or more designs and each of such designs falls under the Related Designs (refers to the Related Designs of the Fundamental Design and the gradual Related Designs linked to the Related Design, the same shall apply hereinafter) pertaining to the Fundamental Design (refers to the primarily selected design pertaining to the Related Design, the same shall apply hereinafter), Article 9(1) or (2) shall not apply to these designs.

(8) In the case as provided in the preceding paragraph, among the applicant's own designs which has fallen under item (i) or (ii) of Article 3, paragraph (1), those which are identical with or similar to the Related Design pertaining to the Fundamental Design (excluding the cases where an application for design registration of the Related Design has been waived, withdrawn or dismissed, or where the examiner's decision or trial decision to the effect that an application for design registration of the Related Design is to be refused has become final and binding, or the design right of the Related Design has been extinguished under Article 44(4) or a trial decision to the effect that the design right of the Related Design is to be invalidated has become final and binding or the design right of the Related Design has been waived) shall be deemed not to have fallen under item (i) or (ii) of Article 3, paragraph (1) for the purposes of said Article, paragraph (1) and (2) for such a design for which the registration is requested under the paragraph (1).

*These are unofficial translations. Only the original Japanese texts of the Act have legal effect.