

Expanded protection for graphic images under revised Design Act

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Graphic images Revised Design Examination Guidelines Expanded protection

The Ministry of Economy, Trade and Industry (METI) recently announced on its website that a Cabinet order of 1 November 2019 had declared that the reformed Design Act would come into force on 1 April 2020.

This article provides a summary of the reformed act's expanded scope of protected designs.

Graphic images

Under the current Design Act, only graphic images which are recorded or displayed on articles (eg, computers or smartphones) are considered protectable designs.

Under the revised act, the scope of what constitutes a protectable design will be expanded to include graphic images which are not:

- recorded on articles but provided via computer networks; or
- displayed or shown on articles, such as images which are displayed on roads or walls.

However, graphic images which are unrelated to the function of, for example, machines, apparatuses and devices (eg, computer wallpapers or video game or movie images) cannot be protected.

On filing a design application, applicants must specify how the graphic image will be used.

Revised Design Examination Guidelines

The Design Examination Guidelines Working Group (part of the Design Subcommittee of the METI Industrial Structure Council IP Committee) had prepared a draft version of the revised Design Examination Guidelines. The draft was made available for public comment on 11 December 2019 and the public have until 9 January 2020 to respond.

According to the [draft](#), the following graphic images are protectable as designs under the revised Design Act (ie, Figures 1 to 4). **(1)**

Type A: Graphic images to be used for operation of articles

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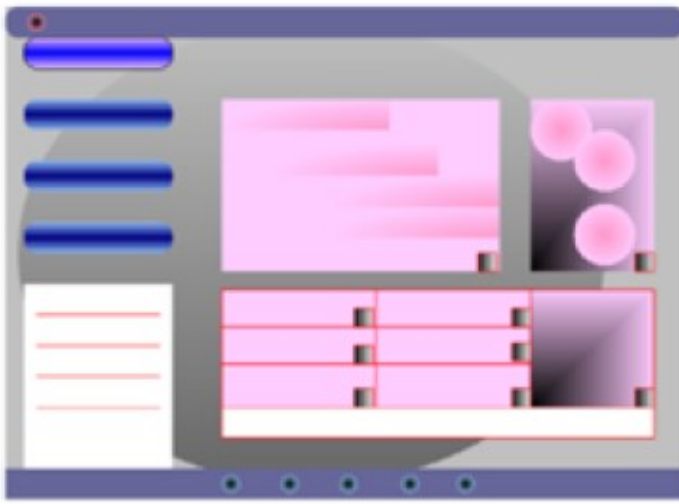


Figure 1. Graphic image of a website for buying goods



Figure 2. Graphic image for an icon functioning as an operation button(2)

Type B: Graphic images displayed based on function of articles



Figure 3. Graphic image for displaying a medical measurement result

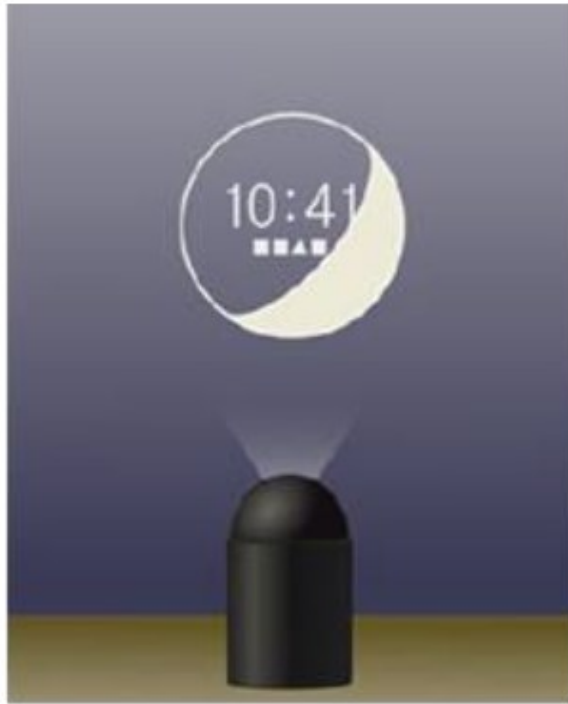


Figure 4. Graphic image for projecting the time on a wall

The revised Design Act stipulates that applicants will have to specify the indication of use of graphic images (ie, how the graphic images will be used). According to the current draft of the revised Design Examination Guidelines, the following uses are considered acceptable uses of graphic images:

- to provide information;
- for trade;
- for learning purposes;
- for controlling sound volume;
- as indicators; and
- as scroll bars.

Unless applicants specify the indication of use, examiners will refuse applications for designs as graphic images on the grounds that they are too vague to register. In such cases, the amendment to add indication of use of graphic images will not be allowed, because it changes the applied-for design. Therefore, an application could be refused if the indication of use of graphic images is not specified at the time of filing.

Expanded protection

The protection of graphic images which are registered as designs clearly covers "creating, using, providing the graphic images via communication networks, etc" and "assigning, leasing, importing and exporting, etc., of (a) storage media bearing graphic images data and/or (b) machines, apparatuses, devices etc. incorporating graphic images data" (Article 2.2.3 of the reformed Design Act).

For example, if third parties use graphic images identical or similar to registered designs on webpages or sold or leased PCs and smartphones that incorporate graphic images without the registrants' permission, such activities will be considered design infringement.

However, protection will be limited to commercial activities and not expanded to using graphic images registered as designs for private activities (eg, private use, storage and display on smartphones).

For further information on this topic please contact [Noboru Taniguchi](#) at Nishimura & Asahi by telephone (+81 3 6250 6200) or email (n_taniguchi@jurists.co.jp). The Nishimura & Asahi website can be accessed at www.jurists.co.jp.

Endnotes

(1) Source of Figures 1 to 4 available [here](#).

(2) Graphic images for icons without such a function cannot be protected under the revised Design Act.

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