

# Expanded protection for building and interior designs under revised Design Act

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**Building designs**  
**Interior designs**

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 revised Design Act would come into force on 1 April 2020.

This article provides a summary of the revised act's expanded scope of IP protection for building and interior designs.

## **Building designs**

Under the current Design Act, only designs for articles are protectable. In principle, building designs cannot be protected as designs under the act, as real estate is not considered articles in Japan.

However, designs for (for example) gates and prefabricated houses, which are industrially mass produced and considered movables during sales, are protectable even if they are considered real estate during their use.

Designs for buildings considered real estate will be protectable as designs under the revised Design Act.

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 had until 9 January 2020 to respond.

According to the draft, buildings under the revised Design Act must be:

- fixtures attached to land; and
- artificial structures, including civil engineering structures.

For example, natural mountains, golf courses and ski slopes will not be protectable as designs under the revised Design Act. However, natural objects such as plants and stones that are fixed to a building or land do not change their position and pertain to the building will be considered constituent parts of its design.

Protectable building designs also include internal designs that are visible during a building's normal use, in addition to exterior designs.

Types of building under the revised Design Act include "buildings for commercial use; houses, factories; bridges; radio masts and towers".

The revised act stipulates that building design applicants must specify and describe the use of their buildings. The draft sets out the following acceptable uses of buildings:

- houses;
- schools;
- gymnasiums;
- offices;
- hotels;
- department stores;
- hospitals;
- museums;

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- bridges; and
- gas holders.

Building designs which consist of multiple architectural structures may also meet the design unity requirements and therefore be protected (eg, schools and commercial uses).

The draft considers "multiple uses" of buildings acceptable, but applicants in such cases must outline the specific uses of their building (eg, the building's lower floors are used as shops and the upper floors are used as accommodation).

An application may be refused if a building's use is insufficiently specified at the time of filing. The applicant cannot amend a refused application in order to add the building's use, as this would change the applied-for design.

Under the revised act, the protection of buildings which are registered as designs will cover "buildings/constructing, assigning, leasing, offering for assignment or lease, or displaying for the purpose of assignment or lease [of buildings]". However, it will not include the drafting or preparation of building design drawings according to the Design Examination Guidelines Working Group's minutes. Thus, the protection of registered building designs will not cover third party preparation of building design drawings.

The protection of registered designs will be limited to commercial activities and not expanded to private activities. Accordingly, the protection of registered designs will not cover the private use of houses or apartments; however, it will cover the commercial use of buildings such as department stores and offices.

The protection of registered designs is expanded to designs that are identical or similar to registered designs. For example, the protection of a registered design for a house as real estate will be expanded both to prefabricated houses as articles and other houses as real estate, provided that both designs are identical or similar.

### **Interior designs**

Under the current Design Act, an interior design consisting of multiple items (eg, tables, chairs and lighting equipment) and building elements (eg, wall decorations and floors) did not meet the unity of design requirements and thus could not be registered entirely as one design. However, under the revised act, such an interior design may be registered if it creates a unified aesthetic as a whole.

The revised Design Act stipulates that if a design for articles, buildings or graphic images consists of equipment and decoration inside a shop, office or other facility it may be filed and registered as one design if it creates a unified aesthetic whole.

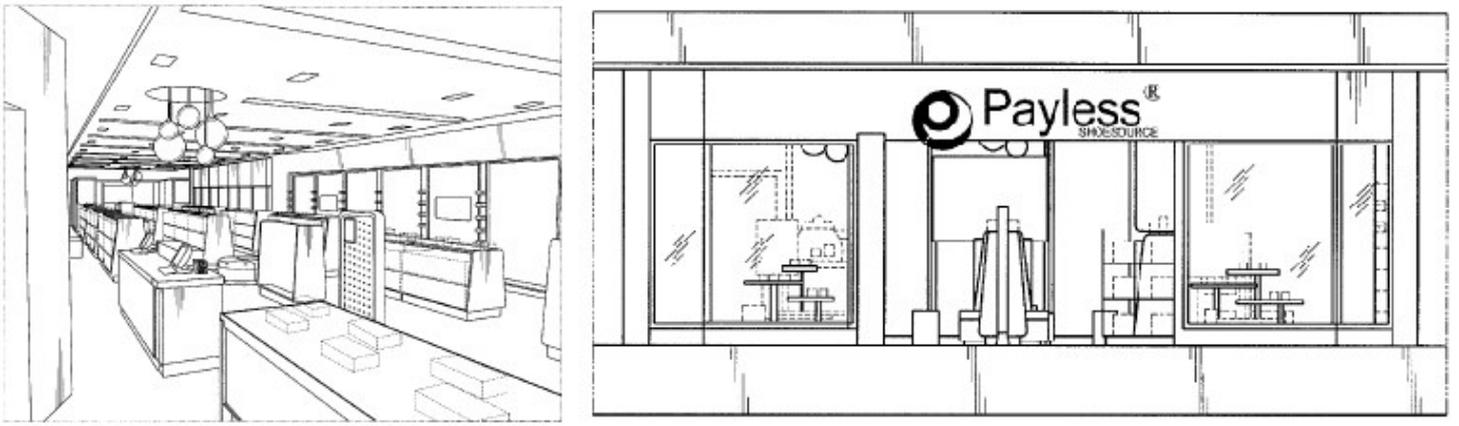
According to the draft of the revised Design Examination Guidelines, an interior design must:

- be situated inside a shop, office or other facility;
- consist of multiple articles, buildings or graphic images under the revised Design Act; and
- create a unified aesthetic whole.

### ***Situated inside a shop, office or other facility***

According the draft, 'facilities' are objects in which people spend a certain amount of time. For example, accommodation, medical facilities, educational facilities and houses are considered facilities under the revised Design Act. Facilities also include prefabricated shops or offices, railway vehicles, passenger aircraft and ships as movables provided that they are designed for people to spend a certain amount of time inside.

Designs that are not exclusively for the interior of a facility are not considered interior designs. However, if the inside of a facility flows seamlessly to the outside, the outside may be included in an applied-for interior design (eg, Figure 1).



**Figure 1. US Design Patent 638139**

***Consist of multiple articles, buildings or graphic images under the reformed Design Act***

In principle, animals, plants, stones and natural landforms which do not fall within the definitions of articles, buildings or graphic images under the reformed Design Act will not be considered constituent parts of interior designs.

However, natural objects such as plants and stones that are fixed to a building, do not change their position, and pertain to buildings may be treated as constituting part of a building's interior design.

***Create a unified aesthetic whole***

The draft sets out several examples of interior designs which create a unified aesthetic whole. However, discussions between the Japan Patent Office (JPO) and the Design Committee of the Japan Patent Attorneys Association suggest that the JPO will rarely apply this requirement to interior designs.

Interior designs which comply with the above requirements may be registered under the revised Design Act provided that they meet the other registrability requirements (eg, novelty and creativity).

As one of the registrability requirements, interior designs should be clearly specified and disclosed. If the use of interiors is considered too vague to register, an application for an interior design will be rejected. For example, the indication 'hotel interior' or 'house interior' is insufficient to specify and describe use. Use should be clearly indicated, such as 'hotel room interior', 'hotel lobby interior', 'residential living room interior' or 'residential kitchen interior'.

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