

Requirements for Claiming Priority in Japanese Design Applications

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The following requirements must be met to enjoy the priority date of an earlier filed foreign application (the “Priority Application”) in a Japanese design application or a Hague international application designating Japan (collectively the “Japanese Application”).

1. Entitlement

The applicant is, in principle, a national of a member state of the Paris Convention who filed the Priority Application in a member state of the convention or their successor.

2. Subject matter

The Priority Application is an application for a design registration, patent or utility model registration. A trademark application cannot be used as a basis for claiming priority.

3. Identicalness

The claimed design is at least “substantially identical” with the subject matter of the Priority Application. This requirement is rather strict. Below are examples of cases where this requirement is not met.

- (1) The Priority Application relates to a whole design (i.e. claims a whole article) but the Japanese Application relates to a partial design (i.e. claims a part of an article) and vice versa.
- (2) The claimed part differs between the Priority Application and the Japanese Application.
- (3) The Priority Applications each relate to a different article and the Japanese Application is directed to a combination of these articles.

As there are other examples of such cases, we recommend consulting with us to see if your proposed design meets this requirement before filing in Japan.

In addition, even where an amendment has been made in the Priority Application, the applicant must submit for the Japanese Application the original drawings that were submitted for the Priority Application.

4. Timing

The Japanese Application is filed within 6 months of the filing date of the Priority Application.

5. Procedures

The applicant claims priority by specifying the name of the member state where the Priority Application was filed and the filing date and number of the Priority Application when filing the Japanese Application.

Unless the applicant uses the DAS system, they must submit an original certified priority document to the JPO within 3 months of the Japanese filing date or the international publication date. No extension of time is available except in very limited circumstances.