

GNIPA Summit Meeting

Recent Initiatives Related to the Design System in Japan

October 26th, 2023

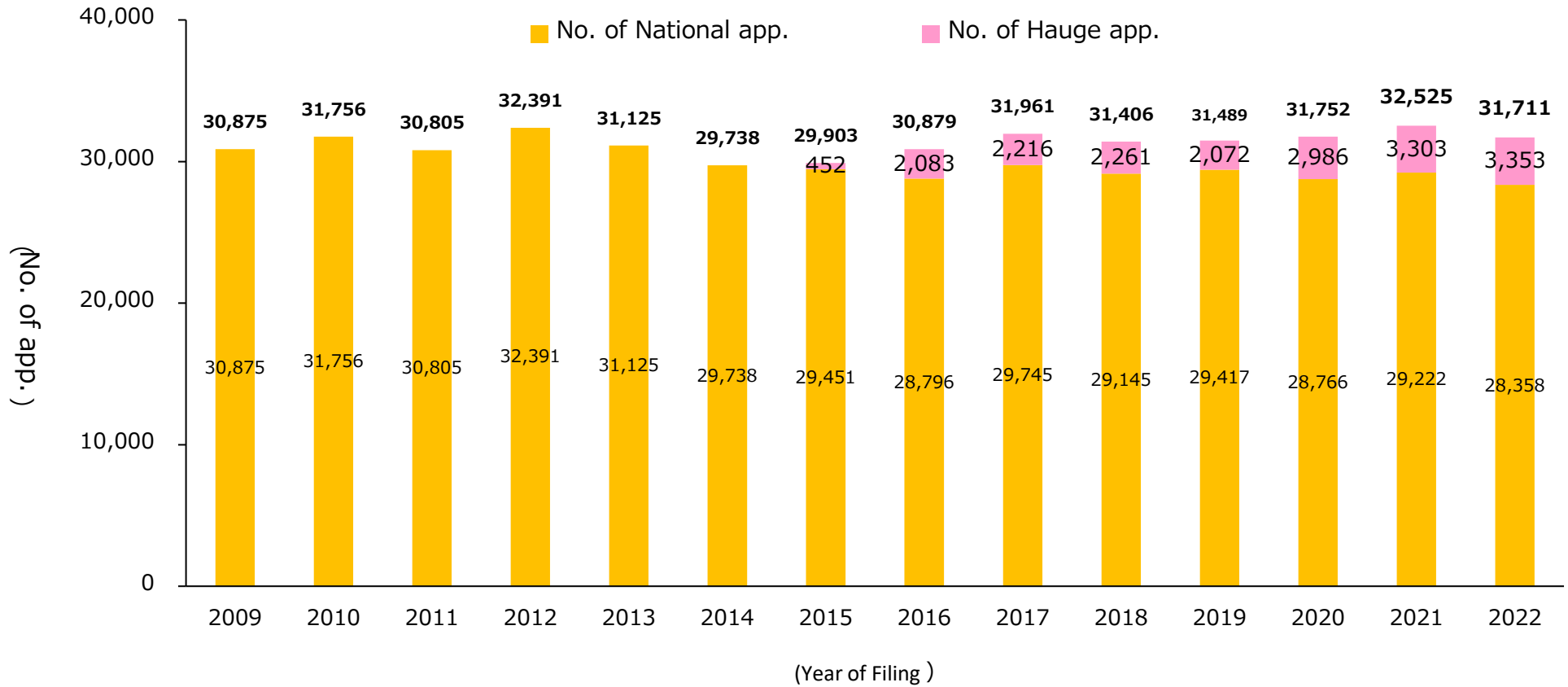
SEKI Keisuke, JETRO Dubai

Representative of the JPO in Middle East and Africa



- 1 Statistics on Design Applications
- 2 Revisions of the Design Act
- 3 Design Protection in Digital Space

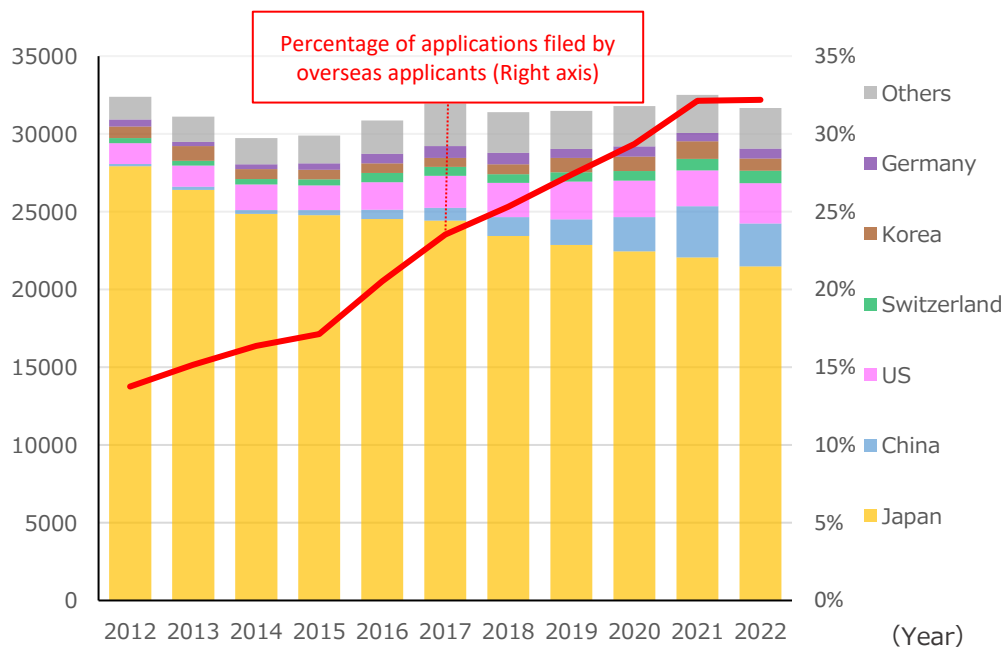
Changes in Number of Design Applications Filed



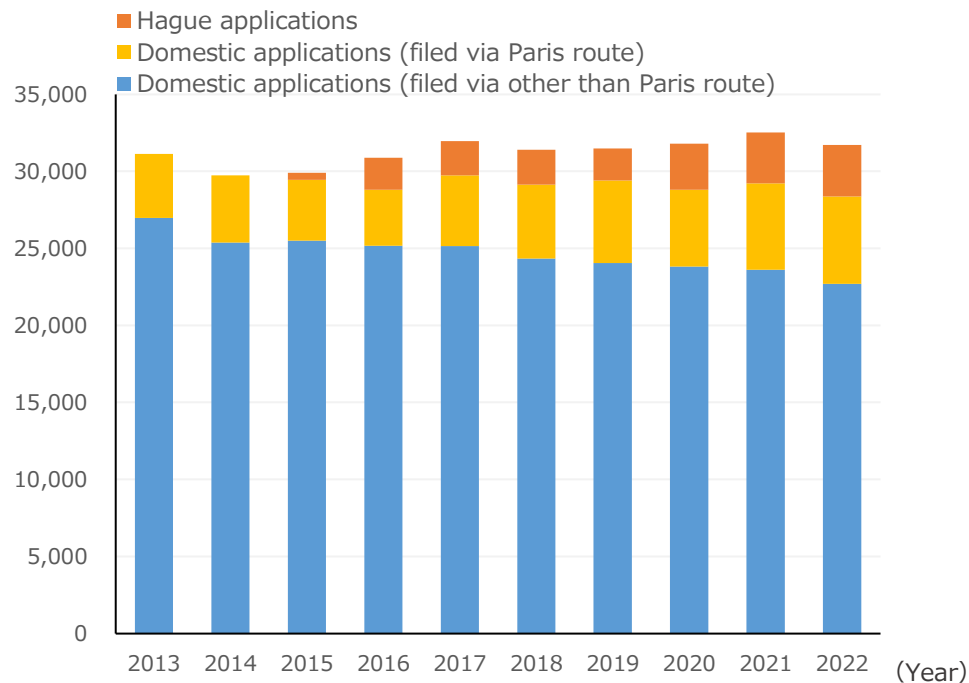
Note: Hague applications are international design applications that were internationally published in that year.

Trends of overseas applications for design registration filed in Japan

Transition in number of applications for design registration filed in Japan by top filing country



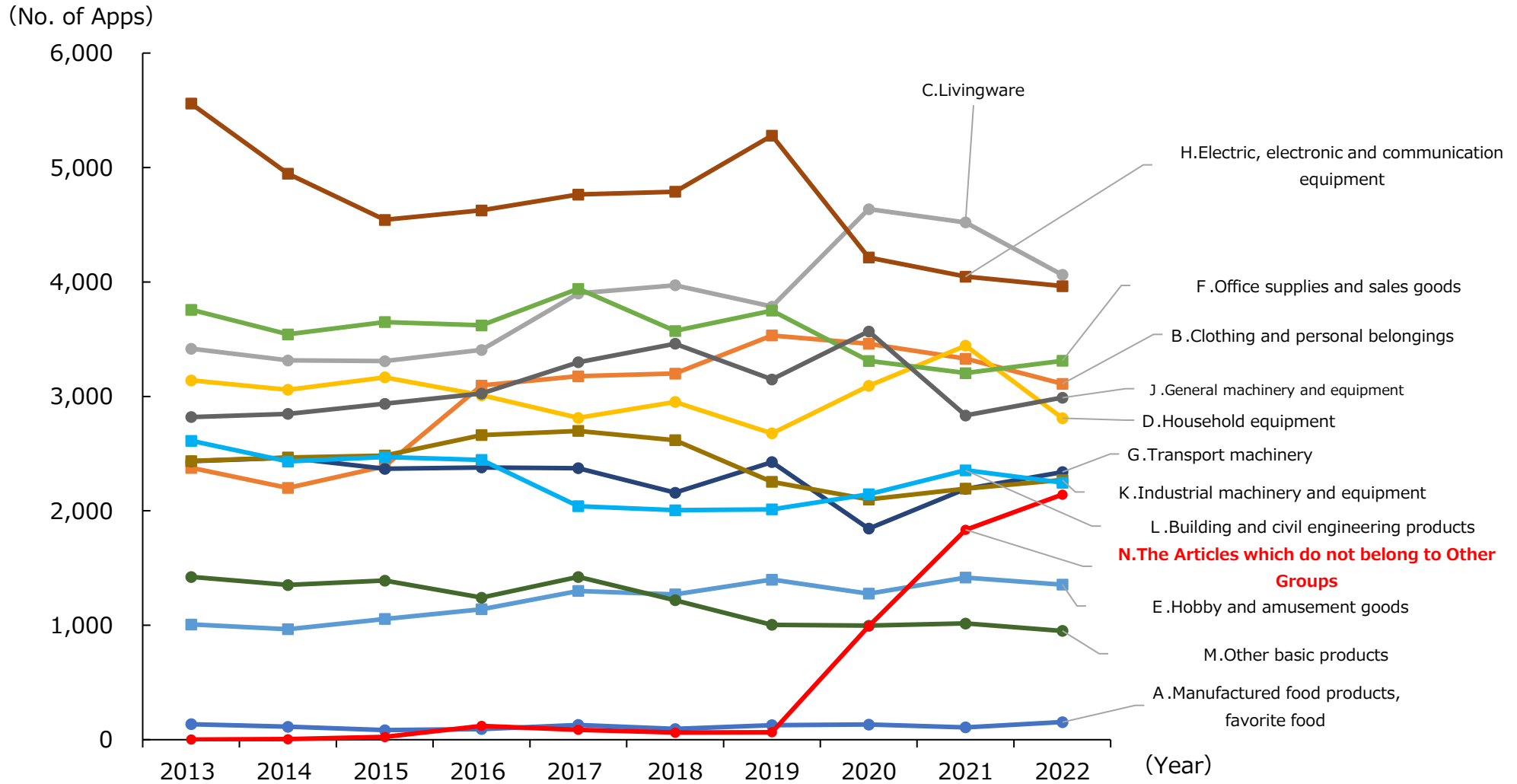
Transition in number of applications for design registration filed in Japan by filing route



* Researched by the Design Division on February 2, 2023.
 * Hague applications --- represented by numbers of international registration designs for which international publication was made in the corresponding year.

Note: Hague applications --- represented by numbers of international registration designs for which international publication was made in the corresponding year.
 Source: Put together by the Design Division referring to "JPO Status Report 2023" (for numbers of applications/Hague applications) and data retrieved by the Design Division on June 28, 2023 (for numbers of Paris-route applications).

Change in the Number of Design Applications by Japanese Design Classification



Main Values (Speed, Quality)



Fast



High-Quality

Normal Accelerated

6.0 / 1.8

First Action Pendency
(months)

FY2022

94.9 %

Users' Satisfaction
(as neutral or higher)

FY 2022 Survey

0.01 %

Invalidation rate
(per registration)

FY 2022



Full substantive examination
based on worldwide prior design search

The 2019 Revision of the Design Act

As the 2019 revision of the Design Act came into effect, expansion of scope of protection, enhancement of related design system, change in the duration of design right and introduction of collective application for multiple designs, etc. were implemented.

Revisions

- Expansion of the Scope of Protection (GUI, Building, Interior)
- Enhancement of the Related Design System
- Change in the duration of design right
- Clarification of the level of creativity
- Introduction of partial design for a set of Articles

- Introduction of collective application for multiple designs
- Review of handling of article classification
- Expansion of remediable procedures

2019(R1).5.17

Published

Published

2020(R2).4.1

Enforced

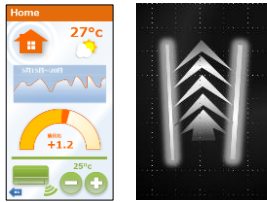
2021(R3).4.1

Enforced

Latest Statistics of Design

Numbers of applications for the New Scope of Protection

GUI



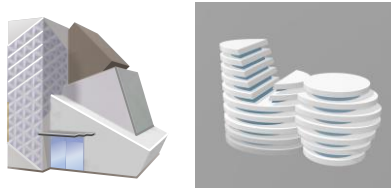
4,597

applications

2,948

registrations

Building



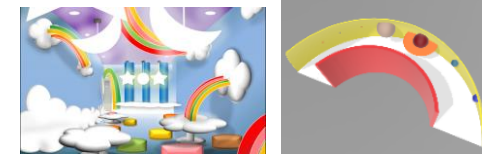
1,293

applications

839

registrations

Interior



868

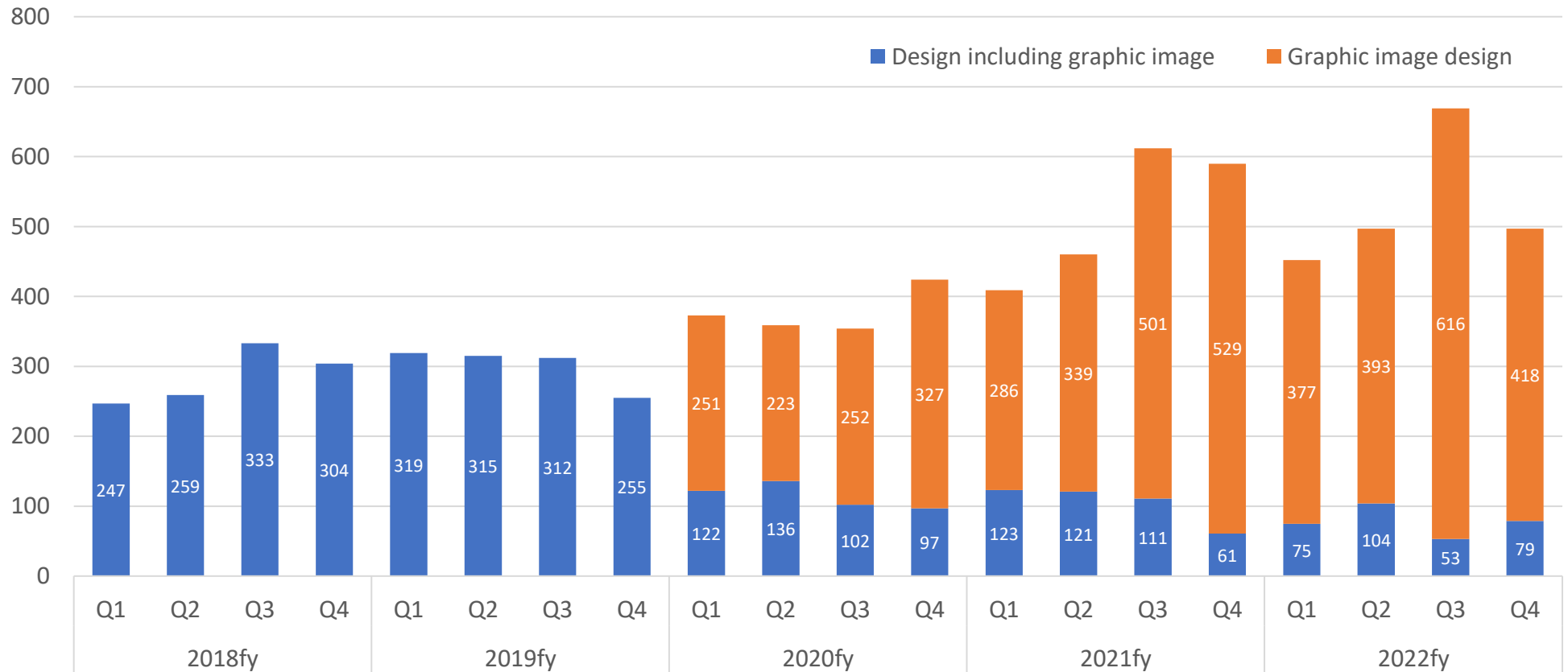
applications

525

registrations

- ✓The cumulative numbers of filed design applications and registrations from April 2020 to August 1,2023.
- ✓No. of Reg/No. of App does not represent the rate of registration since No. of App includes matters of which examinations are in process.

Transition in number of applications for designs regarding graphic image



*Graphic image design: Classified as one of the “N3” group along with the article name including “graphic image”, “GUI” or “icon” (These numbers in the report are based on design registrations filed as “graphic image” classified as one of the “N3” group along with the article name including “graphic image”, “GUI” or “icon”. As for “GUI,” the numbers also include design registrations filed as “graphical user interface” and variant notations meaning the same.)

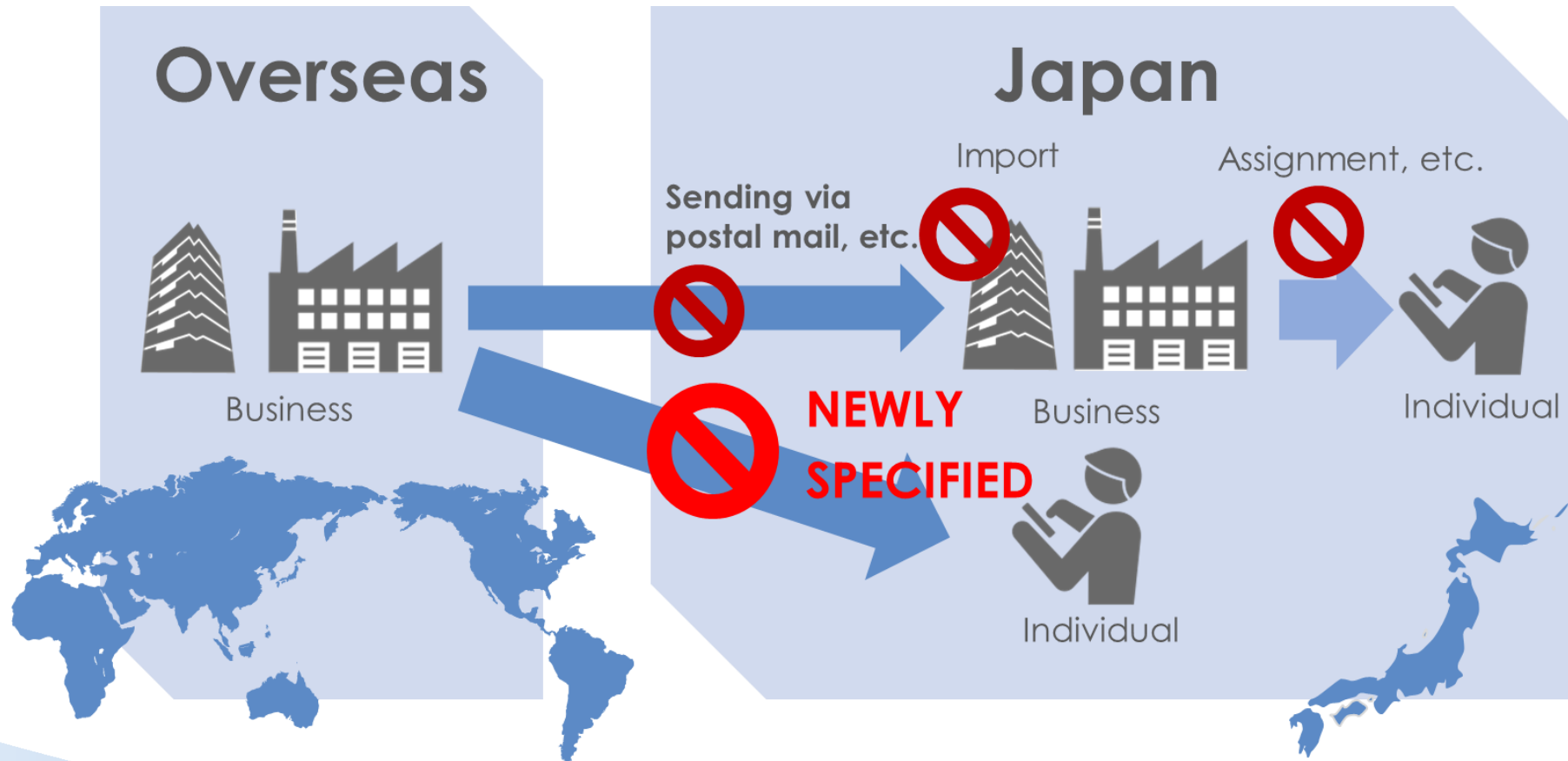
*Design including a graphic image: Classified as “W”; Design that is not a graphic image design

*Hague applications were aggregated based on date of International Publication.

*The report was put together by the Design Division, based on the data retrieved on June 28, 2023.

New Border Measures

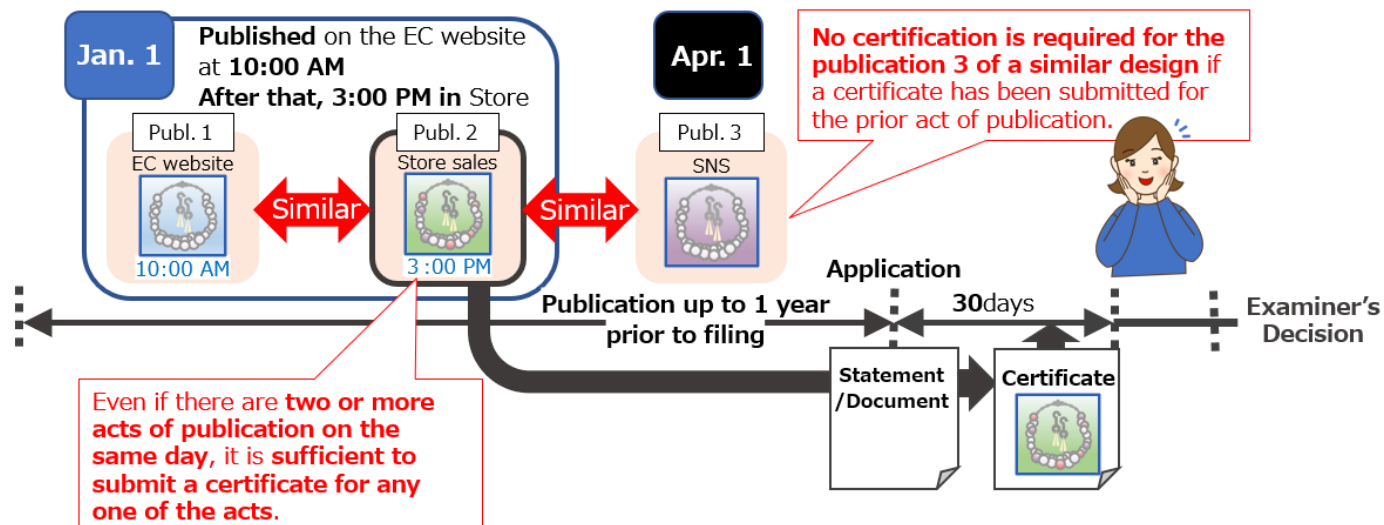
- The Trademark Act and Design Act were amended in a move to tighten regulations on the influx of counterfeit products from overseas.
- These revisions became effective on October 1st, 2022.



The Latest Revision of the Design Act

Relaxation of Filing Requirement for Design Registration 【Article 4 and other related articles in the Design Act】

The revised law promulgated on June 14, 2023 relaxed the procedures to apply the exception to lack of novelty of design. By the revision, the exception to lack of novelty applies not only to the design shown in a proving document, but also to any identical or similar designs subsequently published through an act of the person entitled to obtain a design registration or his/her successor in title. In other words, even in the case of numerous public disclosures of the identical or similar design, it is sufficient to include in a proving document any of the public disclosures on the first date.



Similarity: When comparing the aesthetic aspect of the designs on the premise that the articles to be compared have usages and functions in common, similarity means what causes consumers (including traders) to see the common aesthetic pleasantness (in their visual presentations).

Future Challenges

~Design Protection in Digital Space~

- April 2022: Recommendations from the Headquarters for the Promotion of a Digital Society Project Team regarding NFT Policies of the Liberal Democratic Party in Japan

Excerpt from 4.(2) B in “NFT White Paper, Japan’s NFT Strategy for the Web 3.0 Era”

As an immediate measure, it should be discussed which countermeasure can be taken towards counterfeiting activities based on laws such as the Copyright Act and the Unfair Competition Prevention Act. In the future, the possibility of certain measures through law amendment including the expansion of the scope of protection by design rights, should be considered by the related ministries and agencies.

In addition, considering that the provision and use of metaverse services can easily cross national borders, there is a high need for discussions on harmonization and international coordination of design protection in the digital space, and the government should actively take the initiative to lead such international discussions.

* (Source) https://www.taira-m.jp/Japan%27s%20NFT%20Whitepaper_E_050122.pdf

* *This White Paper is included in "Digital Nippon 2022," a set of concrete recommendations for "New Capitalism," which was released by Digital Society Promotion Office of the Liberal Democratic Party in Japan on April 26th, 2022. <https://www.jimin.jp/news/policy/203427.html>

- June 2022: Report released by JPO Policy Promotion Conference

Excerpt from III in “Role of Intellectual Property System to Promote Utilization of Intellectual Property -Summary-”

How the protection of graphic image design should be provided, based on design rights or other means, needs to be discussed from a mid- and long-term perspective. In doing so, the debate about the protection of graphic image design in Metaverse must be sorted out to determine which countermeasures based on related laws and regulations to be taken towards counterfeiting activities and the limit of such countermeasures, yet with a careful consideration not to inhibit creators from carrying out creative activities.

- FY 2022: Project “Research and Study on Protection of IP in Virtual Space” (FY 2022 Comparison Study Project about System of Industrial Property Rights in the World)
- June 2023: Promulgation of the revised law including a revision to Article 2 of the Unfair Competition Prevention Act

Prevention of conducts of imitation of forms in Digital Space

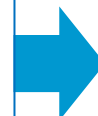
[Article 2, Unfair Competition Prevention Act]

➤ Key of the Revision: The conduct of providing goods imitating form of another person's product in digital space (the conduct of providing the goods through telecommunication lines) is also subject to regulation, thereby strengthening the protection of goods in digital space.

Imitation of Forms: A conduct of offering goods that imitates the form of another person's product (the conduct of Unfair Competition).

(The term of protection is until three years have passed from the start of sale, and applies to fast-moving items such as clothes)

Imitation of Forms in Digital Space Also Covered



Example of similar fashion in digital space and real space

(Left: in Real space Right: in Digital Space)



※ Image provided by : chloma

Image of the Revision of Act

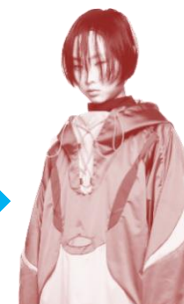
※ The shown counterfeit product is an image created by processing.

Real space



Genuine product

conducts regulated under current Act



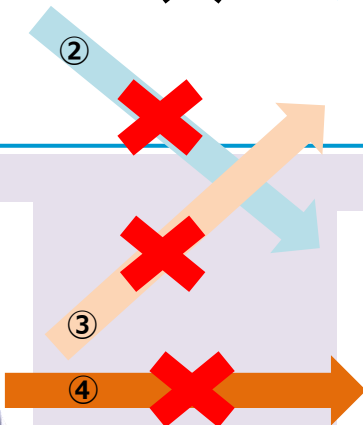
Counterfeit product

"Imitate": to use a form of another person's goods and create goods that have a form substantially similar to that of another person's goods. (Article 2(5))

Digital Space



Genuine product



Counterfeit product

conducts to be regulated by this revision to the Act (②~④)

Implications for the Future

- Considering new creation and rule making tailored to the business environment may be necessary.
- The following points should be taken into consideration
 - Weighing fully the advantages and disadvantages of protection and determining the needs of the relevant industries
 - Consideration should be given to avoid chilling effect on creators' creative activities
 - Discussions on the protection of designs in the digital space have been initiated in other jurisdictions, such as copyright law and unfair competition prevention law, and the trends of such other laws should be closely monitored
 - Consideration of how image designs should be protected under the existing design system, discussion should be conducted on how best to deal with this issue from a broad perspective that is not bound by the existing framework, as it is a unique problem in the new digital space

Thank you for your attention.

