

Note: When any ambiguity of interpretation is found in this provisional translation, the Japanese text shall prevail.

9. Court precedents relating to Utility Models

Classification	Contents	No.	Date of Decision (Case No.)	Corresponding Portion of Examination Guidelines
111	As to whether it is a device concerning a form, a structure or a combination of articles or not	1	Tokyo High Court Decision, Jul. 31, 1951 (1950 (Gyo NA) No. 8)	Part X, Chapter 1 2.1

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Relevant portion of Examination Guidelines	Part X, Chapter 1 2.1
Classification of the Case	111: As to whether it is a device concerning a form, a structure or a combination of articles or not
Keyword	

1. Bibliographic Items

Case	"Cut case" (appeal trial against examiner's decision) Tokyo High Court Decision, Jul. 31, 1951 (1950 (Gyo NA) No. 8)
Source	Administrative Law Cases Reports Vol.2, No. 8, p.1273
Application No.	Japanese Utility Model Application No. S23-005452
Conclusion	Dismissal
Related Provision	Utility Model Act, Article 1 (Former Act)
Judges	Presiding judge: Tokiji NAKAJIMA, Judge: Masao USUNE, Judge: Masuji HARA

2. Overview of the Case

(1) Overview of the Device of the Present Application

It is a device focusing on giving, to an illustration to be posted on a blank space portion of an article of books and magazines and the like, attractive contents as so-called "cut", and, at the same time, make the illustration have an objective and action as advertisement.

(2) Claim of utility model (the device of the present application)

A structure of a "cut" apparatus (A) in books, magazines and the like, the "cut" apparatus (A) including an illustration (2) provided in a blank space portion (1) of an article (B) in books, magazines, brochures and the like (C), wherein said "cut" apparatus (A) is made by appropriating to said illustration an illustration (2) having constitution of advertisement

3. Extraction of the Decision

Decision
Judgment by the Court ...It is prescribed in Article 1 of Utility Model Act that a device that can be granted a registration of a utility model is required to be "a device that relates to a shape or a structure of articles, or a combination of

articles", and the registration is granted about "the model of that article". In the present case, the appeal decision made finding that, the gist of the device supposed in the present application corresponds to none of such shape, structure, or combination. That is, while it was found that it was not a device about a model, the plaintiff alleges that the gist of the present device is of a device of a model concerning a structure.

Therefore, this point is one and only one point of dispute in this case, and, thus, this point will be examined. First, a structure means a case that an article consists of two or more members or portions, and it does not just stay as abstract expression, but is translated into reality objectively and the members or portions are integrated in a manner having particular morphological relation. Although the gist of the present device relates to articles such as books, magazines and the like, it is focusing on a point to give attractive contents that a conventionally "cut" has to an illustration (2) placed in a blank space portion (1) of an article (B), and, at the same time, make the illustration (2) have an objective and action as advertisement, and, thus, a state of contents of an illustration or meaning of explanatory characters added to the illustration is made to be a device. Accordingly, as far as the cut (2) having both actions of being an illustration and being an advertisement is concerned, it is staying as one that is of completely ideological and abstract expression, and there can be countless illustrations and letters for advertisement, and combination methods thereof. Therefore, there is no alternative but to say that such structure itself and also a thing formed by that structure itself do not specify a thing having a specific form, and, thus, such thing cannot be said to be a structure prescribed in the above mentioned Article 1 of the Utility Model Act. As a consequence, the present application does not comply with the registration requirements prescribed in the ACT.

...The plaintiff alleges that, although the gist of the present device is not three dimensional thing as machinery and instruments, it is acknowledged also by the defendant that there is a utility model that is like a planar calculation chart among the registration examples of utility models, and, therefore, the present case should be also admitted as a structure even if it is of a planer shape. However, the planer one among the registration examples is, as defendant says, a combination with fixed positional relation of lines, sections, and scales, and, thus, it is not of abstract expression, and it has a particular form that is objectively materialized and it can be seen as a model of an article. On the contrary, the device of the present case is absolutely different from a specific combination of lines, sections, scales or equivalents of these, and it is not recognized as having a materialized particular form at all. Consequently, the aforementioned one is insufficient to make it be a suitable example for the present case.