Trial decision

Invalidation No. 2010-880005

Tokyo, Japan
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The case of trial regarding the invalidation of design registration for Design Registration No. 1380365, entitled "EXPANSION VALVE FOR AIR CONDITIONER", between the parties above has resulted in the following appeal

decision.

Conclusion

Design Registration No. 1380365 is invalidated.

The costs in connection with the trial shall be borne by the demandee.

Reason

No. 1. The demandant's object of the demand and the grounds therefor

The demandant demanded a trial decision whose content is the same as the conclusion, summarized grounds for the demand as follows, and submitted Evidence A No. 1 to A No. 10 as means of evidence.

The design of Design Registration No. 1380365 (hereinafter referred to as the "Registered Design") is similar to the design of "EXPANSION VALVE" of U.S. Design Patent Publication US D532080S published in the U.S. Official Gazette issued on November 14, 2006 (hereinafter referred to as "Cited Design"), and falls under the category of Article 3(1)(iii) of the Design Act. Therefore, its registration should be invalidated under the provisions of Article 48(1)(i) of the same Act.

In other words, the Registered Design and the Cited Design have a common basic form of a body portion and a common circular hole group structure on a front/back surface, and show a visual impression strong enough to determine that the two designs are similar. Furthermore, the specific form of each portion has just (1) a difference in whether a lower vertical surface is wider or narrower than an upper inclined surface, concerning a notch close to a body lower end portion, (2) differences in the size and layout position of a lower large-diameter hole on a front surface, (3) the presence/absence of a circular platy screw cover on a bottom surface, (4) differences in hole diameter width to body portion lateral width, the width of an inside stepped portion, and the thickness of a driving rod appearing in an inner side, concerning an upper large-diameter hole on the front/back surface, and (5) differences in a center small projection shape on an upper surface in a valve driving portion, and a form of a lower surface portion. Then, (1) is a partial modification within a range which can be said as generally the same, without losing characteristics of the basic form of the body portion at all. (2) are changes of a caliber and a layout form according to a mating component, which is commonly practiced in the field of the articles. (3) are differences in a part which normally hardly attract attention, and have no characteristic, and (4), (5) are the slight differences which are not needed to

be especially adopted. Any of the differences just feebly affects the determination of their similarity, and even if their combined effects are considered, they do not predominate over a common feeling shown by the characteristic form which is common in the two designs. Therefore, there is no room for doubt that the two designs are similar, and the registration of the Registered Design should be invalidated.

No. 2. The demandee's reply and the grounds

The demandee, in the written replay, requested the trial decision "the demand for trial was groundless. The cost in connection with the trial shall be borne by the demandant," summarized allegation as follows, and submitted Evidence B No. 1 to B No. 9 as means of evidence.

The basic form which is common to both designs, as shown in Evidence A No. 5, Evidence A No. 6, and Evidence B No. 1 to B No. 5, is only the form supposed to be ordinary since before the application of the Cited Design up to the present. A "dogleg" shape of a front surface lower portion which the demandant emphasizes, as shown in Evidence A No. 3, Evidence A No. 5, Evidence A No. 6, and Evidence B No. 3 to B No. 6, does not deviate from a range of an ordinary shape. Therefore, those do not configure a main part of creation, and its commonality does not affect the determination of their similarity.

Conversely, the two designs, in their specific form, have (1) differences in a body portion outline shape, especially in an inclined angle of an inclined surface of the "dogleg" shaped part, and a height ratio of the inclined surface and a vertical surface, (2) differences in positions and size of upper large-diameter holes and lower large-diameter holes on a front surface side and a back surface side of the body portion, (3) a difference in a form of a valve driving portion; namely, a position on the front surface side and a position on the back surface of the body portion to the valve driving portion, and (4) a difference in a form of a bottom surface; and substantially differ in the main part. Therefore, it is clear that the Registered Design and the Cited Design are not similar to each other, and the Registered Design does not fall under the category of Article 3(1)(iii) of the Design Act and has no reason for the invalidation of the registration.

No. 3. Judgment on the body

1. The Registered Design

The design registration application of the Registered Design was filed on April 8, 2009, and an establishment of the design right was registered on January 15, 2010, as a related design whose principal design No. is Design Registration No. 1362427. The article to the design is "EXPANSION VALVE FOR AIR CONDITIONER," and its form is as described in the application form of the design registration application, and drawings attached to the application (refer to Appendix 1).

2. The Cited Design

The design submitted by the demandant because the Registered Design falls under the category of Article 3(1)(iii) of the Design Act, is the design of "EXPANSION VALVE" of U.S. Design Patent Publication US D532080S published in the U.S. Official Gazette issued on November 14, 2006, and its form is as described in the publication (refer to Appendix 2).

3. Comparison of the Registered Design and the Cited Design

In comparison of the Registered Design and the Cited Design, articles to which the two designs are respectively applied correspond, and there are the following main common features and different features in their forms.

First, there are the following points as common features.

(1) The basic form is composed of a generally vertically-oriented quadrangular prism shaped body portion, and a disc-shaped valve driving portion provided at an upper end of the body portion. The body portion is notched in a generally "dogleg" shape and a generally reversed "dogleg" shape in front view by inclined surfaces and vertical surfaces in a lower part of both side surfaces (hereinafter, referred as to "dogleg" shaped portions), and has lateral width at a lower end which is narrower than that at the upper end. On a front surface and a back surface, circular hole groups arranged with a plurality of perfect-circular holes are formed. In the circular hole groups, on the front surface, from an upper side to a lower side, one upper large-diameter hole, two right and left intermediate-diameter holes, one small-diameter hole, and one lower large-diameter hole are bisymmetrically arranged as a whole, and on the back surface, from the upper side to the lower side, one large-diameter hole, two right and left intermediate-diameter holes, and one lower large-diameter hole are bisymmetrically arranged as a whole.

(2) Concerning a specific form, the body portion has a height which is a little less than 3 times of front surface lateral width, and side surface lateral width is slightly greater than the front surface lateral width. A one-third part of a lower part in the height of the body portion is made to be the "dogleg" shaped part. The lateral width at the lower end of the body portion is generally a little less than two-thirds of the front surface lateral width (the maximum lateral width), and the inclined surface of the "dogleg" shaped portion descends inward at an angle of about 20-30 degrees to a vertical direction. On the side surface, an upper side and a lower side of the inclined surface form horizontally an edge-shaped ridgeline and a trough line, and the vertical width of the inclined surface and the vertical width of the vertical surface are not so much different.

(3) Concerning the circular hole group on the front surface, the two intermediate-diameter holes are arranged on right and left sides at a small interval, at generally intermediate positions in a height direction. Above the two intermediate-diameter holes, the upper large-diameter hole is arranged so as to make outer peripheries of the two close to each other. At a part inward obliquely lower than the two intermediate-diameter holes, the small-diameter hole is arranged so as to enter a clearance between the two intermediate-diameter holes. A diameter of the upper large-diameter hole is slightly smaller than the body lateral width, and a diameter of the lower large-diameter is generally two-thirds that of the upper large-diameter hole, and smaller than that of the upper large-diameter hole.

(4) Concerning the circular hole group on the back surface, the two intermediate-diameter holes are arranged on right and left sides at a small interval, at generally intermediate positions in the height direction. The upper large-diameter hole and the lower large-diameter hole are arranged on an upper side and a lower side while separating from the intermediate-diameter holes by equal distances. A diameter of the lower large-diameter hole is slightly smaller than that of the upper large-diameter hole.

(5) The valve driving portion has a diameter slightly larger than the body front surface lateral width, is provided with a conical shaped projecting portion at a top surface center, and is formed with a diameter-contracting step portion in an inverted truncated flat conical shape on a lower surface.

Next, the following points are recognized as main different features.

(A) Concerning the inclined angle of the inclined surface of the “dogleg” shaped

portion and a dimensional ratio of the inclined surface and the vertical surface, the Registered Design has an inclined surface which is inclined inward generally at 20 degrees to the vertical direction, but the Cited Design has an inclined surface which is inclined generally at 30 degrees, so that the inclined surface of the Registered Design is close to vertical. Furthermore, as a width ratio in the vertical direction (a side view), the dimensional ratio of the inclined surface and the vertical surface in the Registered Design is about four to three, so that the inclined surface is slightly longer than the vertical surface. On the other hand, the dimensional ratio of the inclined surface and the vertical surface in the Cited Design is about three to a little over four, so that the vertical surface is slightly longer than the inclined surface.

(B) Concerning the position and size of the upper large-diameter hole on the front surface, the Registered Design is one whose diameter is slightly smaller than the body portion lateral width and extremely large, and which has a narrow space remaining at the upper end of the body. However, the Cited Design is one which leaves slight room on right and left sides of the body portion, leaves a large room at the upper end of the body as compared with the Registered Design, and whose diameter is smaller than that of the Registered Design.

(C) Concerning the position and size of the lower large-diameter hole on the front surface, in the Registered Design, an interval between the small-diameter hole and the lower large-diameter hole is narrow, and a slightly large space is left at a lower end of the body. Most parts of the lower large-diameter hole are arranged within a height range (vertical width) corresponding to the inclined surface of the “dogleg” shaped portion, and the diameter of the lower large-diameter hole is larger than the lateral width at the lower end of the body. On the other hand, in the Cited Design, an interval between the lower large-diameter hole and the small-diameter hole is large, and a room left at a lower end of the body is not so much. Most parts of the lower large-diameter hole are arranged within a height range corresponding to the vertical surface of the "dogleg" shaped portion, and the diameter of the lower large-diameter hole is smaller than the lateral width at the lower end of the body.

(D) Concerning the bottom surface of the body, the Registered Design is provided with a circular spring receiver which has a bolt hole at a center thereof, but the Cited Design is not provided with this.

(E) Concerning the position of the valve driving portion, the Registered Design has a form in which a center of the valve driving portion is positioned slightly close to the front surface in the center of the body, and its front end is bulged forward from the front surface of the body. On the other hand, the Cited Design has a form in which a

center of the valve driving portion is slightly close to the back surface in the center of the body, and its rear end is bulged rearward from the back surface of the body.

4. Examination/Judgment

The effects of the common features and the different features mentioned above on the determination of their similarity are examined as the whole form.

First, concerning the common features, the common feature (1) shows the whole basic form, and the common features (2) to (5) clearly show a specific form of each of parts configuring that. Those are combined and integrated to form the unity of the whole form as an expansion valve, and extremely strongly impress a common feeling of the two designs on an observer.

Especially, the common features (2) that the one-third part of the lower part of the body portion forming the generally vertically-oriented quadrangular prism shape is made to be the "dogleg" shaped portion by the inclined surface and the vertical surface, the lateral width at the lower end of the body portion is a little less than two-thirds of the front surface lateral width, the angle of the inclined surface is made to be about 20-30 degrees to the vertical direction, there is not so much difference in the width of the inclined surface and the vertical surface, and the ridge portion and the trough portion on the upper and lower parts on the inclined surface are made to be of angular form in an edge-shape form; further strongly impress the commonality of the whole structure on the observer, even though there are a dimensional difference and an angle difference in actual measurement. Furthermore, combined with the common features (3) and the common features (4) relating to the layouts of the circular hole groups on the front surface and the back surface, the common features (2) generate an extremely strong common feeling in the whole of the two designs.

Incidentally, the demandee alleges that the “dogleg” shaped portion is an ordinary shape of articles of this kind, not the main part of the creation, and does not affect the determination of their similarity; and indeed, in articles of this kind, it was seen that the lower part of the body portion was notched by the inclined surface and the vertical surface, before the application.

However, there are various forms in the position of the inclined surface, an occupied range in the whole, the depth of the notch (the size of the lateral width at the lower end to the lateral width of the body), the width ratio of the inclined surface and the vertical surface, surface forming and the like from the inclined surface to the vertical surface. Regardless of that, the two designs are common as the form as

described in the common features (2), and those are common features relating to the whole structures of the two designs. Moreover, those are integrated with the other common features to form the unity of the whole forms of the two designs and generate the extremely strong common feeling in the two designs. Therefore, the allegation of the demandee that the existence of the "dogleg" shaped portion does not affect the determination of their similarity as the common features cannot be accepted.

As described above, the common features of the two designs substantially affect the determination of their similarity.

On the other hand, it has to be judged that none of the different features affects the determination of their similarity so much, as follows.

First, concerning the different feature (A), the difference in the inclined angle of the inclined surface, even if numeric values on the actual measurement differ, is not enough to give a different impression as the angle difference in the whole observation by sight, and concerning the ratio difference in the width in the vertical direction of the inclined surface and the vertical surface, the impression that the inclined surface and the vertical surface have little width difference in the vertical direction is further strong as the whole form. As a whole, as compared with the common feelings of the two designs brought by combining the common features (1) and (2) such as the facts that the lower end is narrowed to be about two-thirds, and the ridge portion and the trough portion on the upper and lower sides of the inclined surface are made to be angular in the edge-shape, and upper and lower parts of that are vertical surface shapes, those different features do not generate a different feeling which can impress that the two designs are different from each other. Therefore, their effects on the determination of their similarity are still slight.

The different feature (B) is a small dimensional difference between the upper large-diameter holes shown in the layout structures of the circular hole groups which are common on the front surfaces, and it cannot be said that the difference affects the determination of their similarity.

Concerning the different feature (C), there are conventionally various forms in the structure layouts of the circular hole groups on the front surface side and the back surface side in the articles of this kind, and in those, the fact that the front surface sides have the common feature (3) and the back surface sides have the common feature (4) still strongly impress the commonality of the structure layouts of the circular hole groups on the front/back surfaces as a whole, and the difference is limited in the layout mainly on the front surface side in that aspect. In addition, as

with the Registered Design, the form in which a room is not opened so much between the lower hole and the upper hole, the form in which a slight space is left at the lower end of the body, and the form in which the lower large-diameter hole is arranged within the height range generally corresponding to the inclined surface formed on the side surface, are forms existing since before the design registration application of the Registered Design (Design Registration No. 1249639, Design Registration No. 1092027 and the like), and are not regarded as important as points originally characterizing the form. Therefore, the difference is just a partial difference in the common structure form relating to the circular hole groups, and its effects on the determination of their similarity are still slight.

The different feature (D) is a difference on the lower end surface of the body, not so conspicuous, a typical form ordinarily existing since before the application, and not regarded as important as characteristics on the form. Therefore, the effects of the difference on the determination of their similarity are feeble.

Concerning the different feature (E), the two designs are common in the form in which the center of the valve driving portion is slightly shifted forward/backward to a body center and one end of the valve driving portion is slightly bulged out from a body end in a side view, and formed with the circular hole groups on both front and back surfaces, and thus the difference in the form is not so conspicuous, and the effects on the determination of their similarity are feeble.

Furthermore, the two designs also have other different features such as the differences in the step width of inner peripheral edges of the upper large-diameter holes on the front and back surfaces, the thickness of the driving rod on the deep side, and the like, which are cited by the demandant, but any of those is a local slight difference, and thus it cannot be said that the differences affect the determination of their similarity.

As described above, it is only said that any of the different features in the two designs affects the determination of their similarity slightly and feebly, and even if the different features are integrated and their related visual effects are considered, it is not acknowledged that the different features overturn the unity of the whole form formed by the common features and characterize the two designs as different designs from each other. In both designs, the effects of the common features on the determination of their similarity predominate over that of the different features, and the two designs are similar as the whole design.

No. 4. Conclusion

Therefore, the Registered Design is similar to the Cited Design, and the Cited Design was described in the publication distributed before the application of the Registered Design, hence, the Registered Design was registered despite falling under the category of Article 3(1)(iii) of the Design Act, and the registration should be invalidated.

Therefore, the trial decision shall be made as described in the conclusion.

January 7, 2011

Chief administrative judge: URIMOTO, Tadao

Administrative judge: ICHIMURA, Setsuko

Administrative judge: ENDO, Yukihisa

#1　別紙第１　　本件登録意匠

#2　意匠登録第１３８０３６５号

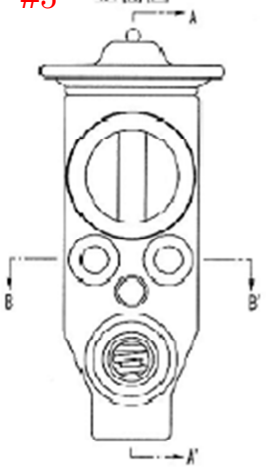
#3　意匠に係る物品　　空調装置用膨張弁

意匠に係る物品の説明　　この物品は、自動車用空調装置等の冷凍サイクルに設けられ、導入された高温・高圧の液冷媒を急激に膨張させて低温・低圧の霧状の冷媒にして導出する膨張弁である。

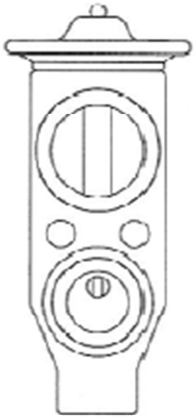
意匠の説明　　左側面図は右側面図と対称に表れるため省略する。

#4

#5　正面図



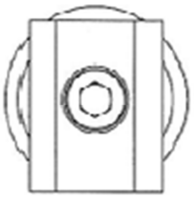
#6　背面図



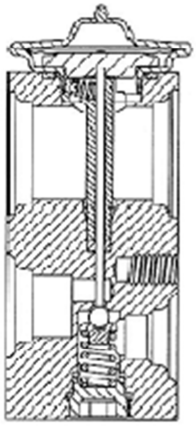
右側面図　#7

#8　平面図

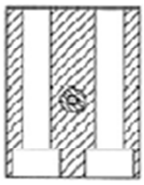
底面図　#9



#10　A－A'線断面図



B－B'線断面図　#11



#1　Appendix 1　　the Registered Design

#2 Design Registration No. 1380365

#3 Article to the design EXPANSION VALVE FOR AIR CONDITIONER

#4 Description of the article to the design This article is an expansion valve which is provided in a refrigeration cycle of an automobile air conditioner and the like, abruptly expands an introduced liquid coolant of high temperature and high pressure to be a mist of the coolant of low temperature and low pressure, and leads the same out.

Description of the design A left side view is omitted because that is symmetrically presented with a right side view.

#5 Front view

#6 Rear view

#7 Right side view

#8 Plane view

#9 Bottom view

#10 A-A' line cross sectional view

#11 B-B' line cross sectional view

#1

別紙第２　　引用意匠

(10) Patent No.: US D532,080 S
(45) Date of Patent: ** Nov. 14, 2006

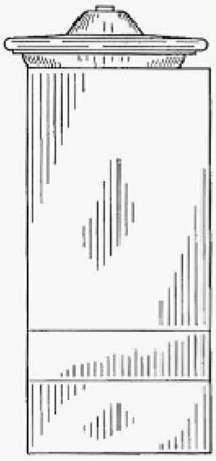


FIG. 1

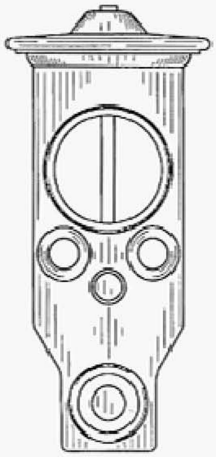


FIG. 2

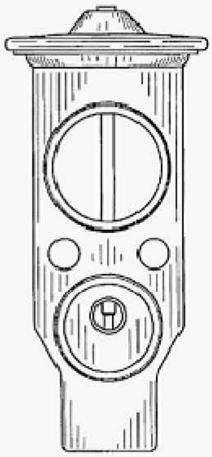


FIG. 3

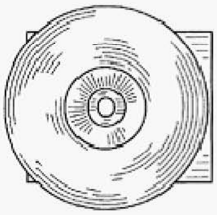


FIG. 4

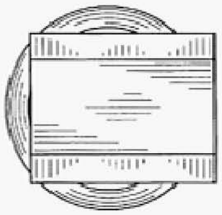


FIG. 5

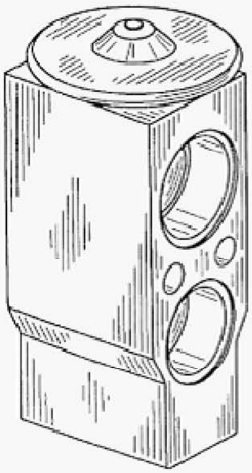


FIG. 6

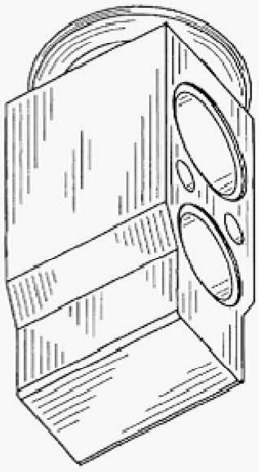


FIG. 7

#1 Appendix 2 the Cited Design