

Appeal decision

Appeal No. 2015-17838

Osaka, Japan

Appellant

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Patent Attorney

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The case of appeal against the examiner's decision of refusal of Japanese design application No. 2014-23293, entitled "Bath" has resulted in the following appeal decision.

Conclusion

The examiner's decision is revoked.

The design in the application shall be registered.

Reason

No. 1 The design in the application

The application for design registration was filed on October 17, 2014 (Heisei 26) to request a design registration of a part of an article, and, according to the description of the application and drawings attached to the application, the design (hereinafter, referred to as "the design in the application") renders "a bath," the article to the design, and describes its shape, patterns or colors, or any combination thereof (hereinafter, referred to as "form") in accordance with the descriptions in the application and in the drawings attached to the application, and moreover, describes that, "A part represented by a solid line including the sectional view is the part for which the design registration is requested as a partial design. A dash-dotted line is a line expressing only metes and

bounds between the part for which the design registration is requested as a partial design and the other parts." (see Appendix 1).

No. 2 Reasons for refusal of the examiner's decision and the cited design

The reasons for refusal in the examiner's decision is that the design in the application falls under the category of Article 3(1)(iii) of the Design Act, and the design cited in the reasons for refusal (hereinafter, referred to as "the cited design") is as follows.

Author of the homepage

Fosss Tables Home Design

Title Beautify your bathroom paint colors for small bathrooms

Listed portion Pages 5 to 6 in the images attached
(On page 1, only the corresponding photograph is enlarged)

Type of Media online

Listed Date October 7, 2013

Retrieved Date Retrieved on March 31, 2015

Source of Information Internet

Address of Information

URL: <http://fosstable.com/beautify-your-bathroom-paint-colors-for-small-bathrooms/>

Cited Design A part corresponding to the part for which the design registration is requested of the design in the application (a part corresponding to the part in the application on a surface at which a washbasin and a mirror exist) of the design of "a bathroom" (while this is found as "a washroom" in the examiner's decision, this is found as "a bathroom" on the body) expressed in a photograph across pages 5 to 6 of the images attached (in page 1, only the corresponding photograph is enlarged), and its form is as expressed in the photograph in the pages listed in this site and the related descriptions (see Appendix 2).

No. 3 Judgment by the body

1. Comparison between the design in the application and the cited design

(1) Article to the design

The article to the design of the design in the application is "a bath" which is a room having equipment such as a bathtub and a shower to wash away the dirt attached to a human body by water or heated water.

The article to the design of the cited design is "a bathroom" which means a western bathroom and is a room having equipment such as a toilet bowl, a washbasin, a bathtub and a shower to dispose of bodily waste from a human body and wash away the dirt attached to a human body by water or heated water.

(2) Position, size and scope as well as usage and function related to the part for which the design registration is requested of the design in the application and the corresponding part of the cited design

Hereinafter, for comparison, the part for which the design registration is requested of the design in the application is called "a part in the application " and the corresponding part of the cited design is called "a part in the cited design," and they are collectively called "both parts" or "the two parts."

The position, size and scope of the part in the application are, of a bath which is entirely a vertical cuboid box, a vertical quadrangle domain that has a height which is about three-fourths of the entire height of the inner wall surface and a width which is slightly smaller than the entire width of the inner wall surface at one inner wall surface (an inner wall surface positioned at the end of a bath interior seen from a front direction), and that is positioned at the center of the right and left direction toward an upper end of the inner wall surface, and a horizontal quadrangle domain that has a height which is about one-third of the height of the depth of the ceiling surface and a width which is slightly smaller than the entire width of the ceiling surface in a ceiling surface represented in a B-B Sectional View, and that is positioned at the center in the right and left direction toward the rear end of the ceiling surface, in which the entire domain positioned at the ceiling surface is a lighting panel of a translucent material.

On the other hand, in the part in the cited design, while a vertical quadrangle domain that has a height which is about three-fourths of the entire height of an inner wall surface corresponding to the inner wall surface of the part in the application and a width which is slightly smaller than the entire width of the inner wall surface are represented, the majority of a domain corresponding to a ceiling surface is outside of an angle of view of the photograph and is not shown.

Moreover, both parts constitute an inner wall surface and a ceiling surface of "a bath" or "a bathroom," so that usage of the both parts is common in that they are provided for equipment of "a bath" or "a bathroom." On the other hand, while the ceiling surface of the part in the application has lighting, it is unclear whether there is lighting at the ceiling surface of the part in the cited design, so that functions of the two parts differ in this point.

(3) Form of the two parts

In comparison of the forms of the two parts, there are the following main common feature and different features in their forms.

(3-1) Common feature

A form is made such that, in a vertical quadrangle domain of an inner wall surface, a dark blue color is applied at a lower portion, and the blue color becomes gradually lighter toward an upper side.

(3-2) Different features

(A) While the part in the application has a form in which a lighting panel of a flat translucent material is provided on the entire horizontal quadrangle domain of a ceiling surface, the majority of a ceiling surface of the part in the cited design is not shown in a photograph, so that its form is unclear and no lighting panel is provided on at least the rear end of ceiling surface.

(B) Regarding the blue color of the vertical quadrangle domain of the inner wall surface, the part in the application applies a navy blue which is a dark tone from a lower end of the domain to a center portion and continuously becomes lighter from the center portion toward an upper end, and then becomes substantially white near the upper end, while the corresponding domain in the part in the cited design applies a greenish blue which becomes blackish gradually toward an upper side in a scope of about one-fifth from the top of the domain and becomes deep black near the upper end.

2. Determination of similarity between the two designs

Evaluating and summarizing the influence exerted by the above common feature and the different features to the determination of similarity between the two designs, similarity between the two designs is deliberated as the entire design and judged.

(1) Regarding the articles

The article to the design of the design in the application is "a bath" and the article to the design of the cited design is "a bathroom" and they disagree. However, comparing their functions and the usage, they are common in that they are sanitary equipment rooms having equipment such as a bathtub and a shower to wash away the dirt attached to a human body by water or heated water, and accordingly, the articles to the design of the two designs are similar.

(2) Regarding the position, size and scope as well as the usage and functions of the

two parts

Comparing the position, size and scope of the two parts, the majority of the ceiling surface of the bathroom is not shown according to the photograph of the cited design, so that the position, size and scope of the two parts cannot be compared. Moreover, comparing the usage and functions of the two parts, they are common in usage in that they constitute an inner wall surface and a ceiling surface of "a bath" or "a bathroom." However, their functions are significantly different in that the ceiling surface in the part in the application has lighting, while whether the ceiling surface in the part in the cited design has lighting is unclear.

(3) Evaluation of the common feature in form

The common feature related to the color of the vertical quadrangle domain of the inner wall surface is merely a commonality to the extent that they are common only as an abstract concept, and a concrete density differs as described in the different feature (B). Accordingly, the common feature of the two parts does not provide any common visual impression to observers, so that the influence exerted by the common feature on the determination of similarity of the two parts is small.

(4) Evaluation of the different features in form

First, regarding the form of the horizontal quadrangle domain of the ceiling surface of the different feature (A), the form of the part in the application in which an extended lighting panel is provided at the entire domain can be said as typical which is not seen in other designs, while in the part in the cited design, the form of the majority of the ceiling surface is unclear and no lighting panel is provided at least at the rear end of the ceiling surface. Consequently, a visual impression of the two parts significantly differs depending on the existence of the lighting panel, and thus an influence exerted by the different feature (A) on determination of similarity between the two parts is large.

Next, regarding the color form of the vertical quadrangle domain of the inner wall surface of the different feature (B), in the part in the application, the form in which a navy blue which is a dark tone from a lower end of the domain to a center portion and continuously becomes lighter from the center portion toward an upper end and then becomes substantially white near the upper end provides an impression as if lighting illuminated from the upper side were gradually faded out toward the lower side and became dark depending on the change of the color tone, and emphasizes the impression together with the arrangement form of the lighting panel of the ceiling surface, while

in the part in the cited design, a portion near an upper end of the inner wall surface appears in deep black and this is significantly different from the part in the application in which a portion near the upper end is substantially white, so that a visual impression due to this difference differs significantly.

Accordingly, an influence exerted by the different feature (B) on determination of similarity between the two parts is large.

In view of this, regarding the form of the two parts, while the influences exerted by the different features (A) and (B) on determination of similarity between the two parts are large, the influence exerted by the common feature on determination of similarity between the two parts is small and cannot be said to exceed the influence exerted by the different features. Accordingly, summarizing these common feature and the different features, the form of the two parts are not similar.

(5) Summary

As described above, in both designs, while the articles to the design are similar and the usage of the two parts are common, the position, size and scope of the two parts cannot be compared and functions of the two parts are significantly different in the existence of lighting. Moreover, in the form of the two parts, while the common feature has not yet decided determination of similarity between the two designs, the influence exerted by the different features on determination of similarity of the two designs exceeds that exerted by the common feature, and an impression when the two parts are observed differs significantly. As a result, it cannot be said that the design in the application is similar to the cited design.

No. 4 Closing

As described above, it cannot be said that the design in the application applies to a design listed in Article 3(1)(iii) of the Design Act based on the cited design of the examiner's decision, so that it cannot be determined that the design in the application should be rejected due to the reasons for refusal stated in the examiner's decision.

Moreover, as a result of the further body's examination, no other reason for rejecting the application concerned is found.

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

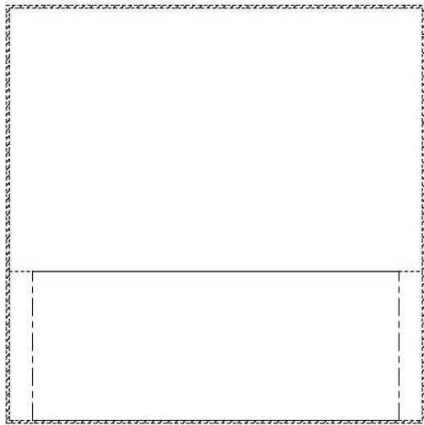
March 15, 2016

Chief administrative judge: KOBAYASHI, Hirokazu
Administrative judge: SEINO, Takao
Administrative judge: WATANABE, Kumi

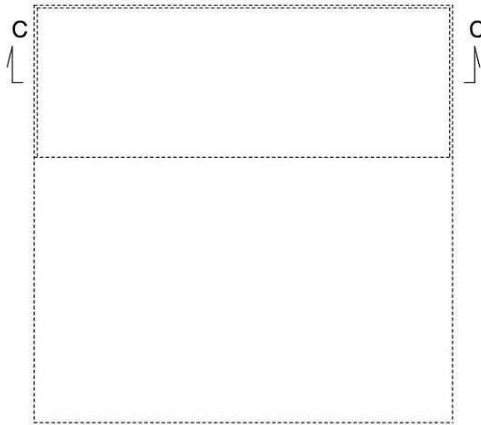
意匠に係る物品 浴室

意匠の説明 断面図を含む実線で表された部分が、部分意匠として意匠登録を受けようとする部分である。一点鎖線は、部分意匠として意匠登録を受けようとする部分とそれ以外の部分との境界のみを表す線である。D-D、E-E部分拡大図及びF-F、G-G部分拡大図において、2重ハッチングを施した部分の部材は透光性を有する。

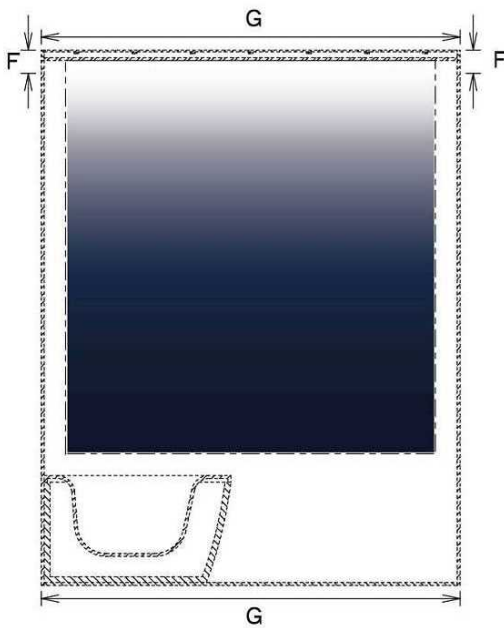
B-B断面図



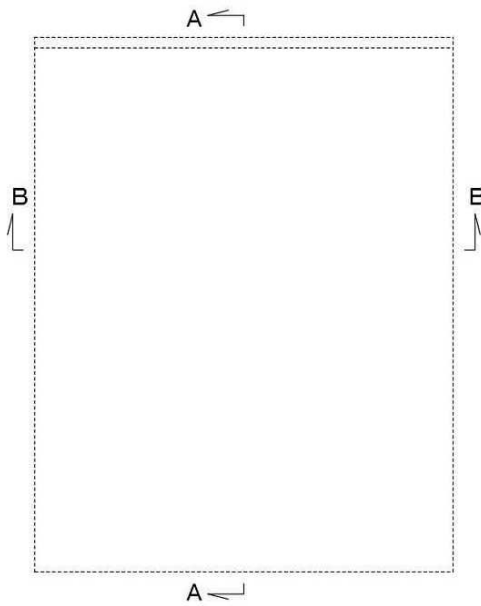
平面図



内部機構を省略したC-C断面図



正面図



別紙第 1

Appendix 1

本願意匠（意願 2 0 1 4 - 0 2 3 2 9 3）

The design in the application (Design Application No. 2014-023293)

意匠に係る物品

The article to the design

浴室

Bath

意匠の説明

Explanation of the design

断面図を含む実線で表された部分が、部分意匠として意匠登録を受けようとする部分である。一点鎖線は、部分意匠として意匠登録を受けようとする部分とそれ以外の部分との境界のみを表す線である。D-D, E-E 部分拡大図及び F-F, G-G 部分拡大図において、2 種ハッチングを施した部分の部材は透光性を有する。

A part represented by a solid line including the sectional view is the part for which the design registration is requested as a partial design. A dash-dotted line is a line expressing only metes and bounds between the part for which the design registration is requested as a partial design and the other parts. In partial enlarged view of D-D, E-E and partial enlarged view of F-F, G-G, the material of parts provided with double hatching has translucency.

B - B 断面図

B-B Sectional View 平面図

Top view

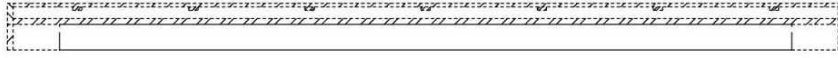
内部機構を省略した C - C 断面図

C-C Sectional View with an inner mechanism omitted

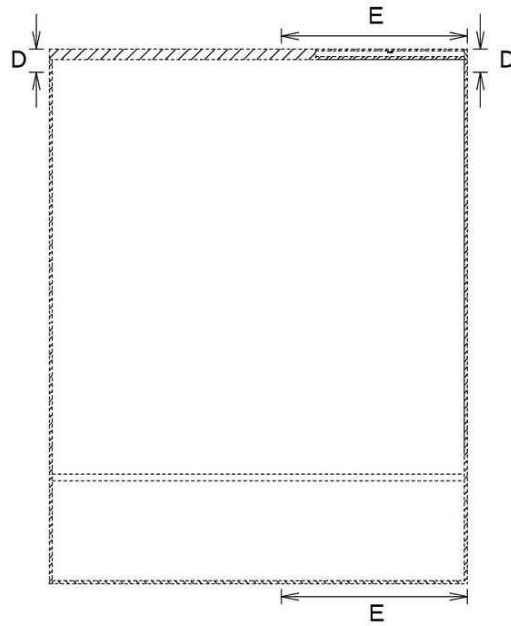
正面図

Front view

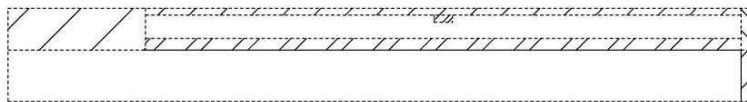
F - F, G - G 部分拡大図



内部機構を省略した A - A 断面図



D - D, E - E 部分拡大図



使用状態を示す参考図



F - F, G - G 部分拡大図

F-F and G-G Partial Enlarged View

内部機構を省略した A - A 断面図

A-A Sectional View with an inner mechanism omitted

D - D, E - E 部分拡大図

D-D and E-E Partial Enlarged View

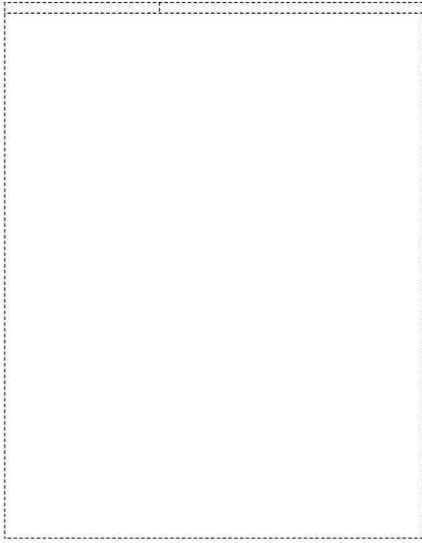
使用状態を示す参考図

Reference View Showing The State Of Use

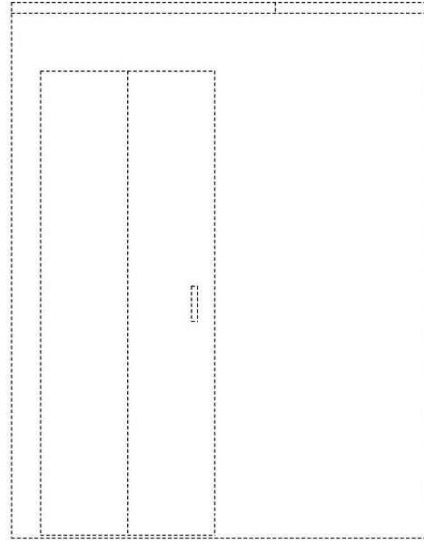
照明パネル

Lighting panel

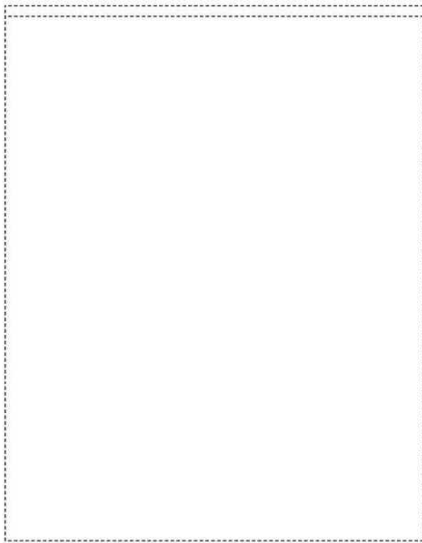
左側面図



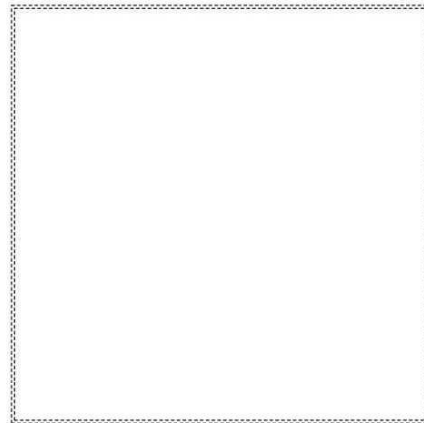
右側面図



背面図



底面図



| | |
|------|-----------------|
| 左側面図 | Left side view |
| 右側面図 | Right side view |
| 背面図 | Rear view |
| 底面図 | Bottom view |