Appeal decision

Appeal No. 2016-378

Tokyo, Japan
Appellant Daikyo Seiko, Ltd.

Tokyo, Japan
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The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2014-9865, entitled "CAP FOR PREFILLABLE SYRINGE WITH SYRINGE NEEDLE" 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 present application is an application for design registration filed on May 8, 2014, and concerning the design (hereinafter referred to as "the design in the application"), according to the descriptions of the application and the drawings attached to the application, the article to the design is "CAP FOR PREFILLABLE SYRINGE

WITH SYRINGE NEEDLE" and its form is as described in the application and the drawings attached to the application (See Appendix 1).

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

The reasons for refusal of 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 cited design in the reason for refusal is the design (hereinafter referred to as "the cited design," and this design and the design in the application are collectively referred to as "both designs" or “the two designs”) of design registration No. 1331670 (the article to the design, PROTECTIVE EQUIPMENT OF TIP OF SYRINGE NEEDLE) described in the design bulletin issued by the Japan Patent Office (issue date of the design bulletin: June 2, 2008) prior to filing the present application and its form is as described in the drawings of the design bulletin (See Appendix 2).

No. 3 Judgment by the body

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

(1) The articles to the design of both designs

The article to the design of the design in the application is "CAP FOR PREFILLABLE SYRINGE WITH SYRINGE NEEDLE," and according to the descriptions of the application and the drawings attached to the application, there is described a cap into which a syringe needle of a prefillable syringe, in which a syringe needle is integrally attached thereto and medical solution is previously filled therein, is inserted for sealing.

On the other hand, the article to the design of the cited design is "PROTECTIVE

EQUIPMENT OF TIP OF SYRINGE NEEDLE," and according to the description of the design bulletin of the cited design, there is described a protective cover for covering a syringe needle to be used to prevent a needle-stick accident etc. of healthcare workers.

In view of this, the article to the design is common in the two designs, since it is a cap or a cover for covering a syringe needle.

(2) The form of both designs

Regarding the form of both designs, mainly, there are the following common features and different features. (Hereinafter, for comparison, the direction of the drawings of the cited design is made to correspond to that of the design in the application. That is, the front view of the cited design is turned to the left by 90° such that an opening of a cover of the cited design is directed to the right, and the other drawings of the cited design are deemed to be represented to correspond to this.)

<Common features>

The two designs are in common as a basic form as follows.

(A) Overall, they are constituted by a substantially cylindrical outer cap which is open at an inlet side and closed at a tip, with a taper getting slightly to be narrowed toward the tip, and an inner cap which is provided inside of the outer cap and into which a syringe needle is inserted. A venting hole penetrating the outer cap is formed at the center of a tip portion at a front side and a rear side of the outer cap, and belt-like portions with the shape of chamfering a surface of the outer cap in the longitudinal direction are provided with the length of about 2/3 of the entire outer cap length from the tip at the top side and the bottom side of the outer cap.

Moreover, the two designs are in common as a specific form as follows.

(B) A circular concave portion with the diameter of about half the diameter of a tip surface of the outer cap is provided at the center of the tip surface.

<The different features>

The two designs are different as a specific form as follows.

(a) While the outer cap of the design in the application has a taper from the inlet side to the tip, the outer cap of the cited design is a cylindrical portion with no taper from the inlet side to the belt-like portions, and has a taper from the cylindrical portion to the tip.

(b) While the outer cap of the design in the application has translucency, the outer cap of the cited design is opaque.

(c) In the design in the application, an annular concave portion is formed in an inner circumferential surface near the inlet side of the outer cap, and an annular convex portion to be housed in the annular concave portion with a length shorter than that of the annular concave portion is formed at an outer circumferential surface near an inlet side of the inner cap, whereby the outer cap and the inner cap are slidable in the axial direction, while in the cited design, the outer cap and the inner cap are not slidable in the axial direction.

(d) The belt-like portions of the outer cap are shaved to be shallower than a surface of the outer cap in the design in the application, while the belt-like portions are flat in the cited design.

(e) The venting hole of the outer cap has the shape of a substantially horizontal "letter U" seen in a front view and a rear view in the design in the application, while in

the cited design, it has the shape of a substantially horizontal "letter V" seen in a front view and a rear view.

(f) In the inner cap in the design in the application, three belt-like concave portions of a length of about 1/3 of the entire inner cap length from the tip are provided at an outer circumference on a side of the tip with even intervals in the circumferential direction, while it is unclear whether the inner cap in the cited design has such a concave portion.

(g) An end on the inlet side of the inner cap is exposed from the outer cap in the design in the application, while in the cited design, a small-diameter protrusion is provided on an end of the inlet side of the outer cap, and an end of the inlet side of the inner cap is not exposed from the outer cap.

2. Determination of similarity between the two designs

Evaluating and summarizing the effects of the common features and the different features mentioned above on the determination of similarity between the two designs, similarity of the two designs is reviewed and judged as an overall design.

While the article to the design is common in the two designs, the form are as follows.

(1) Evaluation of the common features about the form of both designs

Of common feature (A) listed as the basic form, constituting the overall design by the outer cap and the inner cap is merely an inevitably selected form in order that an inner portion to which the syringe needle is inserted is made of a soft material and an outer portion to which an external force is applied is made of a rigid material, and providing the venting hole and the belt-like portions on the outer cap cannot be said to

be the form seen only in both designs. Consequently, the effect of the common feature (A) on the determination of similarity between the two designs remains to a certain degree.

Moreover, common feature (B) is the form also seen in other designs in the field of an article of a cap covering a syringe needle, and it cannot be said that the effect of this point on the determination of similarity between the two designs is large.

Further, when viewed as the overall common features, it cannot be said that these points make the determination of similarity between the two designs.

(2) Evaluation of the different features about the form of both designs

On the other hand, different features (a) to (f) concerning the specific form of both designs relate to portions which are highly conspicuous, so that it should be said that the effects of these different features on the determination of similarity between the two designs exist, respectively.

Especially, regarding the different feature (a), while the outer cap of the design in the application has a taper from the inlet side to the tip, the outer cap of the cited design is a cylindrical portion with no taper from the inlet side to the belt-like portions, and has a taper from the cylindrical portion to the tip. As a result, there is the difference in visual effect between the outer caps in the two designs as to whether a revolving line is represented depending on the existence of the cylindrical portion, and this visual effect occurs in the entire circumference of the outer cap. Consequently, it should be said that the effect of this point on the determination of similarity between the two designs is large.

Moreover, regarding different feature (c), in the design in the application, the

outer cap and the inner cap are slidable in the axial direction, while in the cited design, the outer cap and the inner cap are not slidable in the axial direction. This is an important constitution relating to the function of the cap of the design in the application, and, together with different feature (b); that is, that the outer cap of the design in the application has translucency, sliding of the inner cap is visible through the outer cap in the design in the application, whereby it can be said that consumers can observe this sliding movement with high interest. Thus, it can be said that the effect of the different features (b) and (c) on the determination of similarity between the two designs is extremely large.

Further, the different features (d), (e), and (f) are seen in a relatively large range, so that it can be said that the effect of these points on the determination of similarity between the two designs is of a certain degree.

Finally, different feature (g) is the difference in form at the end on the inlet side of the cap and can be said difficult to find, so that it cannot be said that the effect of this point on the determination of similarity between the two designs is large.

In addition, considering the visual effect by synergy of the different features (a) to (g), impression of the different features is far stronger than impression of the common features, and it should be said that the two designs have different visual impressions as an overall design.

(3) Summary

Accordingly, the articles to the two designs correspond. However, while the common features of the form are not strong enough to lead to the determination of their similarity, the effects of the different features on the determination of their similarity are

far stronger than those of the common features, and, when viewed as an overall design, impression of the difference features is far stronger than impression of the common features, and it should be said that the two designs have different visual impression as overall designs. Hence, it cannot be judged that the design in the application is similar to the cited design.

No. 4 Closing

As described above, since the design in the application does not fall under the category of Article 3(1)(iii) of the Design Act based on the cited design of the examiner's decision, it cannot be judged 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 present application can be found.

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

April 19, 2016

Chief administrative judge: KOBAYASHI, Hirokazu
Administrative judge: KARIMA, Hironobu
Administrative judge: EZUKA, Naohiro

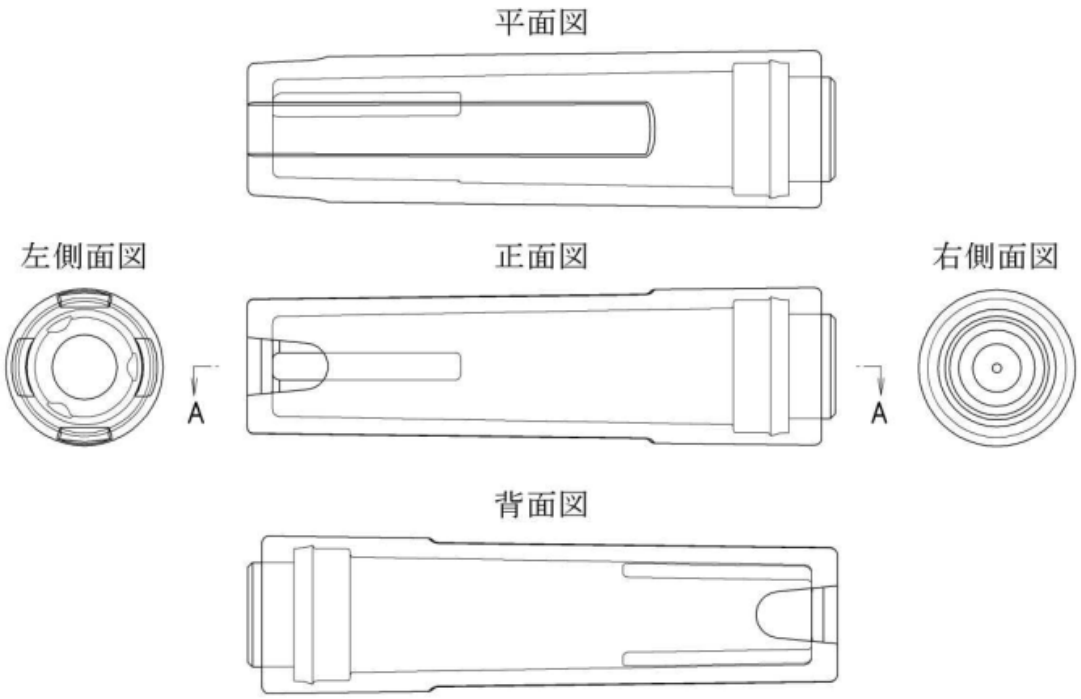
Appendix No. 1 The Design in the Application (Design Application No. 2014-009865)

Article to the design CAP FOR PREFILLABLE SYRINGE WITH SYRINGE NEEDLE

Description of the article to the design The present article is a cap for a syringe used for a tip portion of a syringe in a state that a syringe needle is attached thereto, and for example, a cap for a syringe which is especially useful in a case where it is applied to a prefillable syringe whose syringe cylinder is previously filled with medical solution in a state that a syringe needle is attached thereto. The present article is constituted by an inner cylinder made of elastomer which is an elastic rubber material and an outer cylinder made of a rigid translucent resin, and the inner cylinder and an outer cylinder have the constitution that they are integrated in a state that the inner cylinder is slidable in the front and rear direction along an inner circumferential surface of the outer cylinder. When the present article is fitted to a tip portion of the syringe, an inner circumferential surface of the inner cylinder made of elastomer is closely attached to an outer circumferential surface of a nozzle-like portion of a tip of the syringe to achieve high adhesiveness, and at the same time, such a state is achieved that the tip portion of the syringe is stuck into the inner cylinder made of elastomer. Consequently, the tip of the syringe is surely sealed, and simultaneously, a space formed in the cap is made extremely small, so that fitting of the present article ensures sealing of the tip portion of the syringe in a state that a syringe needle is attached thereto. As shown in A-A Sectional View, the present article has the constitution that a convex portion provided at an outer circumferential surface near an opening of the inner cylinder and a concave portion provided at an inner circumferential surface near an opening of the outer cylinder are integrated to mesh with each other while having small play in the front and rear direction. Accordingly, as shown in Reference Sectional View, in attachment or detachment operation of the cap, the inner cylinder slides in the front and rear direction along the inner circumferential surface of the outer cylinder. As a result, the present

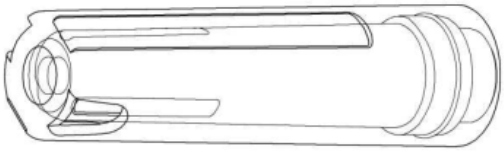
article achieves high sealability described above while achieving attachment or detachment to/from the tip portion of the syringe in state that a load on a delicate syringe needle is inhibited to the minimum.

Description of the Design　Since Bottom View is symmetrical to Top View, the bottom view is omitted.　Reference Sectional View is a drawing showing a section corresponding to section A-A of a syringe in which the present article is attached to its tip.　A portion of the outer cylinder of the present article has translucency.　In Front View, Rear View, Top View, Right Side View, Left Side View, Perspective View 1, and Perspective View 2, lines showing an inner surface and lines showing an outer surface are confusing in the portion of the outer cylinder, so that the lines showing the inner surface are omitted.

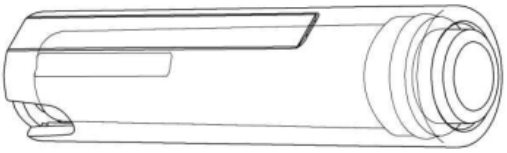


平面図	Top View
正面図	Front View
背面図	Rear View
左側面図	Left Side view
右側面図	Right Side view

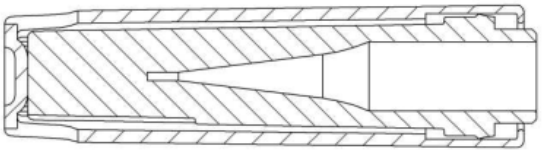
斜視図１



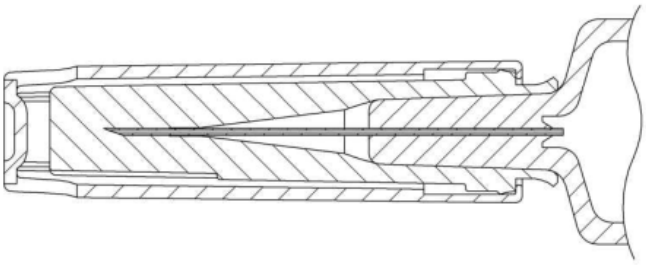
斜視図２



Ａ－Ａ断面図



参考断面図



斜視図１　　Perspective View 1

斜視図２　　Perspective View 2

Ａ－Ａ断面図　　A-A Sectional View

参考断面図　Reference Sectional View

Appendix No. 2　Cited design

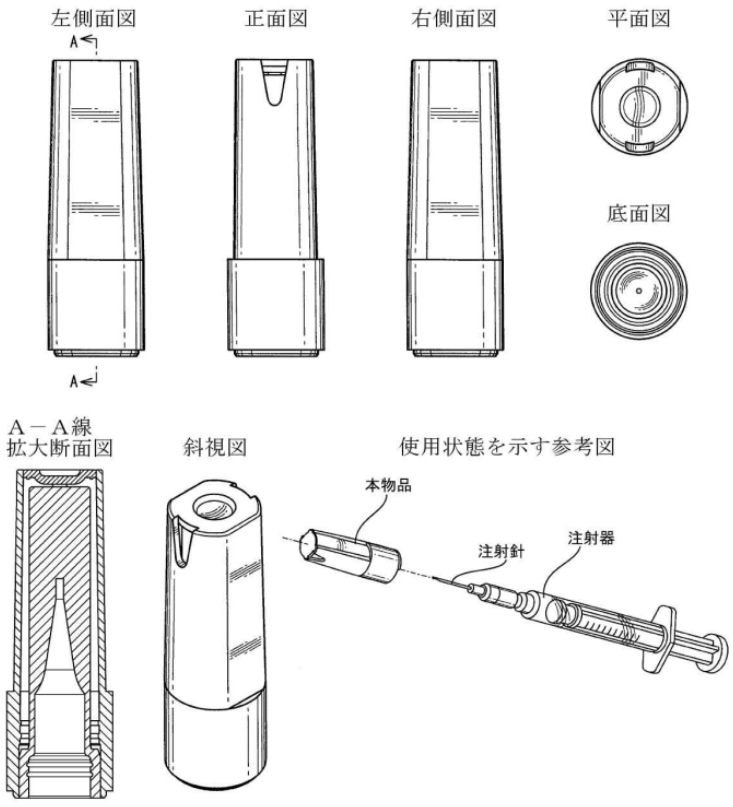
Registration Number　Design registration No. 1331670

Issue Date　June 2, 2008

Article to the design　PROTECTIVE EQUIPMENT OF TIP OF SYRINGE NEEDLE

Description of the article to the design　The present article is a protective cover for covering a syringe needle to be used to prevent a needle-stick accident, etc. of healthcare workers.

Description of the design　Fine lines and dots represented in the entire surface of each drawing are for specifying the shape of a solid surface.　Rear View is the same as Front View, and Left Side View is the same as Right Side View.



左側面図　　Left Side View

正面図　　Front View

右側面図　　Right Side View

平面図　　Top View

底面図　　Bottom View

Ａ－Ａ線拡大断面図　　A-A Enlarged Sectional View

斜視図　　Perspective View

使用状態を示す参考図　　Reference View Showing The State Of Use

本物品　　The present article

注射針　　Syringe needle

注射器　　Syringe