

Appeal decision

Appeal No. 2016-7453

Tokyo, Japan
Appellant

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The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2015-2853 entitled "HEADBOARD FOR BED" 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

This application is an application for design registration filed on February 13, 2015 of the related design, the principal design of which is Japanese Design application No. 2015-2854. According to the description of the application of this application, the article to the design of the design in this application (hereinafter, it is referred to as "the design in the application") is "HEADBOARD FOR BED," and the form of the design in the application is as described in the application and the drawings attached to the application. The application describes in [Description of the Design] that "one part excluding the other part to which thin black ink is applied is the part for which the design registration is requested as a partial design (Note by the body: hereinafter referred to as "the part in the application") (See Appendix 1).

No. 2 Reasons for refusal stated in the examiner's decision

The reason for refusal stated in the examiner's decision is that the design in the application does not fall under the category of Article 10(1) of the Design Act, since the design in the application is not admitted as similar to the principal design described in the application (The design of the application for design registration described as "[Reference Number] CQA-29" and notified as Japanese Design Application No. 2015-2854 by the notification of specifying the application number dated on February 13, 2015). Concretely, the reason for refusal is as follows.

"In the design in the application and the principal design described in the application, while they are common in that they are positioned on an upper portion of the headboard, one difference is admitted in positions with respect to the part for which the design registration is requested due to whether or not there is a wall surface side installation board, and another difference is admitted in scopes with respect to it due to the difference in the forms of two rectangles in a center right portion in the top view. Since these significantly affect the determination of similarity, it is not admitted that the design of this application is similar to the design having the principal design number described in the application."

No. 3 Judgment by the body

Hereinafter, we will examine whether or not the design in the application falls under the category of Article 10(1).

1. The principal design

In the application related to the principal design, an application for design registration was filed on February, 13, 2015, which is the same date as in the present application; an establishment of the design right was registered on December 4, 2015; and the design bulletin was published on January 12, 2016.

According to the description of the design bulletin, the article to the design of the principle design is "HEADBOARD FOR BED," and the form of the principal design is as described in [Drawings] of the design bulletin, and the design bulletin describes in [Description of the Design] that "one part excluding the other part to which thin black ink is applied is the part for which the design registration is requested as a partial design (Note by the body: hereinafter, referred to as "the part of the principal design") (See Appendix 2).

2. Comparison between the design in the application and the principal design

(1) Article to the design

An article to the design of the design in the application is "HEADBOARD FOR BED," and an article to the design of the principal design is also "HEADBOARD FOR BED."

(2) The usage and the function as well as the position, the size, and the scope of the two parts

The position, the size, and the scope of the part in the application is a part constituted by a right-half portion of a top panel, a horizontal plate portion extending to the right end direction, and a vertical plate portion connecting both portions (hereinafter, merely referred to as "a top panel right-half portion," "a horizontal plate portion," and "a vertical plate portion," respectively) which appear on the right side in the top view and appear in a staircase pattern in the perspective view. This is a part occupying the upper right of a headboard for a bed, and according to the description of [Description of the Article to the Design] of the application of this application and the description of [Reference View Showing The State Of Use] in the drawings attached to the application, it has usage and a function capable of preferably disposing objects having different heights; for example, disposing a smartphone on the top panel right-half portion, while disposing a tissue paper box on the horizontal plate portion.

Moreover, the position, the size, and the scope of the part of the principal design is a part constituted by "a top panel right-half portion," "a horizontal plate portion," and "a vertical plate portion" which appears on the right side in the top view and appears in a staircase pattern in the perspective view. This is a part occupying the upper right of a headboard for a bed, and according to the descriptions of [Description of the Article to the Design] and [Reference View showing The State Of Use] of the above design bulletin, it has usage and a function of capable of preferably disposing objects having different heights; for example, disposing a smartphone on the top panel right-half portion, while disposing a tissue paper box on the horizontal plate portion.

Additionally, the usage and the function of the design in the application can be

predicted as use for a single bed, since one pillow is shown according to the description of [Reference View showing The State Of Use] of the application of this application, while the usage and the function of the principal design can be predicted as use for a double bed, since two pillows are shown according to the description of [Reference View showing The State Of Use] of the above design bulletin, and thus they are different in this point.

(3) Form of the two parts

In comparison of the part in the application and the part of the principal design (hereinafter, referred to as "the two parts"), mainly the following common features and different features are admitted.

A. The common features

The following common features are admitted in the form of the two parts.

(A) They are constituted by "a top panel right-half portion," "a horizontal plate portion," and "a vertical plate portion," which are entirely plate-like with substantially the same thickness, wherein "the vertical plate portion" is disposed to be flush with a right end surface of "the top panel right-half portion" and "the horizontal plate portion" protrudes in the right direction from a right end surface of a lower portion of "the vertical plate portion."

Additionally, the bottom portions of "the top panel right-half portion" and "the horizontal plate portion" as well as the left side portion of "the vertical portion" of the part in the application are admitted as included in the part in the application, since sections of each portion belong to the part excluding the other part to which thin black ink is applied according to the description of [Center vertical sectional view of the top view] of the application of the present application. In the same manner, the bottom portions of "the top panel right-half portion" and "the horizontal plate portion" as well as the left side portion of "the vertical portion" of the part of the principal design are admitted as included in the part of the principal design, since the rears of each portion belong to the part excluding the other part to which thin black ink is applied according to the description of [Rear View] of the above design bulletin, so that they are common in this point.

(B) The common features regarding the forms of "the top panel right-half portion" and "the horizontal plate portion"

(B-1) The form seen from the top

"The top panel right-half portion" and "the horizontal plate portion" seen from the top appear in a horizontally long rectangle.

(B-2) The form seen from the right side

The horizontal width of a right end surface of "the top panel right-half portion" as seen from the right side is slightly smaller than the horizontal width of a right end surface of "the horizontal plate portion."

(C) The common feature regarding a ratio of the height of a stepped portion to the length of "the horizontal plate portion"

The ratio of the height of a stepped portion from a top surface of "the horizontal plate portion" to a top surface of "the top panel right-half portion" to the length of "the horizontal plate portion" is about 1:2.7.

(D) The common feature regarding the form of "the vertical plate portion"

A right end of "the vertical plate portion" as seen from the right side appears to be vertical, and a left end thereof appears to be slightly inclined to the right side, and

they are flush with a right end or a left end of "the top panel right-half portion" and of "the horizontal plate portion," respectively.

(E) The common feature regarding the form seen from the front and the left side

At the front, four plates with different vertical widths (They do not constitute the part in the application or the part of the principal design. Hereinafter, this is merely referred to as "a front board") are arranged vertically, and the front board hides "the top panel right-half portion," "the horizontal plate portion," and "the vertical plate portion" as seen from the front.

Also, "the top plate right-half portion," "the horizontal plate portion," and "the vertical plate portion" do not appear from the left side.

B. The different features

On the other hand, the following different features are admitted in the form of the two parts.

(a) The different feature in a form seen from the rear

"The top panel right-half portion," "the horizontal plate portion," and "the vertical plate portion" of the part in the application are hidden by a back board (this does not constitute the part in the application), while in the part of the principal design, since there is no back board, the rears of the corresponding portions appear.

(b) The different feature regarding a form of "the top panel right-half portion" and "the horizontal plate portion"

As seen from the top, a ratio in the horizontal width of "the top panel right-half portion" to "the horizontal plate portion" of the part in the application is about 1:1, while the corresponding ratio of the part in the principal design is about 2.2:1.

(c) The different feature regarding a form of "the top panel right-half portion" due to whether or not there is a square bar-like portion

In the part of the principal design, a square bar-like portion (this does not constitute the part in the application) protrudes on a portion of the top surface of "the top panel right-half portion" near the rear side, whereby this portion is hidden by the square bar-like portion, while in the part in the application, such square bar-like portion is not provided and there is no hidden part in the top surface.

3. Determination of Similarity

(1) Article to the design

As admitted above, the article to the design of the design in the application and the principal design (hereinafter, referred to as "the two designs") are the same.

(2) The usage and the function as well as the position, the size, and the scope of the two parts

As admitted above, both the part in the application and the part of the principal design are parts which occupy the upper right of a headboard for a bed and on which objects with different heights are preferably disposed; for example, disposing a smartphone on the top panel right-half portion, while disposing a tissue paper box on the horizontal plate portion, and thus the usage and the function as well as the position, the size, and the scope of the two parts are common. Additionally, the difference as to whether the usage and the function of the two designs is for a single bed or a double bed does not affect the judgment that the usage and the function as well as the position, the size, and the scope of the two designs are common since the said difference does not change the position occupying the entire design of the two parts so significantly that use

of a smartphone or a tissue paper is inhibited.

(3) Determination of similarity between designs of a headboard for a bed

A headboard for a bed is installed mainly between a bed and a wall in a room, and after the installation; that is, in an ordinary use, it can be said that a rear of the headboard for a bed is frequently hidden by the wall. Consequently, when an observer observes the headboard for a bed in a state of ordinary use, the observer sees the headboard for a bed not from the rear side or the bottom side but from the other directions, and considering that the two parts are hidden by the front board and do not appear from the left side, special attention is paid to constitution of the two parts seen from the top direction and the right side direction. Accordingly, in determination of similarity between designs of the headboard for a bed, the above item is especially evaluated.

(4) Evaluation of common features of the form of the two parts

Regarding the common features that the headboard for a bed is constituted by "the top panel right-half portion," "the horizontal plate portion," and "the vertical plate portion" which are entirely plate-like with substantially the same thickness; that "the top panel right-half portion" and "the horizontal plate portion" appear in a horizontally long rectangle as seen from the top side; and that a ratio of the height of the stepped portion between the top panel right-half portion and the horizontal plate portion to the length of "the horizontal plate portion" is about 1:2.7; that is, the common features (A), (B-1), and (C), it should be said that a certain visual impression is provided to the observer by combining these common features, so that the effects on the determination of similarity between the two parts are large. Especially, they are common in that the bottom portion of "the horizontal plate portion" is included in the two parts. As a result, a space is provided below the horizontal plate portion, and the observer has a certain aesthetic impression to constitution of "the horizontal plate portion" of the two parts, which is connected to "the top panel right-half portion" in a staircase pattern and below which a space is provided. Consequently, considering the observer paying special attention to constitution of the two parts as seen from the top direction and the right side direction, it has to be said that the effects of constitution of "the horizontal plate portion" of the two parts on the determination of similarity between the two parts are large.

On the other hand, regarding the common feature (D) concerning the form of "the vertical plate portion," the degree of inclination of a left end of "the vertical plate portion" as seen from the right side is small, which does not strongly provide any common visual impression to the observer. Also, regarding the common feature (B-2) concerning the form of "the top panel right-half portion" and "the horizontal plate portion" as seen from the right side, the horizontal width of a right end surface of "the top panel right-half portion" as seen from the right side is slightly smaller than the horizontal width of a right end surface of "the horizontal plate portion," which does not provide any common visual impression to the observer. Moreover, since the common feature (E) that the two parts do not appear seen from the front and the left side should not be evaluated in the determination of similarity between the two parts, the effects of the common features (B-2), (D), and (E) on the determination of similarity between the two parts are small.

Accordingly, summarizing the common features (A) to (E), while the effects of the common features (B-2), (D), and (E) on the determination of similarity between the

two parts are small, the effects of the common features (A), (B-1), and (C) on the determination of similarity between the two parts are large, so that it is admitted that the common features in the form affect largely on the determination of similarity between the two parts as a whole.

(5) Evaluation of different features in the form of the two parts

In contrast, the effects of the different features (a) to (c) admitted above on the determination of similarity between the two parts are evaluated as follows.

First, the different feature (a) is the difference as to whether or not "the top panel right-half portion," "the horizontal plate portion," and "the vertical plate portion" are hidden as seen from the rear depending on the existence of the back board which does not constitute the part. From the facts that appearance of this difference is limited when the two parts are observed from the rear direction and that this difference does not at all damage the common features of the two parts, and considering that the observer rarely observes the headboard for a bed from the rear side and the common features (A), (B-1), and (C) of the two parts provide a certain visual impression to the observer, it is difficult to say that the different feature (a) influences the determination of similarity of the two parts.

Next, the different feature (b) is the difference as to whether a ratio of the horizontal width of "the top panel right-half portion" to the horizontal width of "the horizontal plate portion" is about 1:1 (the part in the application) or about 2.2:1 (the part of the principal design). Considering that "the horizontal plate portion" of the two parts has use for disposing a tissue paper box, etc. thereon and its horizontal width is the width of the tissue paper box and constant, the difference of the ratio is converged on the difference in the length of "the top panel right-half portion" to constant the length of "the horizontal plate portion." This difference in the length of "the top panel right-half portion" is due to the fact that usage and the function of the design in the application are for a single bed, while usage and the function of the principal design are for a double bed, and it is difficult to say that the observer especially focuses on the fact that "the horizontal plate portion" of the part in the application is shorter than the corresponding portion of the principal design due to the use for a single bed, since the observer has many chances to use beds of different sizes. Accordingly, the effects of the different feature (b) on the determination of similarity of the two parts are small.

Lastly, as pointed out in the different feature (c), regarding the difference of the form of "the top panel right-half portion" due to the presence or absence of the square bar-like portion, since the area of the portion of the top surface of "the top panel right-half portion" near the rear side hidden by the square bar-like portion in the part of the principal design is extremely small, when this portion is compared with the portion of the top surface of it in the part in the application which is not hidden, it cannot be said that the difference whether the hidden portion exists or not provides a different visual impression to the observer. In addition, considering that the part in the application has no square bar-like portion and rather has an ordinary shape, the difference whether the hidden portion exists or not in the top surface of "the top panel right-half portion" cannot be particularly evaluated as the difference of the part in the application from the part of the principal design.

(6) Overall Judgment

As described above, while the effects of the common features in the form of the two parts on the determination of similarity between the two parts are large as a whole,

the effects of the different features in the form of the two parts on the determination of similarity between the two parts are small, and even considering the effects in the way of connecting the different features in the form, it is difficult to say that the effects of the different features in the form of the two parts on the determination of similarity between the two parts are large exceeding the effects of the common features in the form.

(7) Summary

Accordingly, the articles to the design of the two designs are the same, usage and the function as well as the position, the size, and the scope of the two parts are common, and moreover, regarding the form of the two parts, the effects of the common features on the determination of similarity of the two parts are large, exceeding the effects of the different features. Thus, the design in the application is similar to the principal design.

4. As to whether or not the design in the application falls under the category of Article 10(1)

Since the principal design is a design related to an application for design registration of the applicant for design registration of this application, it satisfies the requirement of the Principal Design under the category of Article 10(1) of the Design Act.

In addition, since the filling date of the application for design registration of the design in the application is on or after the filling date of the application for design registration of the Principal Design and before the date when the design bulletin of the principal design is published, the filling date of the application for design registration of the design in the application satisfies the requirement of the date of application for design registration of the Related Design under the category of Article 10(1) of the Design Act.

Moreover, as described above, the design in the application is admitted as similar to the principal design, so that the design in the application satisfies the requirement for the design (the Related Design) which is similar to the Principal Design under the category of Article 10(1) of the Design Act.

Thus, the design in the application falls under the category of Article 10(1) of the Design Act.

No. 4 Closing

As described above, the design in the application falls under the category of Article 10(1) of the Design Act and can be granted a design registration as a related design of the principal design, so that this application should not be rejected based on the reason for refusal of the original examination.

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

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

September 14, 2016

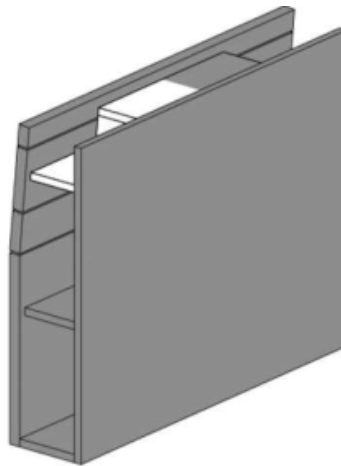
Chief administrative judge: SAITO, Takae
Administrative judge: KOBAYASHI, Hirokazu

Administrative judge: WATANABE, Kumi

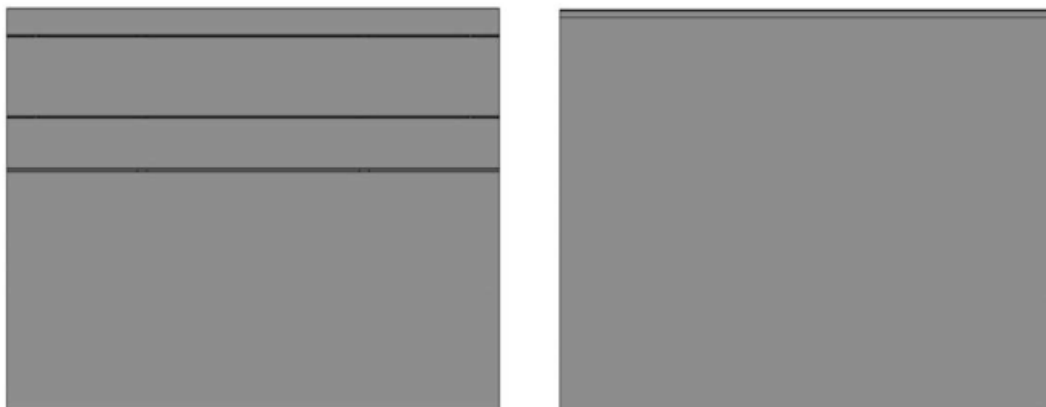
Appendix 1 The design in the application (Design Application No. 2015-002853)
[Article to the Design] HEADBOARD FOR BED

[Description of the Article to the Design] This article is a headboard for a bed which is used connecting the front side thereof to the body of a bed in the drawings. This headboard has a shelf portion on which an object is disposed. The center portion and the side portion of the shelf portion are formed in a staircase pattern, and the side portion is lower than the center portion (the part for which the design registration is requested). By doing this, as shown in Reference View, objects with different heights can be preferably disposed; for example, disposing a flat smartphone on the center portion, while disposing a tissue paper box or a lighting apparatus with a certain height on the side portion.

[Description of the Design] One part excluding the other part to which thin black ink is applied is the part for which the design registration is requested as a partial design.

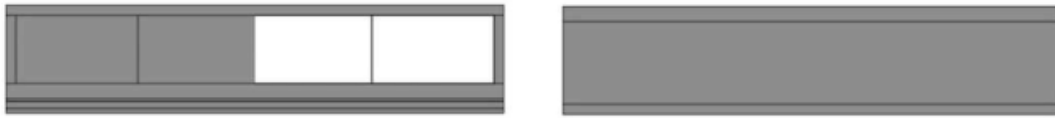


斜視図 Perspective View



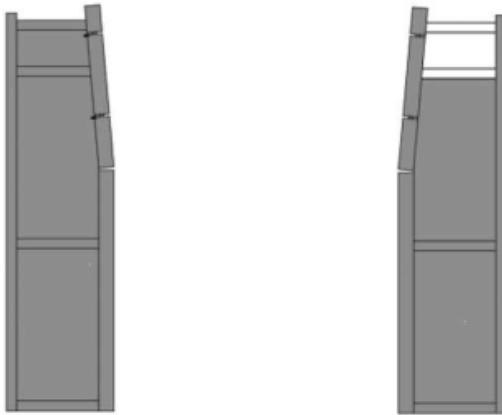
正面図 Front View

背面図 Rear View



平面図 Top View

底面図 Bottom View

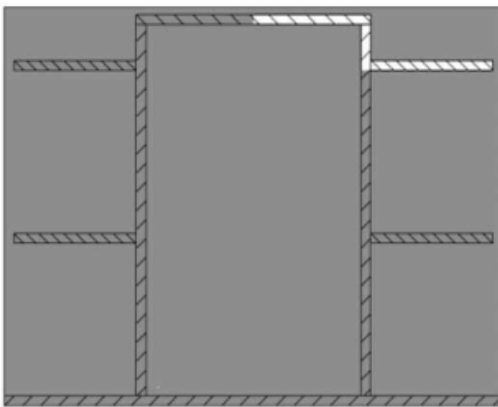


左側面図

Left Side View

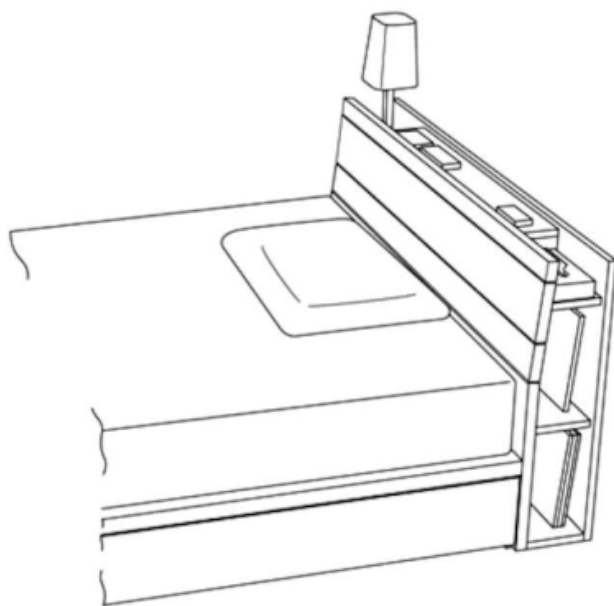
右側面図

Right Side View



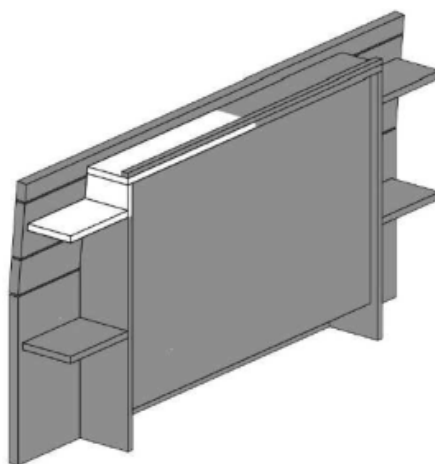
平面中央縦断面図

Center Vertical Sectional View Of The Top View

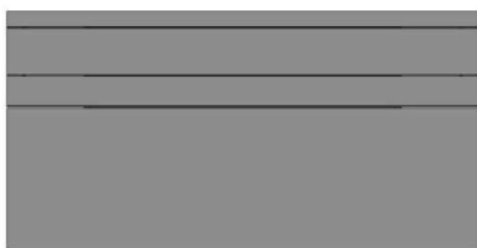


使用状態を示す参考図 Reference View Showing The State Of Use

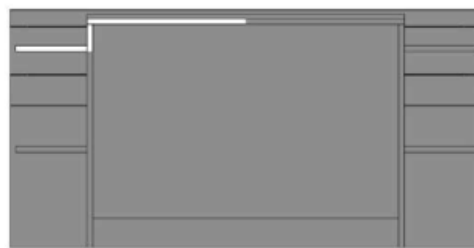
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Appendix 2 The principal design (Design Registration No. 1541291)



斜視図 Perspective View



正面図 Front View



背面図 Rear View



平面図 Top View



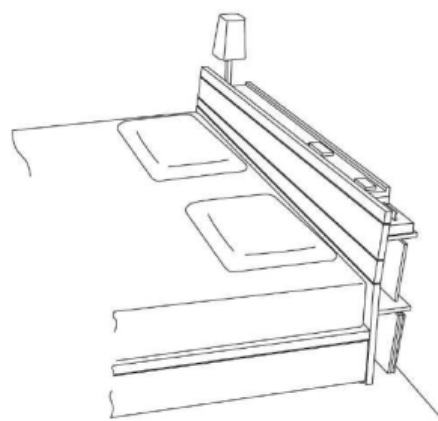
底面図 Bottom View



左側面図 Left Side View



右側面図 Right Side View



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