

Appeal decision

Appeal No. 2016-17324

Aichi, Japan

Appellant TOYOTA HOME CORPORATION

Aichi, Japan

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The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2015-25242, entitled "PREFABRICATED HOUSE," 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 November 11, 2015 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 "PREFABRICATED HOUSE," the article to the design, and describes its form in accordance with the descriptions of the application and drawings attached to the application, and moreover, describes that, "A part represented by a solid line is the part for which the design registration is requested as a partial design. A dash-dotted line is a line expressing only the boundary between the part for which the design registration is requested as a partial design and the other parts. In "Reference View," the part for which the design registration is requested as a partial design is shaded. Bottom View is omitted due to the heavy object (hereinafter the part for which the design registration is requested as a partial design is referred to as "the solid line part in the application") (see Appendix No. 1).

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

The reasons for refusal stated in the examiner's decision are 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 is a part corresponding to the solid line part in the application of the design of design registration No. 1202706 (the article to the design,

PREFABRICATED HOUSE) described in the design bulletin issued by the Japan Patent Office (hereinafter referred to as "Cited design," and this design and the design in the application are collectively referred to as "two designs") and its form is as described in the drawings of the design bulletin (hereinafter, in the Cited design, the part corresponding to the solid line part in the application is referred to as "the cited corresponding part," and the solid line part in the application and the cited corresponding part are collectively referred to as "two design parts.") (see Appendix No. 2).

No. 3 Judgment by the body

1. Comparison of two designs

(1) Article to the design of two designs

Since the article to the design of the design in the application is "PREFABRICATED HOUSE" and the article to the design of the Cited design is "PREFABRICATED HOUSE," the articles to the design of the two designs are in correspondence with each other.

(2) Usage and function of two design parts

Referring to the description of drawings attached to the application including the part represented by a broken line, the solid line part in the application has usage and function as a common porch of a housing complex; on the other hand, the cited corresponding part has usage and function as a garage built-in a single-family house, and usage and function of the two design parts are different from each other.

(3) Position, size, and scope of two design parts

The two design parts are positioned so that the parts are protruded to the front of a house, the height of the two design parts is a height to the second floor of a house, and the area of the two design parts is about 1/6 to 1/4 of the area of the entire house, and thus position, size, and scope of the two design parts are common.

(4) Form of two design parts

Regarding the form of the two design parts, there are the following main common features and different features.

<Common features>

The two design parts are common in the following points, as a basic form,

(A) The entire is constituted of arc-like front walls protruding forward in a top view and left and right outer walls connected to left and right ends of the front wall, any of the left and right outer walls is extended to the front wall of the house, and as a specific form,

(B) To the left side of the front wall, a vertical rectangular aperture is located at a position in the middle of the second and first floors of the house, and inner walls are located in the left and right of the aperture, and

(C) The left and right ends of the front wall are protruded in a wing wall shape.

<The different features>

The two designs are different in the following points, as a specific form,

(a) To the inner part of the aperture of the front wall of the part of the design in the application, a deep wall is positioned in the front of the front wall of the house; on the other hand, at the inner part of the aperture of the front wall of the cited corresponding part, a deep wall is positioned behind the front wall of the house,

(b) The ratio of a width of the aperture to the full width of the front wall is about 1:6 in the part of the design in the application; on the other hand, the above ratio is about 1:3 in the cited corresponding part,

(c) A door is provided on the left outer wall of the cited corresponding part; on the other hand, a door is not provided on the left outer wall of the part of the design in the application,

(d) The right outer wall of the part of the design in the application is extended to the front wall of the house; on the other hand, the left outer wall of the cited corresponding part is extended to the front wall of the house, and

(e) The part of the design in the application excludes a vertical rectangular part in the lower right of the front wall; on the other hand, the cited corresponding part excludes nothing in the lower right of the front wall.

2. Determination of similarity of the two designs

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

(1) Evaluation of the articles to the design of two designs

The articles to the design of two designs have correspondence in

"PREFABRICATED HOUSE," "PREFABRICATED HOUSE" itself is a commonplace article, and it can be said that the influence exerted by the feature that the articles to the design of the two designs are common on the determination of similarity of the two designs is small.

(2) Evaluation of usage and function of two design parts

The solid line part in the application has usage and function as a common porch of a housing complex; on the other hand, the cited corresponding part has usage and function as a garage built-in a single-family house, and it should be said that the function of an entrance of a house is the most basic and important part in the house since the entrance is the part that plays the role of the approach to the house.

Thus, the difference in usage and function of two design parts means a difference in the most basic and important function in the prefabricated house, and it has to be said that the influence exerted by the difference in the usage and function on the determination of similarity of the two designs is large.

(3) Evaluation of position, size, and scope of two design parts

The two design parts are common in position, size, and scope, the size such that

the arc-like front wall is extended to the second floor of the house is not commonplace besides the two design parts, and it can be said that the influence exerted by the feature that position, size, and scope of the two design parts are common on determination of similarity of the two designs remains to a certain degree.

(4) Evaluation of common features regarding form of two design parts

The common feature (A) that the entire is constituted of arc-like front walls protruding forward in a top view and left and right outer walls connected to left and right ends of the front wall, and any of the left and right outer walls are extended to the front wall of the house, is a common feature in a case of generally taking the form of two designs into consideration, the arc-like front wall protruding forward in a top view is not limited to the two design parts and is a commonplace form, and it cannot be said that the influence exerted by the common feature (A) on the determination of similarity of the two designs is large.

In addition, regarding the common feature (B) that to the left side of the front wall, a vertical rectangular aperture is located at a position in the middle of the second and first floors of the house, and inner walls are located in the left and right of the aperture, a form of which a vertical rectangular aperture is located at a position in the

middle of the second and first floors of the house and inner walls are located in the left and right of the aperture is a form seen in an entrance of a house built in a snow-covered area, for example, and it cannot be said that the influence exerted by the common feature (B) on the determination of similarity of the two designs is large.

Further, while the common feature (C) that the left and right ends of the front wall are protruded in a wing wall shape is a not commonplace feature besides the two design parts, the common feature concerns a very partial form, that is, the left and right ends of the front wall, and it cannot be said that the influence exerted by the common feature (C) on the determination of similarity of the two designs is large.

(5) Evaluation of the different features regarding form of two design parts

On the other hand, the different features (a) to (c) regarding the specific form of two design parts are different features in the form derived from usage and function of two design parts, and it has to be said that the influences exerted by these different features on the determination of similarity of the two designs are large.

First, examining the different feature (a) in detail, the aperture of the part of the design in the application corresponds to a gate of a common porch, and a deep wall which should be provided on a common entrance door is provided in a front of the front

wall of the house. On the other hand, the aperture of the cited corresponding part is an gate of a built-in garage, space corresponding to the length of a car is needed in the inner side of the aperture, and a deep wall is not provided in the range between the front of the house and the aperture, but is provided behind the front wall of the house.

Further, many consumers in the field of the article of prefabricated house (hereinafter referred to as "the field of the article") are the purchasers and residents, and it has to be said that the entrance is a part that the purchasers and residents use daily and observe with high interest, and it has to be said that the influence exerted by the different feature (a) on the determination of similarity of the two designs is large.

Further, regarding the different feature (b) that the width of aperture is relatively small in the part of the design in the application, and large in the cited corresponding part, the aperture of the part of the design in the application corresponds to a gate of a common porch and the width such that a human can come and go is enough as the aperture of the part of the design in the application; on the other hand, the aperture of the cited corresponding part is a gate of a built-in garage and the width such that a car parks therein is needed as the aperture of the cited corresponding part, and thus it has to be said that the influence exerted by the different feature (b), similar to the different feature (a), on the determination of similarity of the two designs is large.

In addition, regarding the different feature (c) that a door is provided on the left outer wall of the cited corresponding part, while on the other hand, a door is not provided on the left outer wall of the part of the design in the application, the aperture of the part of the design in the application corresponds to a gate of a common porch and another gate for entering into a porch is not required besides the aperture, and on the other hand, the aperture of the cited corresponding part is a gate of a built-in garage and another gate door for entering from a porch to a garage is needed, and it has to be said that the influence exerted by the different feature (c), similar to the different feature (a), on the determination of similarity of the two designs is large.

Further, regarding the different feature (d) that the right outer wall of the part of the design in the application is extended to the front wall of the house, while on the other hand, the left outer wall of the cited corresponding part is extended to the front wall of the house, the front wall of the part of the design in the application appears to be close to the left side of the house in a front view, while on the other hand, the front wall of the cited corresponding part appears to be close to the right side of the house, and thus the different feature (d) is highly noticeable and it can be said that the influence exerted by the different feature (d) on determination of similarity of the two designs is large.

In contrast, regarding the different feature (e) that the part of the design in the application excludes a vertical rectangular part in the lower right of the front wall; on the other hand, the cited corresponding part excludes nothing in the lower right of the front wall, and thus it can be said that the influence exerted by the different feature (e) on the determination of similarity of the two designs is small.

(6) Summary

Thus, the articles to the design of two designs are in correspondence with each other; however, the influence exerted thereby on determination of similarity of the two designs is small, the influence exerted by the position, size, and scope of two design parts on determination of similarity of the two designs remains to a certain degree, and the influences exerted by the common features (A) to (C) regarding the form of two design parts on determination of similarity of the two designs are not large.

On the other hand, the influence exerted by the difference in the usage and function of two design parts on determination of similarity of the two designs is large, and the influences exerted by the different features (a) to (d) regarding the form of two design parts on the determination of similarity of the two designs are large, even though the influence exerted by the different feature (e) on the determination of similarity of the

two designs is small, in a case of taking the entire design into consideration, an impression that the two designs are different exceeds an impression that the two designs are common, and it can be said that the two designs are different in visual impression, and thus it cannot be said 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 in 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 the 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.

February 10, 2017

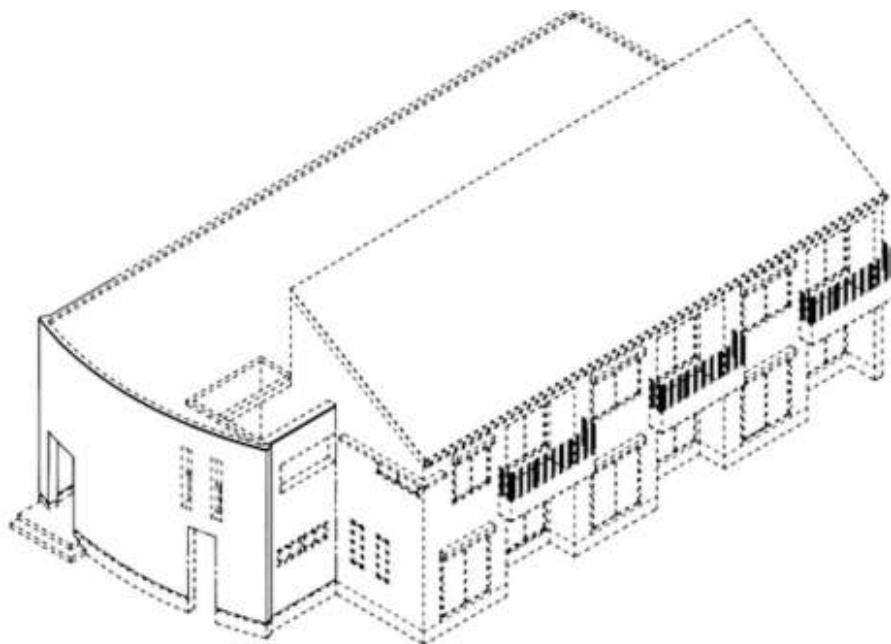
Chief administrative judge: KOBAYASHI, Hirokazu
Administrative judge: KARIMA, Hironobu
Administrative judge: WATANABE, Kumi

Appendix No. 1 The design in the application (Japanese Design Application No. 2015-25242)

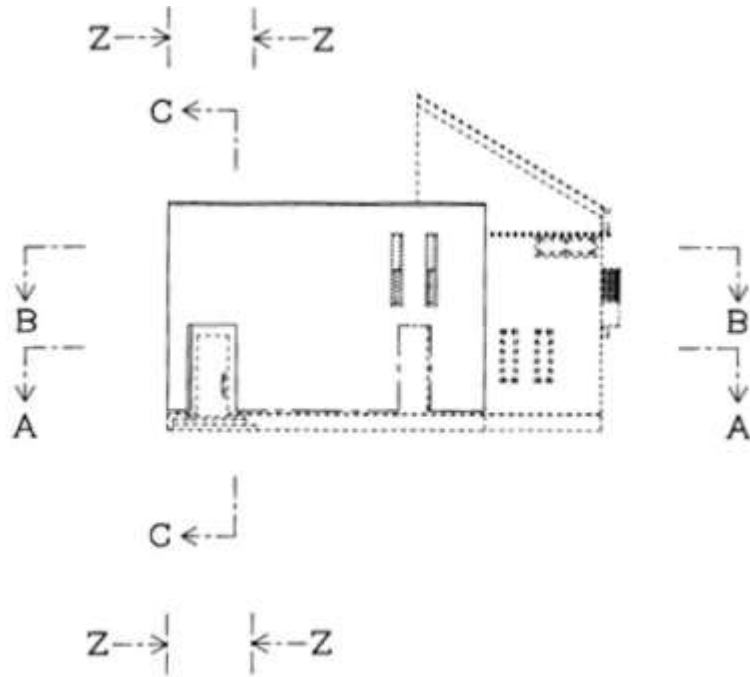
[Article to the design] PREFABRICATED HOUSE

[Description of the Design] A part represented by a solid line is the part for which the design registration is requested as a partial design. A dash-dotted line is a line expressing only the boundary between the part for which the design registration is requested as a partial design and the other parts. In "Reference View," the part for which the design registration is requested as a partial design is shaded. Bottom View is omitted due to the heavy object.

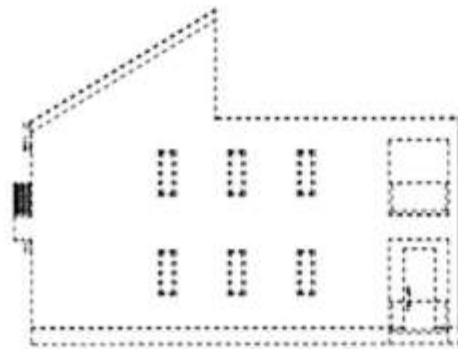
Views showing the front, top and right side



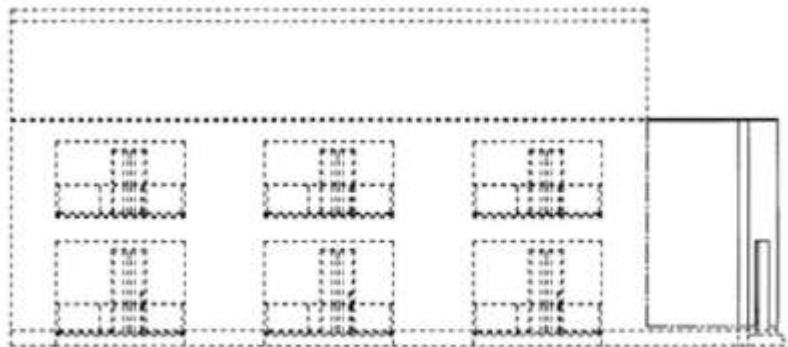
Front View



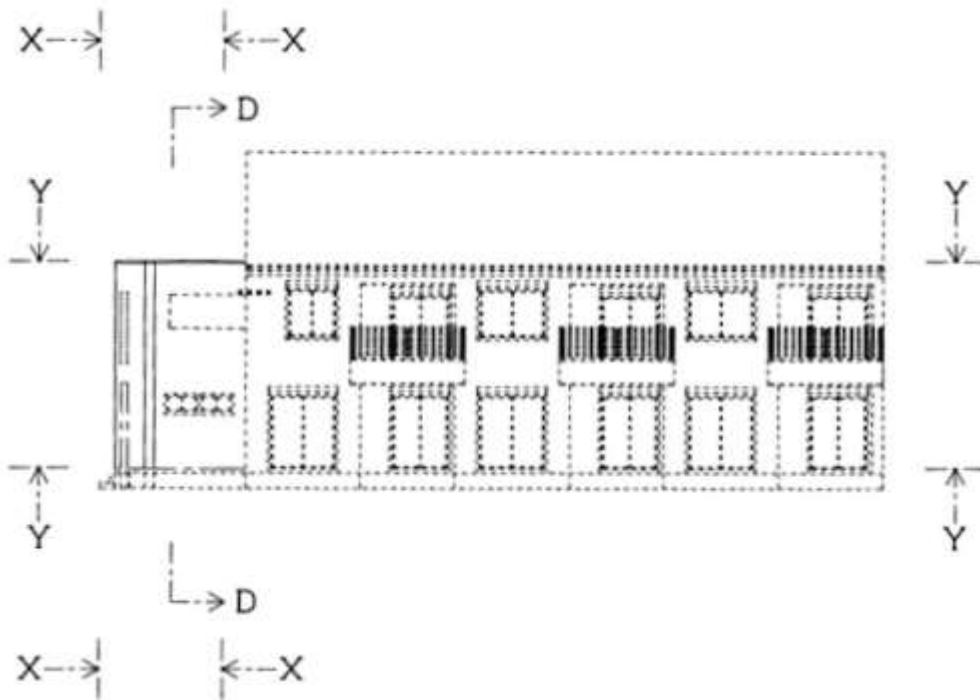
Rear View



Left Side View

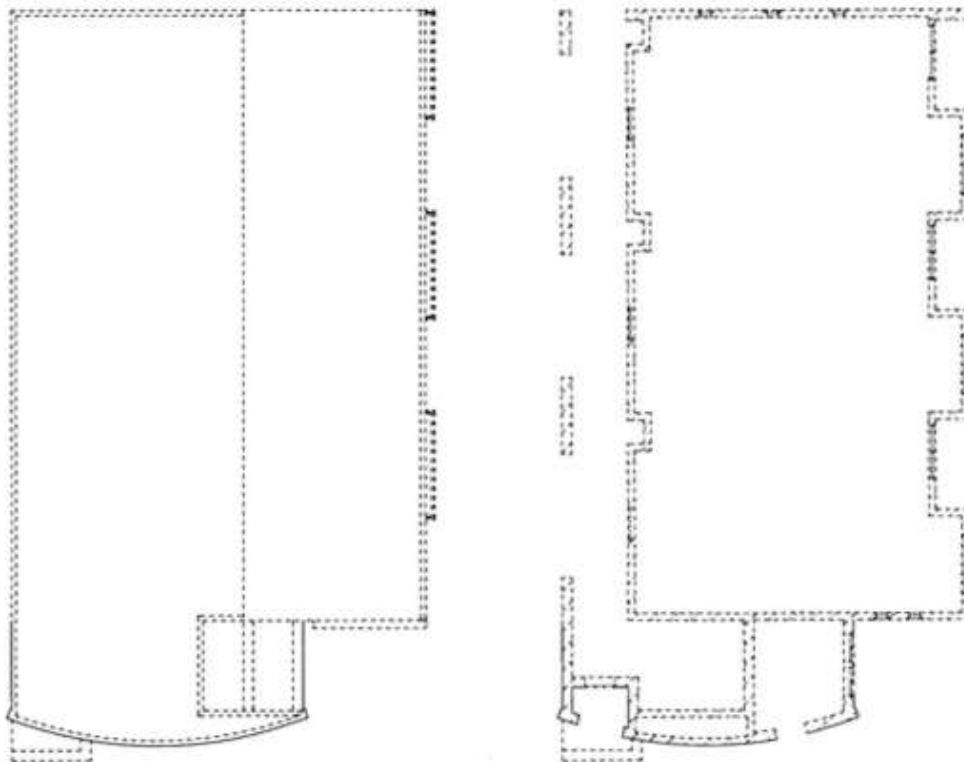


Right Side View

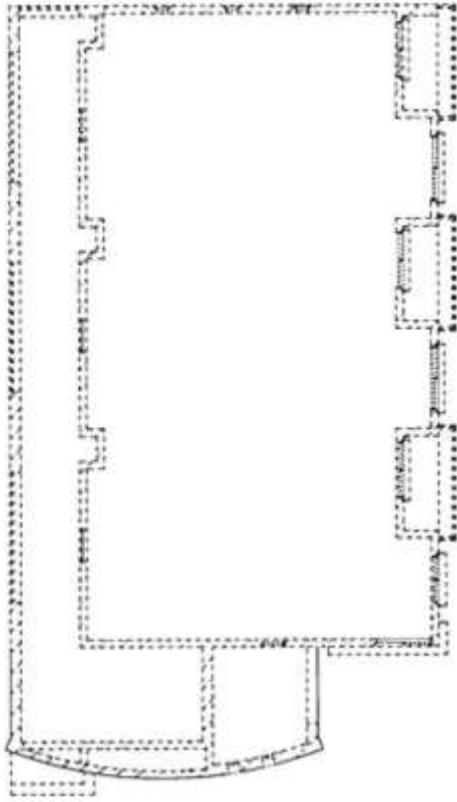


Top View

A-A Sectional View with an inner mechanism omitted

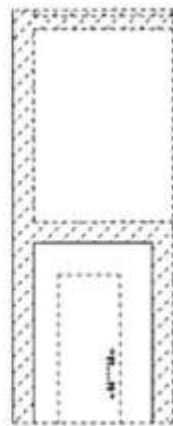
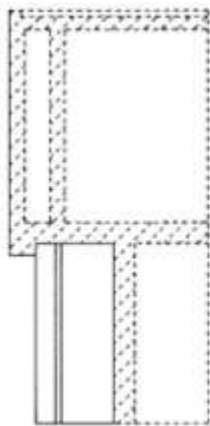


B-B Sectional View with an inner mechanism omitted

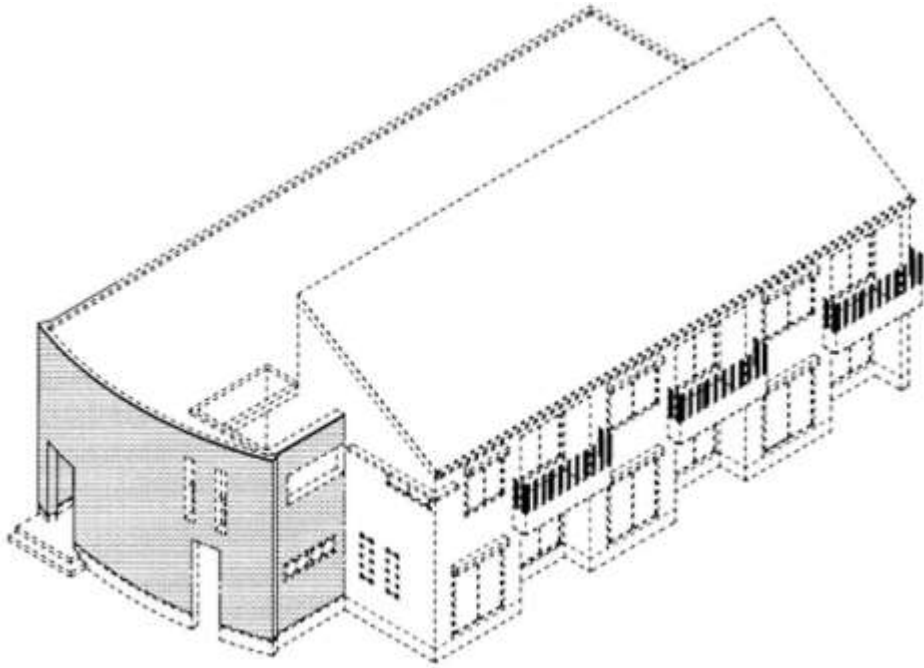


X-X, Y-Y, and C-C Enlarged Sectional View

Y-Y, Z-Z, and D-D Enlarged Sectional View



Reference View



Appendix No. 2 Cited design

Design registration No. 1202706 described in the design bulletin issued by Japan

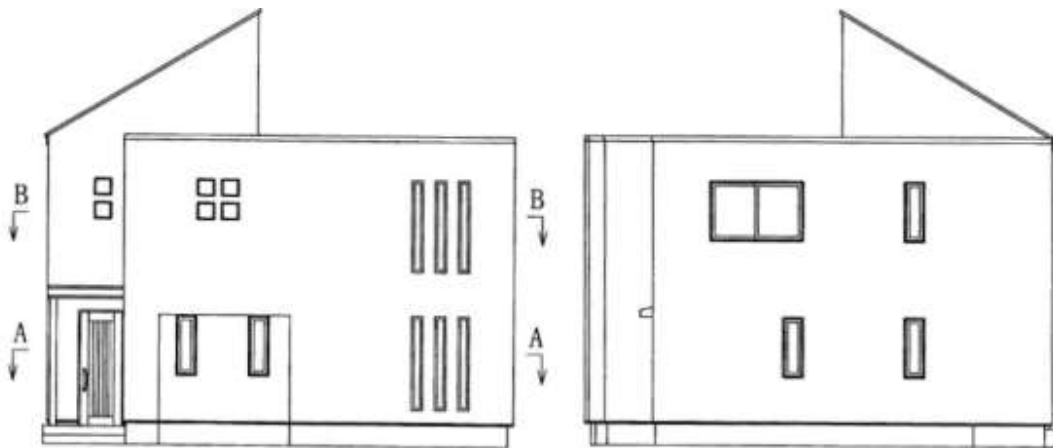
Patent Office issued on April 19, 2004

[Article to the design] PREFABRICATED HOUSE

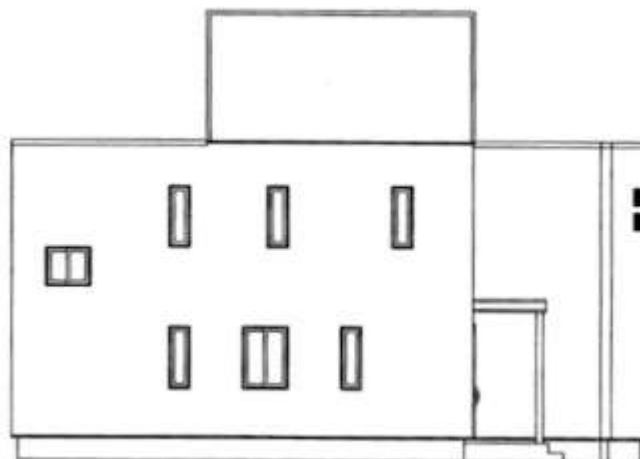
[Description of the Design] Bottom View is omitted due to the heavy object.

Front View

Rear View



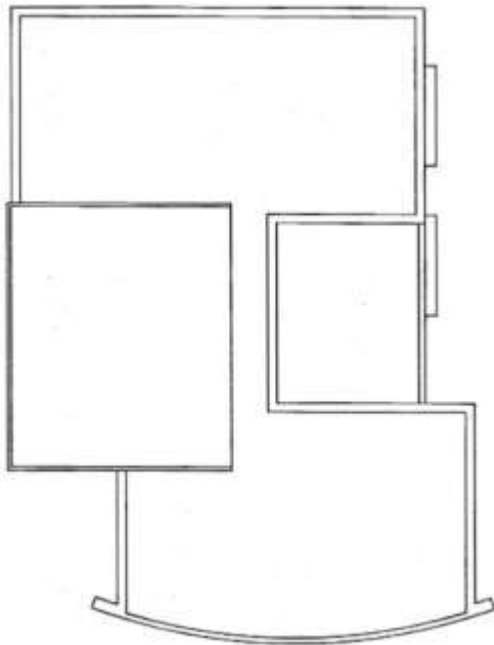
Left Side View



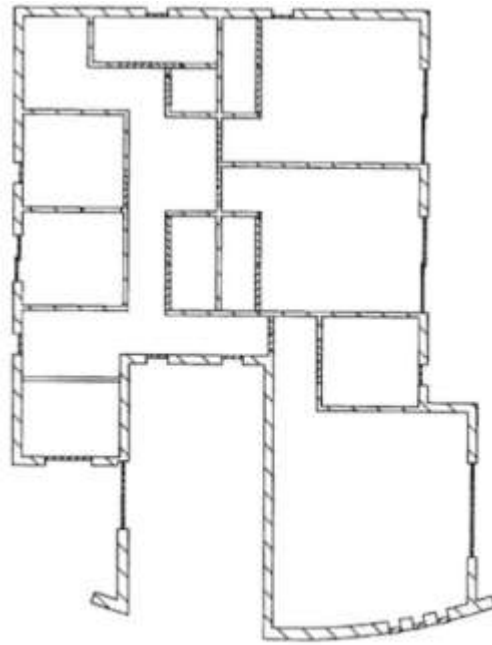
Right Side View



Top View



A-A End Elevational View



B-B End Elevational View

