Appeal decision

Dissatisfaction No. 2017-10202

Osaka, Japan
Appellant AISEI CO.LTD.

Osaka, Japan
Patent Attorney FUJIMOTO, Noboru

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The case of appeal against the examiner’s decision of refusal of Japanese Design Application No. 2016-22578, entitled "CONTACT LENS," has resulted in the following appeal decision.

Conclusion

The examiner's decision is revoked.

The design in the application shall be registered.

Reason

1. The design in the application

The present application is an application for design registration filed on October 17, 2016, in which the application of the provision of Article 4(2) of the Design Act is sought, and concerning the design (hereinafter referred to as "the design in the application"), the article to the design is "CONTACT LENS" and its form is as described in the application and the drawings attached to the application (See Appendix 1).

2. Reason for refusal of the examiner's decision and the cited design

The reason for rejection of the examiner's decision is that the design in the application does not fall under the design of the applicant who filed the application for design registration on the earliest date, and the design cited in the reason for rejection

under the provision of Article 9(1) of the Design Act (hereinafter referred to as "the cited design") is the design of the application for design registration filed on April 27, 2016 and of design registration No. 1561180 (Design Application Number No. 2016-9339) described in the design bulletin issued on October 17, 2016 by the Japan Patent Office and is entitled "CONTACT LENS" and its form is as described in the design bulletin (See Appendix 2).

3. Comparison of two designs

Comparing two designs, first of all, concerning the articles to design, two designs relate to a "contact lens" and they coincide in the articles to the design.

With reference to the forms of two designs, mainly the following common and different features are found.

For the purpose of comparing two designs, the direction of the cited design is made to correspond to that of the design in the application and the respective forms are found and compared below.

(1) Common features

Two designs mainly share the following features in common.

(A) Each of the overall designs is made of a translucent curved surface body, which looks like a spherical body cut off partially by a plane. The curved surface body comprises a central circular portion (hereinafter referred to as the "central circular portion") without a pattern, which surrounds the central point of the curved surface body at the center in the top view, and an outer circumferential end portion (hereinafter referred to as the "outer circumferential end portion") without a pattern at the outermost circumference of the curved surface body.

Patterns are arranged at an inner circumferential portion (hereinafter referred to as the "inner circumferential portion") near the central circular portion and an outer circumferential portion (hereinafter referred to as the "outer circumferential portion") near the outer circumferential end portion. The outer circumferential portion is dark toned.

(B) At the parts near the inner side of the inner circumferential portion (hereinafter referred to as the "inner side of the inner circumferential portion"), a light toned spot pattern (hereinafter referred to as the "spot pattern at the inner side of the inner circumferential portion") extending from the vicinity of the outer circumference to the central portion is arranged. The spot pattern at the inner side of the inner circumferential portion is arranged radially from the central point of the central circular portion and forms approximate narrow triangles and is zigzag near the central circular portion. Their lengths are not uniform and the spots near the central circular portion are smaller.

(C) At the parts near the outer circumferential portion at the outer side of the inner circumferential portion (hereinafter referred to as the "outer side of the inner circumferential portion"), a dark toned spot pattern (hereinafter referred to as the "spot pattern at the outer side of the inner circumferential portion") extending toward the central portion from the outer circumferential portion is arranged. The spot pattern at the outer side of the inner circumferential portion is arranged radially from the central point of the central circular portion and is shifted from the spot pattern at the inner side of the inner circumferential portion and the apexes form uneven shapes of approximate triangles near the central circular portion. Their lengths and shapes are not uniform.

(D) A regular dot pattern (hereinafter referred to as the "outer circumferential dot

pattern") formed of a number of small circles is annularly arranged in the outer circumferential portion so that it may continue to the outer side of the spot pattern at the outer side of the inner circumferential portion.

(2) Different features

The following main differences are found.

(A) With reference to the spot pattern at the outer side of the inner circumferential portion, in the design in the application, the size and the shapes of spots are irregular and near the outer circumferential portion, a number of amorphous and larger spots are observed, whereas in the cited design the spot pattern appears to be uniformly diffused.

(B) With reference to the form of the outer circumferential dot pattern, in the design in the application, the outer circumferential dot pattern is approximately grid-like and smaller dots are formed near the outer circumferential end portion, whereas in the cited design, the outer circumferential dot pattern is approximately diagonal grid-like and dots of the same size are arranged.

(C) With reference to the form of the spot pattern at the inner side of the inner circumferential portion, in the design in the application, the pattern of extremely small spots is arranged near the central circular portion and the dots different in size are finely mixed, whereas in the cited design, the size of dots is unchanged near the central circular portion.

(D) With reference to the color of the spot pattern at the inner side of the inner circumferential portion, in the design in the application, it is light toned in an achromatic color, whereas in the cited design, it is relatively light brown.

(E) The ratio between the overall height and the diameter is about 1:3.8 and higher in the design in the application, whereas it is about 1:5.5 and lower in the cited design.

4. Determination of similarity

(1) Common features

The two designs are reviewed. Common feature (A) is as follows: Each of the overall designs is made of a translucent curved surface body, which looks like a spherical body cut off partially by a plane. The curved surface body comprises a central circular portion without a pattern, which surrounds the central point of the curved surface body at the center in the front view, and an outer circumferential end portion without a pattern. Patterns are arranged at an inner circumferential portion and an outer circumferential portion. The outer circumferential portion is dark black. The overall configuration is a feature in common between the two designs. However, it can be said that in the field of this kind of article, this form is a common form and has already been observed in many designs other than the two designs. Therefore, this form cannot be said to be a remarkable feature that is found only in the two designs, and the two designs cannot be determined to be similar simply because the overall configuration is a feature in common between them. Accordingly, this feature affects the determination of similarity of the two designs only to a certain extent.

Next, common feature (B) is as follows: At the inner side of the inner circumferential portion, a light toned spot pattern at the inner side of the inner circumferential portion extending from the vicinity of the outer circumference to the central portion is arranged. The spot pattern at the inner side of the inner circumferential portion is arranged radially from the central point of the central circular portion and forms approximate narrow triangles and is zigzag near the central circular portion. Their lengths are not uniform and the spots near the central circular portion

are smaller. This form is a feature in common between the two designs. However, in the field of this kind of articles, this form has already been observed in many designs other than the two designs, and this form cannot be said to be a remarkable feature that is found only in the two designs. This feature affects the determination of similarity of the two designs only insignificantly.

Common feature (C) is as follows: At the outer side of the inner circumferential portion, a dark toned spot pattern at the outer side of the inner circumferential portion extending toward the central portion from the outer circumferential portion is arranged. The spot pattern at the outer side of the inner circumferential portion is arranged radially from the central point of the central circular portion and is shifted from the spot pattern at the inner side of the inner circumferential portion, and the apexes form uneven shapes of approximate triangles near the central circular portion. Their lengths and shapes are not uniform. This form is a feature in common between the two designs. However, in the field of this kind of article, this form has already been observed in many designs other than the two designs, and this form cannot be said to be a remarkable feature that is found only in the two designs. Accordingly, this feature affects the determination of similarity of the two designs only insignificantly.

Common feature (D) is as follows: A regular outer circumferential dot pattern formed of a number of small circles is annularly arranged in the outer circumferential portion so that it may continue to the outer side of the spot pattern at the outer side of the inner circumferential portion. This form is a feature in common between the two designs. However, it can be said that the form in which a regular outer circumferential dot pattern is annularly arranged in the outer circumferential portion in the same way as

the two designs is a common form and can be observed in other designs. This form cannot be said to be a form in common only between the two designs. This feature affects the determination of similarity of the two designs only insignificantly.

Thus, even when the influence given by the entirety of the points in common to the determination of similarity of two designs is taken into consideration, it cannot be said that the common features determine the similarity of two designs.

(2) Different features

On the other hand, the visual effect synergistically resulting from the form of the different features determines the similarity of two designs.

More specifically, first of all, with reference to the different feature (A) or the spot pattern at the outer side of the inner circumferential portion, in the design in the application, the sizes and the shapes of spots are irregular, and near the outer circumferential portion, a number of amorphous and larger spots are observed. For this reason, the design in the application gives an amorphous impression and creates an impression that the vicinity of the outer circumferential portion is darker. In contrast, in the cited design the spot pattern appears to be uniformly diffused, and accordingly, gives a regular impression and creates an impression that the dark portion is diffused in the vicinity of the central circular portion. The cited design is clearly different in appearance from the spot pattern of the design in the application. The difference can be said to significantly affect the determination of similarity of two designs.

Next, with reference to difference (B) or the form of the outer circumferential dot pattern, it can be said that the design in the application in which the outer circumferential dot pattern is approximate grid-like and smaller dots are formed near the outer circumferential end portion creates a natural impression. In contrast, in the cited

design, the outer circumferential dot pattern is approximately diagonal grid-like and dots of the same size are arranged. Accordingly, the dot pattern appears more distinct near the outer circumferential end portion and can be said to give a regular impression. It gives a different impression from the form of the design in the application to the consumers in the field of this kind of article and therefore, the difference can be said to affect the determination of similarity of two designs.

In addition, with reference to difference (C) or the spot pattern at the inner side of the inner circumferential portion, in the design in the application, the pattern of extremely small spots is arranged near the central circular portion and dots different in size are finely mixed, and in consequence, the design in application looks like a natural state of the eye. In contrast, in the cited design, the size of dots is unchanged near the central circular portion and in consequence, the black portion takes up more space in the pupil and thus it can be said that the cited design creates an impression that one has a large pupil. Even though this difference is a partial difference in the form in common, the impression when two designs are used is different. Therefore, the difference can be said to affect the determination of similarity of two designs.

With reference to difference (D) or the difference in colors, the difference can be certainly recognized. In the field of contact lenses which have already had many colors, the difference in colors cannot be said to be significant enough to differentiate two designs from each other, but it can be said that the difference slightly affects the determination of similarity of two designs.

Further, with reference to difference (E) or the difference in height, in the field of this kind of contact lens, variations to a certain extent can be anticipated in the form to be carried out, and it cannot be said that the influence exerted on the entire

determination of similarity by the difference in height is significant, but the difference can be said to slightly affect the determination of similarity of two designs.

(3) Summary

As described above, two designs coincide in the articles to design, but the different features in their forms surpass the common features and they cause the consumers a different aesthetic impression surrounding the entirety of two designs. Therefore, two designs are found to be dissimilar.

5. Closing

Accordingly, the design in the application does not fall under the provision of Article 9(1) of the Design Act, so that the present application should not be rejected based on the reason for refusal of the examiner's decision.

No other reason for rejecting of the present application can be found.

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

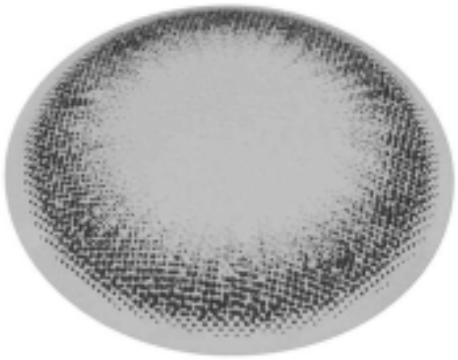
December 22, 2017

Chief administrative judge: NAITO, Hiroki
Administrative judge: SAITO, Takae
Administrative judge: SHODA, Takeshi

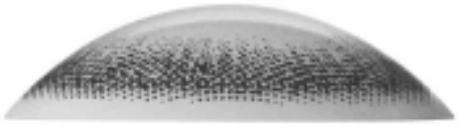
別紙第１　　本願意匠（意願２０１６－０２２５７８）　　C・P

【意匠に係る物品】コンタクトレンズ

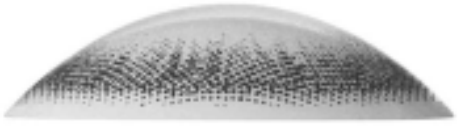
斜視図



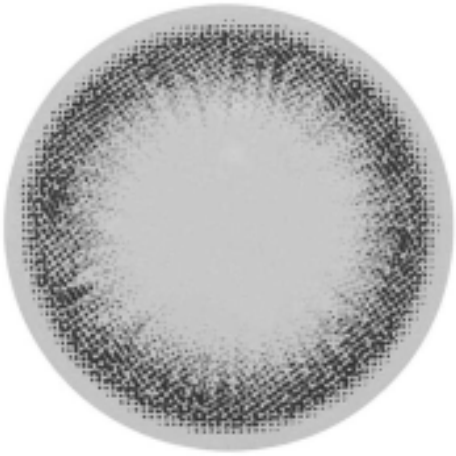
正面図



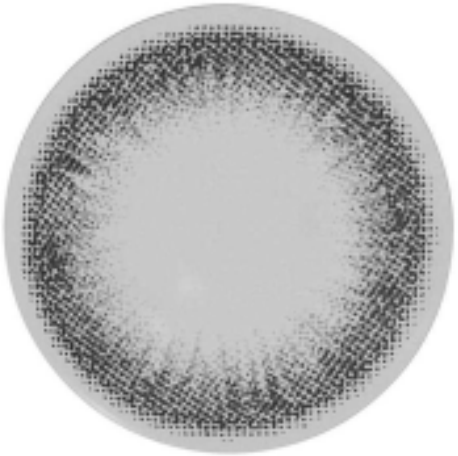
背面図



平面図

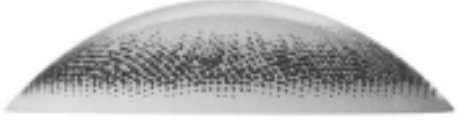


底面図



左側面図

右側面図



別紙第１　本願意匠（意願２０１６－０２２５７８）　Appendix 1　The design in the application (Japanese Design Application No. 2016-022578)

【意匠に係る物品】コンタクトレンズ　　[Article to the design] CONTACT LENS

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

別紙第２　　引用意匠

特許庁が平成２８年(２０１６年)１０月１７日に発行した意匠公報記載
意匠登録第１５６１１８０号

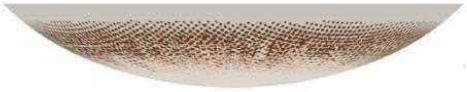
【意匠に係る物品】コンタクトレンズ

【意匠の説明】本物品は透明体である。正面図、背面図、平面図、底面図、右側面図、左側面図、斜視図１、及び斜視図２の表面部全面に表された濃淡は、立体表面の形状を表す濃淡である。

斜視図１

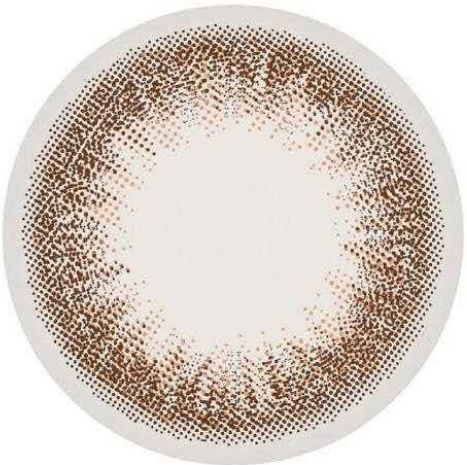
斜視図２

平面図



左側面図

正面図



右側面図

背面図

底面図

別紙第２　引用意匠　　Appendix 2　The cited design

特許庁が平成２８年（２０１６年）１０月１７日に発行した意匠公報記載意匠登録第１５６１１８０号　Design registration No. 1561180 described in the design bulletin issued on October 17, 2016 by the Japan Patent Office

【意匠に係る物品】コンタクトレンズ　　[Article to the design] CONTACT LENS
【意匠の説明】　[Description of the Design]
本物品が透明体である。正面図、背面図、平面図、底面図、右側面図、左側面図、斜視図１、及び斜視図２の表面図前面に表された濃淡は、立体表面の形状を表す濃淡である。　　The article is a transparent body. Shading represented on the entire surface portion of Front View, Rear View, Top View, Bottom View, Right Side View, Left Side View, Perspective View 1, and Perspective View 2 represents the surface shape of the three-dimensional object.

斜視図１　　Perspective View 1
斜視図２　　Perspective View 2

平面図　Top View

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

底面図　Bottom View