

Appeal decision

Appeal No. 2018-7479

Appellant TOYOTOMI CO., LTD.

Patent Attorney NISHIURA, Tsuguharu

Patent Attorney TAKAMI, Yoshitaka

Patent Attorney DEYAMA, Tasuku

Patent Attorney YAMADA, Tomohiko

Patent Attorney DOBASHI, Amu

The case of appeal against the examiner's decision of refusal of Trademark Application No. 2016-9831 has resulted in the following appeal decision:

Conclusion

The appeal of the case was groundless.

Reason

No. 1 The trademark in the Application

The trademark in the Application is a Position Mark in which a position of a mark is specified as indicated in Attachment 1. The application for its registration was filed on January 29, 2016 with designated goods of Class 11 which are as described in the application, and "Detailed Description of Trademark" based on Article 5(4) of the Trademark Act is as described in the application.

Thereafter, by the written amendment dated July 17, 2018 in the body, the designated goods in the application and "Detailed Description of Trademark" are respectively amended to Class 11 "Circulation type oil stoves [space heaters] for household purposes" and "the trademark for which registration is sought (hereinafter, referred to as 'the trademark') is a position mark in which a position of the trademark is specified and has a three-dimensional shape of three substantially circular flames that appear by reflection in a state where the flames are floating at intervals in the vertical

direction in a center region in a transparent combustion tube when a combustion unit of the oil heater burns. The three substantially circular portions colored in black and illustrated in the figure indicate the three-dimensional shape of the flames that have appeared by the reflection, and a portion colored in red indicates that the combustion unit of the oil heater burns. Note that a portion colored in blue and red indicates an example of a shape of the oil heater or the like and is not an element of the trademark".

No. 2 Gist of reasons for refusal stated in the examiner's decision

1 Applicability of main paragraph of Article 3(1) of the Trademark Act

Regarding the trademark in the Application, the figure as indicated in Attachment 1 is described, and in the Detailed Description of Trademark, it is described that "the trademark for which registration is sought (omitted) includes (omitted) a virtual image of three substantially circular flames." However, since the virtual image does not fall under a mark according to the trademark stipulated in Article 4(6) of Ordinance for Enforcement of the Trademark Act (limited to character, figure, symbol, or three-dimensional shape, or any combination thereof or combination thereof with colors), although it is described in the application that the trademark in the Application is a position mark, it cannot be acknowledged that the trademark in the Application is a position mark.

Therefore, the trademark in the Application does not meet the requirements as provided in the main paragraph of Article 3(1) of the Trademark Act.

2 Applicability of the present application to Article 5(5) of the Trademark Act

Regarding the trademark in the Application, as described in 1 above, the trademark in the Application does not meet the requirements as provided in the main paragraph of Article 3(1) of the Trademark Act. However, even if it is acknowledged that the trademark in the Application is a position mark, the trademark in the Application is recognized from a mark drawing and the Detailed Description of Trademark. Therefore, the description in the Detailed Description of Trademark should specify the trademark for which registration is sought. Accordingly, the configuration and the form of the mark indicated in the mark drawing need to coincide with the configuration and the form of the mark described in the Detailed Description of Trademark. The mark indicated in the mark drawing is recognized as a three-dimensional shape. Whereas, in the Detailed Description of Trademark, the shape of the mark is not described, and it is only described that "a virtual image of three substantially annular flames is included". The configurations and the forms of the marks in the mark drawing and in the Detailed Description of Trademark do not

coincide with each other. Therefore, it cannot be acknowledged that the trademark in the application is specified.

Therefore, the trademark in the Application does not meet the requirements as provided in Article 5(5) of the Trademark Act.

3 Applicability of the trademark in the Application to Article 3(1)(iii) of the Trademark Act

The applicant alleges that if the trademark in the Application is registered by amending the "virtual image" in the Detailed Description of Trademark into the "three-dimensional shape", the applicant will consider the amendment of the Detailed Description of Trademark. Therefore, a case where the "virtual image" is amended to the "three-dimensional shape" will be discussed below.

The trademark in the Application includes a trademark specified by the mark drawing and the Detailed Description of Trademark. In general, the shape of the product or the like is appreciably restricted by the function of the product or the like. However, while maintaining the same function, the shape of the product that can be selected generally varies to a certain extent. Then, in many cases, for the purpose of create a function of the product and an aesthetic impression and to achieve or decorations to attract consumers' attention, various three-dimensional shapes other than a mark for indicating the source are employed and colored in actual circumstances. The trademark in the Application includes the three-dimensional shape of the three substantially circular flames that appear in a state where the flames are floating at intervals in the vertical direction in the center region in the transparent combustion tube when the combustion unit of the oil heater burns. In the context with the designated goods of the application, a part of a form of the oil heater that can be generally employed is recognized.

Then, even if the trademark in the Application is used for the designated goods, traders and consumers coming into contact with the trademark in the Application only understand that the trademark indicates one shape of the combustion tube of the oil heater that can be employed to simply create the aesthetic impression of the product or enhance the function of the product. It is reasonable to determine that the shape of the product is simply displayed by a generally used method.

Therefore, the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act.

4 Article 3(2) of the Trademark Act

It is not acknowledged that the trademark in the Application is a trademark by which consumers are able to recognize the goods as those pertaining to a business of a

particular person, and the trademark in the Application does not fall under Article 3(2) of the Trademark Act.

No. 3 Judgment by the body

The Appellant submitted, as means of evidence, Reference Materials 1 to 20 in the original examination and further submitted Reference Materials 21 and 22 by the body. The numbers of the evidences are replaced with Evidence A No. 1 to Evidence A No. 22 (including their branch numbers) below.

1 Applicability of the main paragraph of Article 3(1) of the Trademark Act and Article 5(5) of the Trademark Act

As a result of the amendment made as described No. 1, it is acknowledged "the Detailed Description of Trademark" of the trademark in the Application specifically specifies "Trademark for Which Registration Is Sought" described in the application of the present application.

Therefore, the trademark in the Application meets the requirements of the main paragraph of Article 3(1) of the Trademark Act and Article 5(5) of the same Act.

2 Applicability of Article 3(1)(iii) of the Trademark Act

(1) Regarding the trademark in the Application

As described in No. 1 above, in "the Detailed Description of Trademark", the trademark in the Application "includes the three-dimensional shape of the three substantially circular flames that appear by reflection in a state where the flames are floating at intervals in the vertical direction in the center region in the transparent combustion tube when the combustion unit of the oil heater burns". "The three-dimensional shape of the three substantially circular flames" is referred to as "the shape of the present application".

(2) Shape of product or the like of position mark

A The following decision is made regarding the shape of the product or the like of the three-dimensional trademark, and the same can apply to the shape of the product of the position mark like the shape of the present application.

B In many cases, the shape of the product or the like is selected to effectively enhance an expected function of the product or the like or to further enhance the aesthetic impression of the product or the like, and it can be said that the number of shapes of the product that indicates the sources of the product and the service and is used to distinguish relevant products and services from others is small. In this way, from the viewpoint of manufacturers and providers of the product or the like, in many cases, it can be said that the shape of the product or the like itself is not employed as a

shape that has a function for indicating the source and a function for distinguishing relevant products from others', that is, is not employed as a shape that has a function as a trademark. Furthermore, also from the viewpoint of consumers who view the shape of the product or the like, it can be said that there are many cases where the shape of the product or the like is recognized as a shape selected to enhance the function and the aesthetic impression of the product and is not recognized as a shape selected for indicating the source, unlike a mark that is a planar display using a character, a figure, a symbol, or the like.

Then, the shape of the product or the like is employed to enhance the function or the aesthetic impression of the product or the like in many cases, and it is reasonable to understand that the shape that is acknowledged to be selected for these purposes, from an objective viewpoint, falls under Article 3(1)(iii) of the Trademark Act as a trademark consisting solely of a mark using the shape of the product or the like by a generally used method, unless there are special circumstances.

Furthermore, a specific shape of the product or the like is employed to enhance the function or the aesthetic impression of the product or the like. On the other hand, under restrictions based on a usage, property, or the like of the product, it can be said that the shape of the product can be selected from a wider selection to a certain degree. However, if a shape of the same kind of product or the like may be predicted as being selected for the purpose of the function or the aesthetic impression, even if the shape has characteristics, it should be said that the shape of the product falls under Article 3(1)(iii) of the Trademark Act as a shape to enhance the function or the aesthetic impression of the product or the like.

This is because a person related to the same kind of the product or the like desires to use the shape to enhance the function or the aesthetic impression of the product or the like. Therefore, to allow a specific person to monopolize the shape only because the application of the trademark has been made in advance is not appropriate from the viewpoint of the public interest.

Moreover, even if a product or the like has a fresh shape that cannot be predicted by consumers, when the shape is exclusively selected according to the viewpoint of improving the function of the product or the like, it should be said that the shape of the product falls under Article 3(1)(iii) of the Trademark Act in consideration of the object of Article 4(1)(xviii) of the Trademark Act.

Accordingly, in a case where a product or the like has a unique shape that is not observed in the same kind of the product or the like, if the product or the like meets the requirements respectively provided in the Patent Act, the Utility Model Act, or the

Design Act as an invention or a utility model from the viewpoint of the function of the product or the like and as a design from the viewpoint of the aesthetic impression of the product or the like, the monopoly may be given within the range of the laws. However, in consideration that the trademark right can be almost permanently held by repeating the renewal of duration of the trademark right, to protect a shape that may be protected by these acts according to the trademark right causes a result of an almost permanent monopoly of the shape of the product or the like by a specific person that exceeds the duration of the right protected by the Patent Act, the Design Act, or the like, and this is an unreasonable restriction of free competition and violates public interests (the determination 2007 (Gyo-Ke) 10405 by Intellectual Property High Court, June 24, 2008).

(3) Whether or not the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act is determined from the above viewpoints.

A As indicated in Attachment 2, in the publication of unexamined patent application 1988 No. 55609 of which the applicant is the Appellant (Evidence A No. 18-3), in the section of "Claims", it is described that "2 The heater according to Claim 1, wherein light emitted from a combustion flame and a glowing body can be multiply and a rainbow-like shape seen due to interference and refractive property by metal coating" and in the section of "the Detailed Description of the Invention", it is described that "... a large amount of heat rays and warm color rays suitable for heating are emitted to outside of the heater, and the combustion tube makes the light emitted from the combustion flame and the glowing body be dispersed and interfered with so as to generate various colors and to brighten the combustion tube in rainbow colors" and "... in this way, the present invention makes heat rays with a wavelength that is the most suitable for heating excellently transmit by a simple structure configured by forming a metal film or metal compound film on the transparent or semitransparent combustion tube, and the light emitted by the combustion flame is interfered with by the film to form a large number of images of the combustion flame and the glowing body colored in various colors, and the heat rays generated from the combustion flame and the glowing body reach from multiple directions, and the images are seen, and a lens effect caused by a ring-shaped concavo-convex shape enhances a heating effect, and in addition, a large number of images of the combustion flame and the glowing body colored in various colors are significantly beautiful and enhance a visual heating effect and cause an excellent design effect by intersecting beams of light", and in the section of "Brief Description of the Drawings", it is described that "FIG. 1 is a vertical side cross-sectional diagram illustrating one embodiment of the present invention", and as

"FIG. 1", a diagram illustrating a plurality of images (shape) of the combustion flames in the combustion tube is illustrated.

Then, the patent was registered on July 26, 1989, and the duration expired on July 25, 2000 (investigation by ex officio).

B In the FIG. 1 in the publication of examined patent application of which the right holder is the Appellant in A described above, the images (shape) of the combustion flames in the heater are illustrated as four images (shape) (hereinafter, referred to as "Patent Shape") indicated by dotted line shape. Although the numbers of images are different from each other, the positions and the shape of the images are similar to those of the shape of the present application.

Furthermore, according to the description of the publication, in the Patent Shape, the light emitted from the combustion flame and the glowing body of the heater can be multiply and a rainbow-like shape seen due to the interference and the refractive property by the metal coating, and the Patent Shape is included in the claims.

Then, in the Patent Shape, the light emitted by the combustion flame is interfered with by the film to form the large number of images of the combustion flame and the glowing body colored in various colors, and the heat rays generated from the combustion flame and the glowing body reach from multiple directions, and the heating effect is enhanced, and in addition, a large number of images of the combustion flame and the glowing body are significantly beautiful, enhance the visual heating effect, and cause the excellent design effect by intersecting the beams of light. Therefore, it is obvious that the Patent Shape is employed to enhance the function or the aesthetic impression of the product or the like.

Then, even if the number of three-dimensional shapes of substantially circular flames included in the shape of the present application and that of the Patent Shape are different from each other, it can be said that the difference is within a range in which it can be predicted that the shape is selected by the reasons for the function or the aesthetic impression.

In addition, the Patent Shape is included in the Claims and meets the requirements as provided in the Patent Act, and the monopoly is given to the Patent Shape. Therefore, in consideration that the trademark right can be almost permanently held by repeating the renewal of duration of the trademark right, to protect the shape of the present application that is similar to the Patent Shape according to the trademark right causes a result of an almost permanent monopoly of the shape of the product or the like by a specific person that exceeds the duration of the right protected by the Patent Act, and this is an unreasonable restriction of free competition and violates public

interests.

Therefore, the shape of the present application is employed to enhance the function or the aesthetic impression of the product or the like and is within a range in which it can be predicted that the shape is selected for the purpose of the function or the aesthetic impression. In addition, the shape of the present application meets the requirements as provided in the Patent Act, and the monopoly is given to the shape of the present application. To protect the shape of the present application according to the trademark right causes the result of an almost permanent monopoly by a specific person that exceeds the duration of the right protected by the Patent Act, and this is an unreasonable restriction of free competition and violates public interests. Therefore, it should be said that the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act.

3 Whether or not to meet the requirements as provided in Article 3(2) of the Trademark Act

The Appellant alleges that the trademark in the Application does not fall under Article 3(1)(iii) of the Trademark Act and should be registered in accordance with the provisions of Article 3(2) of the same Act, since the trademark in the Application acquired distinctiveness through use even if the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act. Therefore, the following will be examined.

(1) According to the evidences submitted by the Appellant and the allegation of the Appellant, the following facts are acknowledged.

A Regarding the Appellant

The Appellant is a company that manufactures and sells oil heaters and was established in 1949 (Evidence A No. 1-24, Evidence A No. 8-4 to A No. 8-6, and A No. 8-8).

B Use method and use start period of the shape of the present application

(A) Use method of the shape of the present application

On page 3 of the 65th anniversary magazine of the Appellant, under the headline of "1980/World's first circulation type oil heater RB-2 using glass", it describes "A circulation type oil heater for which glass is used, and a special coating is applied on the glass, and in which a 'rainbow-colored' flame is reflected on the glass. The oil heater has been known as a 'rainbow stove' ... This is one of representative stoves of TOYOTOMI CO., LTD", and an image of the product "oil heater" is written. On a glass portion of the oil heater (hereinafter, referred to as "Appellant Use Product"), a shape that is acknowledged to be similar to the shape of the present application is displayed (Evidence A No. 1-24).

(B) Use start period

On page 3 of the 65th anniversary magazine of the Appellant, it describes "1980/World's first circulation type oil heater using glass" (Evidence A No. 1-24), and the Appellant Use Products are written in product catalogs of the Appellant published in 1982 to 1985, 1987 to 1991, and 2005 to 2016 (Evidence A No. 1-1 to A No. 1-9 and A No. 1-12 to A No. 1-23).

Then, according to the appellant's allegation, manufacture of the Appellant Use Product was stopped from 1994 to 2004.

Then, the Appellant manufactured and sold the Appellant Use Product for 14 years from 1980 to 1993 and for 12 years from 2005 to 2016. Therefore, it is acknowledged that the Appellant has manufactured and sold the Appellant Use Product for at least about 30 years in total.

(C) Sales amount and share of use product

a According to "Gas and Kerosene Appliances Annual Statistics Report published in June 2017 by the Investigation Statistics Committee of Japan Industrial Association of Gas and Kerosene Appliances (JGKA)" submitted by the Appellant, on page 76, in "1. In the table of the natural ventilation open-type oil heater (former name: compact stove)" and in the paragraph of "amount", it is described that the number of "circulation type" oil heaters was about 127,000 in 2014, about 100,000 in 2015, and about 102,000 in 2016 (Evidence A No. 6).

b The Appellant submitted shipping slips (copy of issuing agent) from branch offices or business offices of the Appellant across Japan whose dates range from October to December in 2016. In this paper, "rainbow" is described in the field of "product name". However, all the fields of addresses and names of the "receiver" are masked (Evidence A No. 5-1).

c The Appellant submitted records of number of shipments or the like. The characters of "rainbow" are described in the field of "product name". However, "client", "company name", "sales", "name of delivery destination", and "branch office name" are masked (Evidence A No. 5-2).

(D) Method, number, and content of advertisements

a The TV commercials of the Appellant Use Product were aired by the Appellant from October to December in 2012 in TV programs such as "Hanamaru market", "Beat Takeshi no TV tackle", and "Hodo tokusyu (news feature)". In the commercials, an image of the Appellant Use Product is used (Evidence A No. 7-1).

b The Appellant mentioned the news programs that featured and introduced the Appellant Use Product such as the news program "World business satellite" of TV

TOKYO Corporation (broadcasted on November 24, 2011), the news and information program "Ippou" broadcasted on weekday evenings by CBC Television Co., Ltd. for Chukyo wide area (broadcasted on December 10, 2014), the information program "Go to factories! The very first story of hot-selling products" of Aichi Television Broadcasting Co., Ltd. (broadcasted on December 21, 2014), one portion "Tokai Mono katari" in the evening news program "Hotto evening" by NHK (Japan Broadcasting Corporation) Tokai (broadcasted on November 16, 2011), and the midevening information program "Joshihana (girl talk)" of Nagoya Broadcasting Network Co., Ltd. (broadcasted on December 5, 2014), and images of products featured in the respective programs were submitted (Evidence A No. 7-2 to A No. 7-6).

c The Appellant Use Product was introduced in magazines ("Mizuho furimo" December 2014, "AUTO CAMPER" December 2012, "HC market white paper 2011" September 2011, "DIAMOND/HOMECENTER" September 2013, and "Otonano Ippin" 2013 winter), and articles regarding the Appellant Use Product were written in newspaper articles (THE SANKEI SHIMBUN February 9, 2017, Nikkei Marketing Journal (distribution newspaper) January 25, 2017, Hokkaido Shimbun evening edition, district version (Obihiro and Tokachi) November 11, 2016, THE MID-JAPAN ECONOMIST November 9, 2013, The Nihon Keizai Shimbun August 24, 2013, and THE MID-JAPAN ECONOMIST September 25, 2012 and August 10, 2011) (Evidence A No. 8-1 to A No. 8-12).

d In the online shopping sites (Rakuten, amazon, and Kakaku.com), the ranking of the Appellant Use Products is written, and evaluations by user are written such as "I was interested in Rainbow, and its flame is very beautiful!", "The flame is bright when lighted, the rainbow is really beautiful, and I'm so impressed", "The brightness of the flame visually makes me feel warm", "The threefold flame is reflected through the glass, and I can feel severalfold warmth", "A lantern-like design. I admire the beautiful seven-colored? flame", or the like (Evidence A No. 10 to A No. 12).

e In the advertisement of Petroleum Association of Japan (PAJ) which is an industry group in which the Appellant is a member, an image of the Appellant Use Product is used (Evidence A No. 17).

f Articles and images of the Appellant Use Products are introduced in moving images, personal blogs, search engines, or the like (Evidence A No. 13 to A No. 15).

g In catalogs of the stove that is the Appellant's product, there is used an image of the stove with the flame which can be seen as the stove is actually used. In catalogs of stoves which are other companies' products, an image of the stove in use is similarly used (Evidence A No. 2).

(E) Others

The Appellant Use Product received the Good Design Award in 2005 (Evidence A No. 16).

(2) Whether or not the trademark in the Application acquires distinctiveness as result of use in the Appellant Use Product

In comprehensive consideration of the facts acknowledged in (1), it can be determined as follows.

The Appellant is a company that manufactures and sells oil heaters and was established in 1949, and it is acknowledged that, even though the Appellant had stopped manufacturing and selling the Appellant Use Product for a certain period, the Appellant has manufactured and sold the Appellant Use Product at least for about 30 years in total.

Then, the Appellant Use Product was used in the product catalogs of the Appellant, advertisements in magazines, newspaper articles, or the like. However, the shape of the present application mainly indicates the three-dimensional shape of the flame of the oil heater. As described above, the evaluations on the shape of the present application by consumers are "The flame is very beautiful", "The flame is bright, and the rainbow is really beautiful", "The brightness of the flame visually makes me feel warm", "The threefold flame is reflected through the glass, and I can feel severalfold warmth", and the like. A warming function which is a function of the oil heater, and attractive appearance and beauty of the oil heater are evaluated, and the shape of the present application is simply recognized as an aspect of the function or the decorative feature of the stove. Furthermore, as in the catalogs of the stoves of other companies, there is used the image of the Appellant Use Product with the flame that can be seen as the stove is actually used, and the shape of the present application is not prominently displayed in particular. Accordingly, it cannot be said that it is acknowledged that the shape of the present application solely has a function of a mark identifying the source. It cannot be said that only the shape of the present application is understood as the mark identifying the source of the Appellant.

Then, from the evidences submitted by the Appellant, the number of circulation type oil heaters in the entire industry (2014 to 2016) can be confirmed. However, the Appellant only alleges that the Appellant manufactures about 30,000 oil heaters per year in recent years and ships the oil heaters across Japan. Even if the Appellant manufactures about 30,000 oil heaters per year in recent years, there is no reason to evaluate only the circulation type oil heaters as a share target, and if all the stoves including the circulation type stoves are evaluated, it can be estimated that the market share of the Appellant is significantly low.

Furthermore, regarding the advertisements, the TV commercials were broadcasted only for three months, that is, from October to December in 2012, and the Appellant Use Product has been featured about five times in the news programs, and the number of each of the advertisements in the magazines, the newspaper articles, or the like is about five. It cannot be said that these numbers are very large.

Moreover, the Appellant Use Product was introduced in moving images, personal blogs, search engines, or the like, and the Appellant Use Product received the Good Design Award in 2005. However, any one of the Appellant Use Products used for these advertisements including the TV commercials, the advertisements in the magazines, or the like is the image of the entire Appellant Use Product; that is, the oil heater. The fact is not acknowledged such that the shape of the present application is used as a mark for distinguishing relevant products from others, for example, a portion of the shape of the application is displayed in an especially prominent manner.

According to the above, it is hard to say that consumers recognize the trademark in the Application as a mark indicating the source of the product or a mark for distinguishing relevant products from others.

In addition, in comprehensive consideration of the appellant's allegation and respective items of Evidence A submitted by the Appellant, the fact cannot be found that is sufficient for acknowledging that the trademark in the Application is recognized by consumers as the mark indicating goods as being connected with the Appellant as a result of the use.

Therefore, it cannot be said that the trademark in the Application meets the requirements as provided in Article 3(2) of the Trademark Act.

4 Regarding the appellant's allegation

(1) The Appellant alleges that " ... There is no fact such that another company in the same industry has manufactured and sold an oil heater having a similar form since the Appellant has started to manufacture the oil heater up to the present ... The technology for displaying the virtual image of the flame by using the transparent combustion tube is the characteristic configuration that has been granted a patent in the past for a certain period of time. Furthermore, ... because the stove has the characteristic configuration, the stove acquired the Good Design Award. ... If the stove has a characteristic portion that is not included in stoves of the other companies, consumers feel the aesthetic impression from the characteristic portion (three-dimensional shape of substantially circular flames) when consumers purchase the product the next time. In addition, it can be said that the characteristic portion has a viewpoint for distinguishing relevant products from others in order to drive the demand

for repurchase. Therefore, the trademark in the Application does not fall under Article 3(1)(iii) of the Trademark Act".

However, as described in 2 above, even if the shape of the present application is a unique shape that is not observed in the same kind of the product or the like, a shape that has received the Good Design Award, or a shape that cannot be predicted by consumers, the monopoly as a patent is given to the present application according to the Patent Law, from the viewpoint of invention. In addition, the shape of the present application received the Good Design Award from the viewpoint of aesthetic impression. It is reasonable to say that the trademark in the Application is the shape of the product that is exclusively selected to enhance the function of the product or the like or according to the aesthetic impression. Accordingly, it should be said that the trademark in the Application falls under Article 3(1)(iii) of the Trademark Act.

(2) The Appellant alleges that "In the advertisement in product catalogs or the like, the Appellant strongly appeals the virtual image of three substantially circular flames that appear in a state where the flames are floating at intervals in the vertical direction in the center region in the transparent combustion tube that is the feature of the trademark in the Application; that is, the circular flames in the combustion tube".

However, as described in 3 above, almost all the images in the catalogs are the images of the entire Appellant Use Product (entire oil heater). In the catalog of the product "stove", the product in a state where the combustion unit is burned is generally featured as described in (1) B (D) g described above. Therefore, it is hard to say that the shape of the present application gives a strong impression by the image of the product "stove" in the catalog of the Appellant or the like, and the shape of the present application cannot be recognized as a mark for distinguishing relevant products from others.

Accordingly, none of the appellant's allegations can be accepted.

5 Summary

As described above, the trademark in the Application is a trademark by which consumers are not able to recognize the goods as those pertaining to a business of a particular person, falls under Article 3(1)(iii) of the Trademark Act, and does not meet the requirements as provided in Article 3(2) of the same Act. Accordingly, the trademark in the Application cannot be registered.

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

August 20, 2019

Chief administrative judge: HAYAKAWA, Fumihiro

Administrative judge: SATSUMA, Junichi

Administrative judge: ENOMOTO, Masami

Attachment 1 The trademark in the Application

(1) Trademark for which registration is sought (regarding colors, refer to the original)



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Attachment 2 Patent Registration No. 1508319

[FIG. 1]



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