

## Appeal decision

Appeal No. 2018-13003

Osaka, Japan

Appellant

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Patent Attorney

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The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2017-26363, entitled "PROGRAMMABLE CONTROLLER" 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 History of the procedures

The present application is an application for design registration filed on November 28, 2017, and a written opinion was submitted on May 11, 2018 in response to the notice of reasons for refusal dated March 27, 2018. However, an examiner's decision of refusal was issued on June 25, 2018. In response to this, an appeal against the examiner's decision of refusal was requested on October 1, 2018.

#### No. 2 The design in the application

The present application was filed to request a design registration of a part of an article, and is an application for design registration of the related design, the principal design of which is Japanese Design application No. 2017-26361 (Design Registration No. 1606756). Concerning the design, the article to the design is "PROGRAMMABLE CONTROLLER," and the shape, patterns, colors, or any combination thereof (hereinafter, "the shape, patterns, colors, or any combination thereof" are referred to as "the form") are as described in the application and the drawings attached to the application. In the design in the application, the part for which the design registration is requested as a partial design (hereinafter, referred to as "the part in the application") is described as "the part indicated by solid lines refers to the part for which the design registration is requested as a partial design" (see Appendix 1).

#### No. 3 Reasons for refusal stated in the examiner's decision

The reason for refusal 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 it cannot be recognized as the design which is similar to the principal design described in the application, and in the notification of reasons for refusal, the following reason is described.

"The design in the application for design registration and the design of Japanese Design Application No. 2017-026361 described in the application as the principal design, the parts for which the design registration is requested are both surface parts on the front surface, and the two designs are common in a form bent in a dogleg shape.

However, the design of Japanese Design Application No. 2017-026361 excludes a large connector portion part from the surface of the part for which the design registration is requested, whereas the design in the application has no part to be excluded on the surface on the front surface side by a connector part and the like. Thus, the forms of the surfaces that are the parts for which the design registration is requested are significantly different.

Therefore, the two designs are different in specific form of the parts for which the design registration is requested, and thus it is recognized that the two designs are not similar to each other."

#### No. 4 The principal design

The application related to the principal design (Japanese Design Application No. 2017-026361) was filed on November 28, 2017, which is the same date as in the present application to request a design registration of a part of an article; an establishment of the design right (Design Registration No. 1606756) was registered on May 25, 2018; and the design bulletin was published on June 18, 2018. Concerning the design, the article to the design is "PROGRAMMABLE CONTROLLER," and the form is as described in the application and the drawings attached to the application. In the principal design, the part for which the design registration is requested as a partial design (hereinafter, referred to as "the part of the principal design") is described as "the part indicated by solid lines refers to the part for which the design registration is requested as a partial design" (see Appendix 2).

#### No. 5 Judgment by the body

After the recognition of the design in the application and the principal design (hereinafter, referred to as "the two designs") is carried out, the determination of similarity between the two designs is made and the suitability of the examiner's decision is carried out.

##### 1. Recognition of the design

##### (1) The design in the application

##### A Article to the design

The article to the design of the design in the application is "PROGRAMMABLE CONTROLLER."

##### B Usage and function of the part in the application

The part in the application is used as a front surface part of a housing in a programmable controller, and has a function of the housing such as protecting an inner mechanism.

##### C Position, size, and scope of the part in the application

The part in the application is positioned on the front surface side of the housing, and has the size and scope of a front surface upper part inclining upward to a

rear surface side (hereinafter, referred to as "the front surface upper portion"), and a front surface lower part inclining downward to the rear surface side(hereinafter, referred to as "the front surface lower portion").

D Form of the part in the application

(A) The form of the entire part in the application is composed of the front surface upper portion inclining upward to the rear surface side by about 10°, and the front surface lower portion inclining downward to the rear surface side by about 5°;

(B) the form of the front surface upper portion is formed in a generally vertical rectangular flat shape whose aspect ratio in a front view is about 2.2: 1; and

(C) the form of the front surface lower portion is formed in a generally vertical rectangular flat shape whose aspect ratio in a front view is about 4.6: 1.

(2) The principal design

A Article to the design

The article to the design of the principal design is "PROGRAMMABLE CONTROLLER."

B Usage and function of the part of the principal design

The part of the principal design is used as a front surface part of a housing in a programmable controller, and has a function of the housing such as protecting an inner mechanism.

C Position, size, and scope of the part of the principal design

The part of the principal design is positioned on a front surface side of the housing, and has the size and scope of a part except for an interface part (hereinafter, referred to as "the interface portion") by a terminal block shown by a dashed line of a front surface upper portion inclining upward to a rear surface side and a front surface lower portion inclining downward to the rear surface side.

D Form of the part of the principal design

(A) The form of the entire part of the principal design is composed of the front surface upper portion inclining upward to the rear surface side by about 10°, and the front surface lower portion inclining downward to the rear surface side by about 5°;

(B) the form of the front surface upper portion is formed in a generally vertical rectangular flat shape whose aspect ratio in a front view is about 1.5 :1; and

(C) the form of the front surface lower portion is formed in a generally vertical rectangular flat shape whose aspect ratio in a front view is about 3.1 :1, and at a center part thereof, an interface portion shown by a dashed line is arranged while being provided with a margin part at a periphery thereof.

2. Comparison

(1) Comparison with the article to the design

The articles to the design of the two designs are both "PROGRAMMABLE CONTROLLER", and thus the two designs are corresponded in usage and function.

(2) Comparison of usage and function of the part in the application and the part of the principal design

Both the part the application and the part of the principal design (hereinafter, referred to as "the two parts") are used for a front surface part of a housing in a programmable controller and have a function of the housing such as protecting an inner mechanism, and thus the usages and function of the two parts are corresponded.

(3) Comparison of position, size, and scope of the two parts

Although the two parts are positioned on a front surface side of the housing, and are parts of a front surface upper portion inclining upward to a rear surface side and a front surface lower portion inclining downward to the rear surface side, since aspect ratios of the two parts are different and there is difference in the presence/absence of an interface portion shown by a dashed line at the front surface lower portions of the two parts, the two parts are corresponded in position, but are different in size and scope.

(4) Comparison of the form of the two parts

In comparison of the form of the two parts, mainly, there are the following common features and different features.

A Common features of the form of the two parts

(Common feature 1) The two parts are common in the point that the form of the entire parts is composed of the front surface upper portion inclining upward to the rear surface side by about 10°, and the front surface lower portion inclining downward to the rear surface side by about 5°.

(Common feature 2) The two parts are common in the point that the form of the front surface upper portion is formed in a generally vertical rectangular flat shape.

(Common feature 3) The two parts are common in the point that the form of the front surface lower portion is formed in a generally vertical rectangular flat shape.

B Different features of the form of the two parts

(Different feature 1) The two parts are different in the point that the aspect ratio in a front view at the front surface upper portion of the part in the application is about 2.2: 1, whereas the aspect ratio in a front view in the front surface upper portion of the part of the principal design is about 1.5: 1.

(Different feature 2) The two parts are different in the point that the aspect ratio in a front view at the front surface lower portion of the part in the application is about 4.6: 1, whereas the aspect ratio in a front view in the front surface lower portion of the part of the principal design is about 3.1: 1.

(Different feature 3) Nothing is arranged in the front surface lower portion of the part in the application, whereas at the center part of the front surface lower portion of the part of the principal design, the interface portion by a terminal block shown by a dashed line is arranged while being provided with a margin part at a periphery thereof, and thus the two parts are different in the point of the presence/absence of the part shown by the dashed line.

### 3. Judgment

(1) Determination of similarity of the articles to the design

The articles to the design of the two designs are corresponded in usage and function, and thus are identical.

(2) Determination of similarity of usage and function of the two parts

The usage and function of the two parts are corresponded, and thus are identical.

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

The positions in the form of the entire articles are corresponded, and thus the positions of the two parts are identical. Also, in the art of a programmable controller relating to the two designs, it is very normal practice to provide an interface portion at a front surface part of a programmable controller, and thus regarding the side and scope of the two parts, the size and scope in the form of the entire article fall within an ordinary scope in the art of the design, so that the difference thereof cannot be evaluated as large.

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

A The common features of the form of the two parts

The two parts which are common in the form of the entire part of (Common feature 1) and are also common in the form of the front surface upper portion of (Common feature 2) and the forms of the front surface lower portion of (Common feature 3) are common in the basis of the design. When connected and disposed in a row as shown in the reference view showing the state of use, the inclination angles of the two parts correspond, and further a common impression is given to consumers, so that these common features have a large impact on the aesthetic impression of the partial design as a whole.

B The Different features of the form of the two parts.

Regarding the difference in the aspect ratio in a front view in the front surface upper portion of (Different feature 1), and the difference in the aspect ratio in a front view in the front surface lower portion of (Different feature 2), the two parts have a generally vertical rectangular shape in a front view, and when the two parts are connected and disposed in a row as shown in the reference view showing the state of use, it cannot be said that the impression to be given is largely changed by the difference in the ratio, so that (Different feature 1) and (Different feature 2) have a small impact on the aesthetic impression of the partial design as a whole

Regarding the difference in the presence/absence of the part shown by the dashed line in the front surface lower portion of (Different feature 3), in the art of the programmable controller, it is very normal practice to provide an interface portion at a front surface part, and it cannot be said that the impressions of the two parts differ due to the difference within the an ordinary scope shown by the dashed line, so that it can be said that the effects of (Different feature 3) on the determination of similarity of the two parts are small.

(5) Similarity of the two designs

Based on individual evaluation of the Common features and the Different features in the form of the two parts, comprehensively observing all the Common features and Different features as a whole of the partial design, the two parts are common in the aesthetic impression in the form of the front surface upper portion and the form of the front surface lower portion, in addition to the form of the entire part. Even in consideration of the difference in the aspect ratio in a front view in the front surface upper portion and the front surface lower portion or the difference in the presence/absence of the part shown by the dashed line, when the two parts are observed as a whole, it can be said that the two parts create a common aesthetic impression.

Therefore, the two designs are common in the articles to the design, and are also common in the usage, function, and position of the two parts, although the size and scope of the two parts are different, the difference is within the ordinary scope in the art of the design and cannot be evaluated to be large. Also in the form of the two parts, the impression given by the Different features is buried by that of the Common features and the two parts give common aesthetic impression to consumers as a whole, and therefore it is recognized that the design in the application is similar to the principal design.

#### 4 Summary

As described above, the design in the application is similar to the principal design; an exclusive design license is not set for the design right of the principal design; it satisfies the requirement of Article 10(2) under the category of Article 10(1) of the Design Act; and the holder of a design right of the principal design and the applicant of the design in the application are identical. Therefore, the principal design is recognized as the applicant's own registered design, and since the filing date of the application for design registration of the design in the application is on or after the filing date of the application for design registration of the principal design and before the date when the design bulletin of the principal design was published, it satisfies the requirements under the category of Article 10(1) of the Design Act.

Therefore, the design in the application can be granted a design registration as a related design of the principal design, the principal design being Japanese Design application No. 2017-26361 (Design Registration No. 1606756).

#### No. 6 Closing

As described above, the design in the application is similar to the principal design, and falls under the category of Article 10(1) of the Design Act, so that it cannot be determined that the design in the application should be rejected due to the reasons for refusal stated in the examiner's decision.

As the result of the further body's examination, no reasons for refusal were found.

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

December 26, 2018

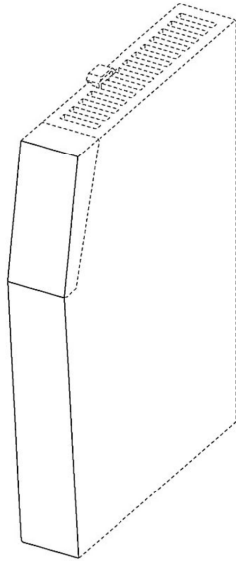
Chief administrative judge: NAITO, Hiroki  
Administrative judge: EZUKA, Naohiro  
Administrative judge: WATANABE, Kumi

別紙第1 本願意匠（意願2017-026363）

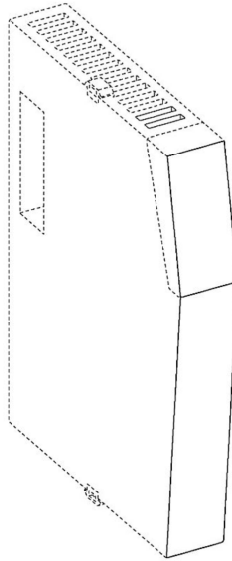
【意匠に係る物品】プログラマブルコントローラ

【意匠の説明】実線で表された部分が、部分意匠として意匠登録を受けようとする部分である。

斜視図1



斜視図2



正面図



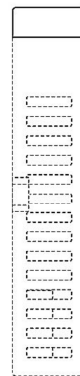
背面図



平面図



底面図



別紙第1 本願意匠（意願2017-026363） Appendix 1 The design in the application (Japanese Design application No. 2017-026363)

【意匠に係る物品】プログラマブルコントローラ [Article to the design]  
PROGRAMMABLE CONTROLLER

【意匠の説明】実線で表された部分が、部分意匠として意匠登録を受けようとする部分である。 [Description of the Design] The part indicated by solid lines refers to the part for which the design registration is requested as partial design.

斜視図 1                      Perspective View 1

斜視図 2                      Perspective View 2

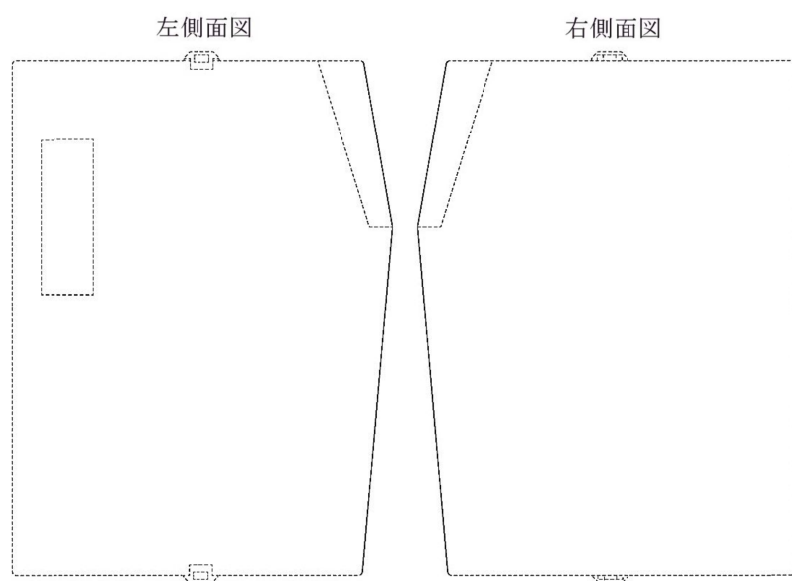
正面図   Front view

背面図   Rear view

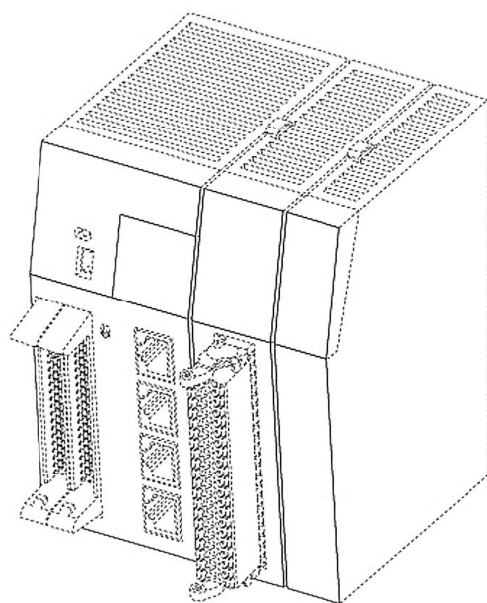
平面図   Top View

底面図   Bottom View





使用状態を示す参考図



左側面図

Left Side View

右側面図

Right Side View

使用状態を示す参考図

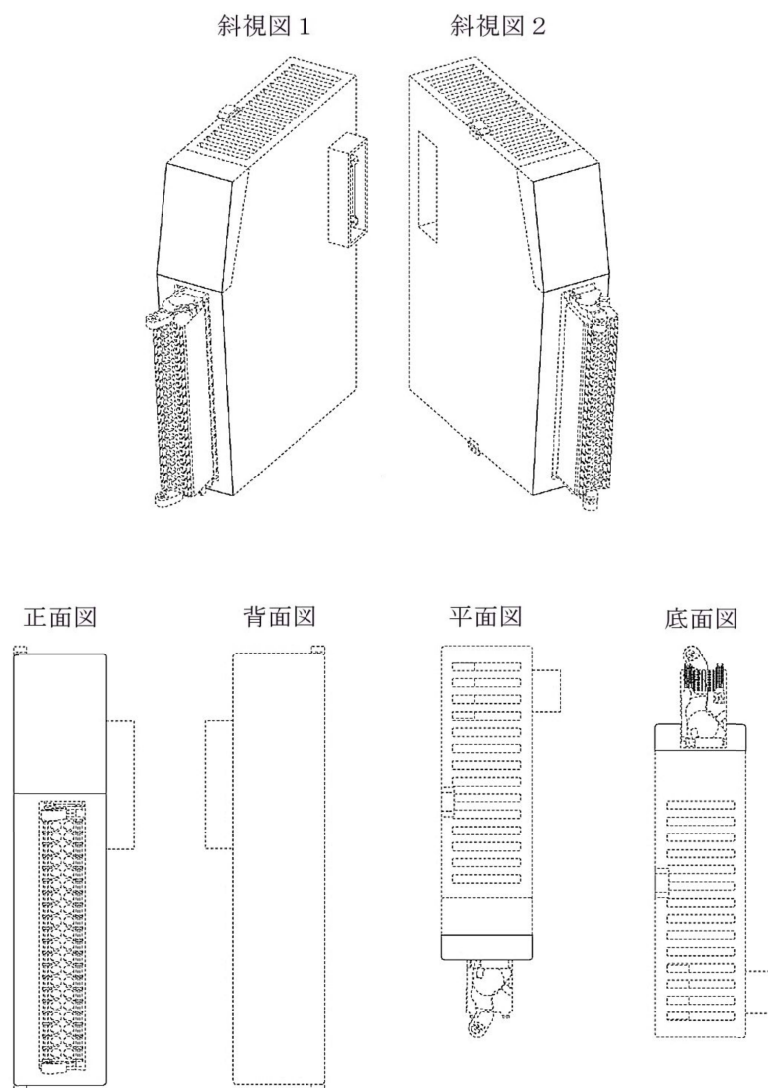
Reference view showing the state of use

別紙第2 本意匠

特許庁が平成30年(2018年)6月18日に発行した意匠公報記載  
意匠登録第1606756号

【意匠に係る物品】プログラマブルコントローラ

【意匠の説明】実線で表された部分が、部分意匠として意匠登録を受けようとする部分である。



別紙第2 本意匠

Appendix 2 The principal design

特許庁が平成30年(2018年)6月18日に発行した意匠公報記載 意匠  
登録第1606756号 Design registration No. 1606756 described in the design  
bulletin issued on June 18, 2018 by the Japan Patent Office

【意匠に係る物品】プログラマブルコントローラ [Article to the design]  
PROGRAMMABLE CONTROLLER

【意匠の説明】実線で表された部分が、部分意匠として意匠登録を受けようとする部分である。 [Description of the Design] The part indicated by solid lines refers to the part for which the design registration is requested as partial design.

斜視図 1                  Perspective View 1

斜視図 2                  Perspective View 2

正面図    Front view

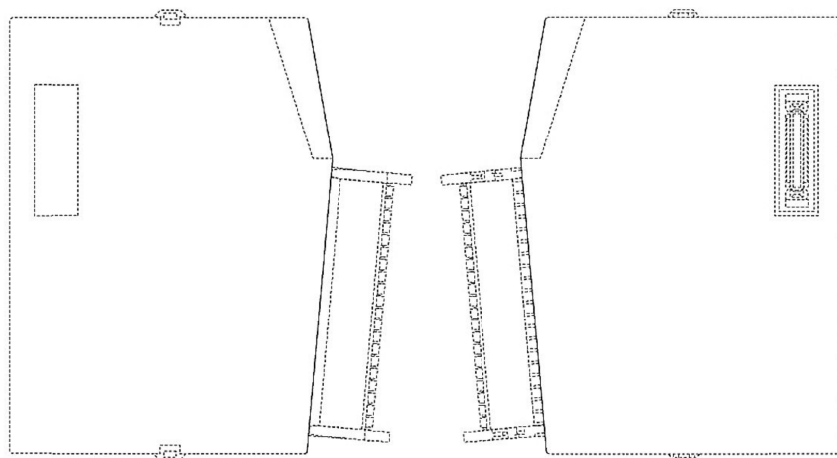
背面図    Rear view

平面図    Top View

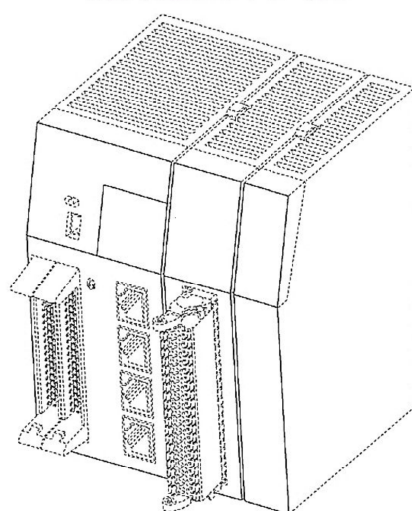
底面図    Bottom View

左側面図

右側面図



使用状態を示す参考図



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