

## Appeal decision

Appeal No. 2018-14233

Osaka, Japan

Appellant

LOUVREDO Co., Ltd.

Patent Attorney

OKUMURA, Hideyuki

The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2017-12750, entitled "BRUSH FOR HAIR DRIER ATTACHMENT", 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 June 14, 2017, in which the application of the provision of Article 4(2) of the Design Act (exceptions to lack of novelty) is sought, and the history of the main procedures after that is as follows.

As of March 12, 2018	Notification of reasons for refusal
April 23, 2018	Submission of a written opinion
As of July 23, 2018	Examiner's decision of refusal
October 26, 2018	Appeal against the examiner's decision of refusal

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

The article to the design in the application is "BRUSH FOR HAIR DRIER ATTACHMENT," and the shape, patterns, or colors, or any combination thereof (hereinafter, referred to as "the form") is as described in the application and the drawings attached to the application (see Appendix 1).

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

Reasons for refusal stated in the examiner's decision are that the design in the application is similar to a design that was described in a distributed publication or a design that was made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the application (hereinafter, referred to as "the Cited Design"), and thus, it falls under the design of Article 3(1)(iii) of the Design Act (a design that cannot be granted design registration because of its similarity to a prior, publicly known design).

The Cited Design is as follows (see Appendix 2).

#### "<The Cited Design>

Name of Author	YouTube, LLC
Title	TESCOM Curl Drier/Basic Usage
Type of Media	[online]
Publication Date	March 8, 2016
Search Date	March 8, 2018
Source of Information	Internet
Address of Information	Design of "BRUSH FOR HAIR DRIER ATTACHMENT" represented in the video posted on <a href="https://www.youtube.com/watch?v=ZgD12Hja44w">https://www.youtube.com/watch?v=ZgD12Hja44w</a> "

### No. 4 Comparison

The direction of the Cited Design is found as the same direction as the design in the application.

#### 1 Comparison with the article to the design

The articles to the design of the design in the application and the Cited Design (hereinafter, referred to as "the two designs") are "BRUSH FOR HAIR DRIER ATTACHMENT" and are identical.

#### 2 Comparison of the form

##### (1) Common features in the form

(Common Feature A) A case portion which holds a brush portion (bristles and a brush base portion),

(Common Feature A-1) The case portion has a gently tapered shape from a cylinder portion (hereinafter, referred to as "the cylinder portion") attached to a hair drier body toward a case tip end,

(Common Feature A-2) wherein a brush portion side end portion of the cylinder portion is a tapered surface including in a direction separating from bristles, with an air blowout port provided on the tapered surface,

(Common Feature A-3) a blowout port composed of a hole divided into three parts aligned in a lateral direction of the brush base in a brush portion side upper part at a case tip end.

(Common Feature B) A brush portion,

(Common Feature B-1) The brush portion is attached with a generally semicylindrical brush base fitted in at a notch portion between a case tip and a cylinder portion, and

(Common Feature B-2) The brush portion is provided with a plurality of bristle rows linearly aligned in a longitudinal direction of the brush base, the plurality of bristle rows radially projecting out from the brush base in a plane view, and

(Common Feature B-3) The brush portion has a row of bristles independent from the bristles radially provided in the right and left ends longitudinal direction of the brush base (hereinafter, referred to as "the right and left independent bristles"),

(Common Feature B-4) wherein a plurality of blowout port holes provided between the adjacent row of the bristles are provided in the longitudinal direction of the brush base, and the shape of the hole is a generally elongated track shape.

## (2) Different features in the form

(Different Feature 1) In the design in the application, three parallel relief patterns gently undulating appear from an opposite side surface (case back surface) to the brush portion to a boundary of the brush base and a case between a case tip end and the cylinder portion, whereas, in the Cited Design, there is no such aspect, and it appears in a not rough shape.

(Different Feature 2) Regarding the blowout port holes provided between the adjacent rows of the bristles, in the design in the application, when the brush portion is viewed from a front side, there are elongated blowout port holes appearing on each side across a central vertical row of bristles, two rows of the same blowout port holes are arranged on right and left sides between the rows of the bristles on the outer side, and furthermore, on the left side, three blowout port holes are vertically provided, whereas, in the Cited

Design, as described on Pages 1/3 and 2/3 of Appendix 2, when the brush portion is viewed from a front side, in the central vertical row, not the bristles, but three elongated blowout port holes are arranged and surrounded by a bright tone frame in relation to the brush base, and no blowout port hole is provided between the right and left independent bristles.

(Different Feature 3) Regarding the bristles, in the design in the application, the bristles radially provided at the center portion are tapered, and left and right independent bristles are composed of substantially the same diameter ones, whereas, in the Cited Design, it is composed of red colored brush-like ones with slightly wider tip ends, as well as ones with rounded tip ends and tapered ones.

## No. 5 Judgment

### 1 Determination of similarity of the article to the design

The articles to the design of the two designs are the same.

### 2 Evaluation of the common features and the different features in the form

The articles to the design of the two designs are "BRUSH FOR HAIR DRIER ATTACHMENT," and although it can be said that the brush portion that is in direct contact with hair during use is a part that attracts the most attention of consumers, the aspect of the case portion is also a part that appears in the appearance, and it can be said that it is a part that attracts attention.

#### (1) Common features in the form

Common Features A-1 to B-4 are common features in a case of generally taking the form of two designs into consideration, and as the form in the field of the article, it cannot be said to be a remarkable feature that is found only in the two designs, and an impact on the aesthetic impression on the whole design remains to a certain degree.

#### (2) Different features in the form

Regarding Different Feature 1, the three parallel relief patterns gently undulating of the design in the application are an unprecedented aspect in the field of the article, and it has a significant influence on the aesthetic impression of the whole design.

Different Feature 2 is the aspect that is in direct contact with hair, and the blowout port holes in the Cited Design have a strong visual effect, since they are arranged and surrounded by a bright tone frame in relation to the brush base, when the brush portion is viewed from a front side, and it can be said that it significantly affects the aesthetic impression of the whole design.

Although Different Feature 3 relates to the specific form of the bristles, since it is a part that is in direct contact with hair, an impact on the aesthetic impression of the whole design can be recognized to a certain degree.

### 3 Determination of similarity between the two designs

Based on the evaluations of the common features and the different features in the forms of the two designs, when comprehensively observing the design as a whole, the two designs, as described in 2 above, have large difference in the aesthetic impression in the case portion and have noticeable difference in the aesthetic impression also in the form of the brush portion, when considering that the case portion is also the part that attracts the attention of consumers while paying attention to the aspect of the brush portion, as described in 2 (2) above. Then, even considering that there is a common feature in the overall basic configuration, it can be said that it causes a different aesthetic impression when observing the design as a whole.

Therefore, although the articles to the design of the two designs are identical, in the form thereof, the two designs give a different aesthetic impression to the customers. Hence, the two designs are not similar to each other.

### No. 6 Closing

As described above, the design in the application is not similar to the Cited Design, and does not fall under the category of Article 3(1)(iii) of the Design Act. Therefore, the application cannot be rejected due to the reasons of the examiner's decision.

In addition, beyond that, no reasons for refusal were found.

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

May 8, 2019

Chief administrative judge: KOBAYASHI, Hirokazu  
Administrative judge: KITASHIRO, Shinichi  
Administrative judge: SHODA, Takeshi