### Trial decision

Invalidation No. 2018-880003

Demandant	MTG Co., Ltd.
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The case of trial regarding the invalidation of design registration of Japanese Design Registration No. 1593189, entitled "Training device" between the parties above has resulted in the following trial decision.

### Conclusion

The trial of the case was groundless.

The costs in connection with the trial shall be borne by the Demandant.

#### Reasons

No. 1 History of the procedures

The design of the present design registration No. 1593189 (hereinafter referred to as the "Registered Design") was filed on January 30, 2017 for design registration (Japanese Design Application No. 2017-1528); the establishment of the design right was registered on November 24, 2017 after examination; the relevant design bulletin was issued on December 18, 2017; and then, in summary, the following procedures were conducted by the body.

 $\cdot$  Request for trial of the case

February 28, 2018

$\cdot$ Submission of written reply for the trial case	May 11, 2018	
$\cdot$ Submission of written refutation of the trial case	July 12, 2018	
$\cdot$ Submission of oral proceedings statement brief (Demandee)	September	6,
2018		
$\cdot$ Submission of oral proceedings statement brief (Demandant)	September	19,
2018		
· Oral proceedings	October 3, 201	8

#### No. 2 The Demandant's petition and reasons

facts.

The Demandant petitioned, as the object of demand for the trial, that "we request a trial decision that registration of design registration No. 1593189 is invalid, and that the costs in connection with the trial shall be borne by the Demandee," argued the grounds as summarized below (including the contents of the "written refutation of the trial case" and the "oral proceedings statement brief"), and submitted Evidence A No. 1 to Evidence A No. 11 listed in below-mentioned 5 to prove the stated

1 Gist of reasons for invalidation of design registration

Since the Registered Design (Evidence A No. 1, see Appendix 1) is similar to the design of Design Registration No. 1536247 owned by the Demandant (Evidence A No. 2, see Appendix 2), it cannot be granted design registration pursuant to the provisions of Article 3(1)(iii) of the Design Act and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

2 Reasons for invalidation of the registration of the Registered Design

(1) Description and positioning of the Cited Design

In the Cited Design, the name of the article is "Training device", and the form thereof is as published in Design bulletin of Design Registration No. 1536247 (hereinafter, referred to as "Evidence A No. 2").

The Cited Design was filed on February 19, 2015 and was registered on September 18, 2015 without any prior design being presented during the examination process.

(2) Gist of the Cited Design and the Registered Design

A The gist of the Cited Design is as follows.

(A) Basic constitution

a A training device having a pad portion composed of six pad pieces and a

circular battery portion,

b wherein the six pad pieces are arranged in a two-row, three-stage structure in a substantially horizontally long rectangular shape symmetrically with respect to the battery part, and

c wherein an electrode portion is arranged on the back surface of each pad piece and a part thereof is connected to the battery portion.

(B) Specific constitution

a The battery portion is disposed in the center of the pad portion.

b The pad pieces in the middle stage are substantially horizontally arranged across the battery portion, the right and left pad pieces in the upper stage are arranged while slightly inclining upward, and the right and left pad pieces in the lower stage are substantially horizontally arranged, while slighting tapering and inclining outward and upward on lower sides.

c Clearances between the pad pieces in the first stage and the second stage and between the pad pieces in the second stage and the third stage are tapered and tip ends thereof are sharp.

d An outline of an upper side of the pad portion linearly inclines slightly inward toward the center, an outline of the lower side linearly inclines outward and upward from the center portion, and a tapered notch is provided at the center portion between the upper side and the lower side, and a tip end thereof is an acute angle.

e On a surface of each of the six pad pieces, a rounded-corner pentagonal bump portion is provided, an outer periphery of the bump portion has three grooves, and a line pattern is provided on the outside along a peripheral edge of the pad piece.

f The peripheral edge of the surface of the pad portion inclines in a tapered shape over the entire circumference.

g The battery portion projects out from the pad portions at a tip end, and + and – are indicated in upper and lower sides on the surface thereof.

h Four small holes are bored between the battery portion and the pad pieces.

i The electrode portion has a rounded-corner rectangular shape, and has small holes in rows in which the central three stages are large, the outer one stage is medium, and the outer two stages are small, and the small holes in each row are arranged so as to form a staggered pattern with the upper and lower small holes.

j A double circular battery portion is arranged in the center of a back surface of the pad portion, a battery lid in which a coin groove for opening/closing the lid is recessed in the center is provided, and a thin striation is recessed at the peripheral edge.

k A base color of the pad portion is not limited.

B The gist of the Registered Design is as follows.

(A) Basic constitution

a A training device having a pad portion composed of six pad pieces and a circular battery portion,

b wherein the six pad pieces are arranged in a two-row, three-stage structure in a substantially horizontally long rectangular shape symmetrically with respect to the battery part, and

c wherein an electrode portion is arranged on the back surface of each pad piece and a part thereof is connected to the battery portion.

(B) Specific constitution

a The battery portion is disposed in the center of the pad portion.

b The pad pieces in the middle stage are substantially horizontally arranged across the battery portion, the right and left pad pieces in the upper stage are arranged while slightly inclining upward, the pad pieces in the lower stage are disposed symmetrically with the pad pieces in the upper stage, and the pad portion is also vertically symmetrical.

c Clearances between the pad pieces in the first stage and the second stage and between the pad pieces in the second stage and the third stage are tapered and tip ends thereof are arc-shaped.

d An outline of an upper side and a lower side of the pad portion linearly inclines slightly inward toward the center, curves from the upper side to a side part, a part corresponding to the upper side inclines slightly upward, a part corresponding to the side part inclines slightly downward, a tapered notch is provided at the center portion between the upper side and the lower side, and a tip end thereof is arc-shaped.

e On a surface of each of the six pad pieces, upper stage M type, lower stage W type, and middle stage champion belt-shaped shadows are observed, and the existence of a bump portion corresponding to that is seen, and on each pad piece in the upper stage and the lower stage, a line pattern is provided along a peripheral edge thereof.

f The peripheral edge of the surface of the pad portion inclines in a tapered shape from the peripheral edge of the shadow seen as the bump portion over the peripheral edge of each pad piece.

g The battery portion projects out from the pad portions at a tip end, and + and – are indicated in upper and lower sides on the surface thereof.

h Small holes are not bored between the battery portion and the pad pieces.

i In the electrode portion, the upper stage and the lower stage are leaf-

shaped with warped veins, and the middle stage has a rounded-corner rectangular shape with regular veins.

j A double circular battery portion is arranged in the center of a back surface of the pad portion, a battery lid in which a coin groove for opening/closing the lid is recessed in the center is provided, and a thin striation is not recessed at the peripheral edge.

k A base color of the pad portion is black.

C Comparison of the Cited Design and the Registered Design

(A) "Article to the design"

Although the "article to the design" of the Cited Design is "Training device" as described in the corresponding column of Design bulletin of Design Registration (Evidence A No. 2), the Registered Design is also a training device, and the articles are identical.

(B) Comparison of the Cited Design and the Registered Design

[Common Feature of the Cited Design and the Registered Design]

The Cited Design and the Registered Design are common in the following constitutions.

a Common Feature 1: All basic constitutions

b Common Feature 2: Of the specific constitutions, the point that the battery portion is arranged in the center of the pad portion.

c Common Feature 3: Of the specific constitutions, the point that the battery portion projects out from the pad portion at a tip end thereof, and + and - are indicated in upper and lower sides on the surface thereof.

[Different Features of the Cited Design and the Registered Design]

The Cited Design and the Registered Design are different in the following specific constitutions.

a Different Feature 1: The point that regarding the arrangement structure of the pad pieces, the Cited Design is vertically asymmetrical, whereas the Registered Design is vertically symmetrical.

b Different Feature 2: The point that regarding the clearances between the pad pieces in the first stage and the second stage and between the pad pieces in the second stage and the third stage, as for the Cited Design, the tapered tip end is sharp, whereas, as for the Registered Designs, the tapered tip end is arc-shaped.

c Different Feature 3: The point that regarding the arrangement structure of the pad pieces, as for the Cited Design, the pad pieces in the upper stage do not curve from the upper side to the side part, and the pad pieces in the lower stage do not curve from the lower side to the side part, whereas, as for the Registered Design, the pad pieces in the upper stage curve from the upper side to the side part, and the pad pieces in the lower stage curve from the lower side to the side part.

d Different Feature 4: The point that regarding the tapered notch provided at the center portion between the upper side and the lower side of the pad portion, the Cited Design has the tapered notch at the center portion between the upper side and the lower side of the pad portion, and the tip end thereof is sharp, whereas the Registered Design is arc-shaped at the center portion.

e Different Feature 5: The point that regarding the pattern on the surface of the pad piece, the Cited Design has the rounded-corner pentagonal bump portion and has three grooves on the outer periphery of the bump portion, and the line pattern is provided on the outside along the peripheral edge of the pad piece, whereas the Registered Design has the bump portion in which the upper stage of M type, the lower stage of W type, and the middle stage of a champion belt-shape, and a border line is provided at the peripheral edge on each of the pad pieces in the upper stage and the lower stage.

f Different Feature 6: The point that regarding the tapered inclined portion at the peripheral edge of the surface of the pad portion, the Cited Design has the same width, whereas the Registered Design does not have the same width.

g Different Feature 7: The point that regarding the small holes between the battery portion and the pad pieces, the Cited Design has the four small holes bored between the battery portion and the pad pieces, whereas, the Registered Design has no small holes.

h Different Feature 8: The point that regarding the electrode portion, in the Cited Design, it has a rounded-corner rectangular shape, and has small holes in rows in which the central three stages are large, the outer one stage is medium, and the outer two stages are small, and the small holes in each row are arranged so as to form a staggered pattern with the upper and lower small holes, whereas, in Registered Design, the upper stage and the lower stage are leaf-shaped with warped veins, and the middle stage has a rounded-corner rectangular shape with regular veins.

i Different Feature 9: The point that regarding the configuration of the center of the back surface of the pad portion, in the Cited Design, the thin groove is recessed at the peripheral edge of the battery lid, whereas, in the Registered Design, no thin groove is recessed at the peripheral edge of the battery lid.

j Different Feature 10: The point that in the Registered Design, the base color of the pad portion is black.

#### (3) Determination of similarity

The determination of the similarity between designs should be made by extracting the part that visually attracts the most attention for traders and consumers of the article to the design, from the design, examining the common features and the different features of the part (primary part), and then also examining the common features and the different features of other parts, and, as a result of taking these into consideration, on the basis of whether or not the aesthetic impressions are common, as a whole.

#### A Primary part of the Cited Design

Regarding the Registered Design, when grasping the part that visually attracts the most attention for traders and consumers of the article to the design; that is, the primary part of the design, it should be examined by considering the publicly known or well-known design at the time of filing the application of the design, and based on the evaluation of the degree of creativity and the like that should bring a new aesthetic impression in the design.

#### **B** Evaluation of Common Features

(A) The basic constitution of Common Feature 1 is a part that makes a primary part of the Cited Design, and it should be said that the effect on the determination of similarity between the two designs is extremely large.

(B) Although the point that the battery portion is arranged in the center of the pad portion, which is Common Feature 2, is publicly known in the design having four pad pieces, there is no publicly known example in which the battery portion is arranged in the center in the design having fix pad pieces, and the effect on the determination of similarity is large.

(C) Regarding the point that the battery portion projects out from the pad portion at a tip end thereof, + and - are indicated in upper and lower sides on the surface thereof, and + and - are indicated are indicated in right and left sides on the surface thereof, which is Common Feature 3, although the design in which a tip end projects out from a pad portion is publicly known in the design having four pad pieces, in the design having six pad pieces, no publicly known example is disclosed, and it is a prominent part in the center and has the large effect on the determination of similarity.

C Evaluation of Different Features

On the other hand, as described below, it cannot be said that each different feature in the specific constitutions especially attracts the attention of the viewer, when they are viewed entirely.

(A) Regarding Different Feature 1 (arrangement of the pad pieces)

A different feeling in a lower part due to vertically symmetrical arrangement of the pad pieces of the Registered Design is embedded in a common feeling of the basic constitutions of the two-row, three-stage horizontally symmetrical arrangement, and the effect thereof on the determination of similarity is minute. Further, the vertically symmetrical design is also registered as a related design of the Registered Design.

(B) Regarding Different Feature 2 (clearances between the pad pieces)

It is a very detailed difference, and its effect on the determination of similarity is minute.

(C) Regarding Different Feature 3 (outline of the pad portion)

Although there is a corresponding difference in that the two side of the upper and lower stages of the pad portion of the Registered Design are curved, the pad pieces in the upper stage are arranged so as to slightly incline upward on both the left and right sides so that the feeling of inward inclination in the center of the upper stage is common, and also in the pad pieces in the lower stage, the side part of the curved portion inclines upward and is tapered so that the feeling of upward inclination of the lower sides is common. Hence, the different feeling of the two designs is compromised and the effect on the determination of similarity is not large.

(D) Regarding Different Feature 4 (notch in the center between the upper side and the lower side of the pad portion)

It is a very detailed difference, and its effect on the determination of similarity is minute.

(E) Regarding Different Feature 5 (pattern on the surface of the pad piece)

Although there is difference in that the Cited Design has the rounded-corner pentagonal bump portion and has three grooves on the outer periphery of the bump portion, and the line pattern is provided on the outside along the peripheral edge of the pad piece, whereas in the Registered Design, upper stage M type, lower stage W type, and middle stage champion belt-shaped shadows seen as the bump portion are observed, and a border line is provided at the peripheral edge on each of the pad pieces in the upper stage and the lower stage, it is not noticeable, due to the presence of the tapered portion along the peripheral edges of the bump portions of the two designs, and the line pattern of the Cited Design and the border line of the Registered Design are both borders of the peripheral edges of the pad pieces, and thus it should be said that they are not factors influencing the determination of similarity between the two designs.

(F) Regarding Different Feature 6 (tapered inclined portion)

Although there is difference in that the Cited Design has the same width, whereas the Registered Design does not have the same width, it is not visually noticeable because it forms an inclined portion like a gentle skirt from the bump portion to the peripheral edge portion, and its effect on the determination of similarity is minute.

(G) Regarding Different Feature 7 (small holes between the battery portion and the pad pieces)

There is difference in that Cited Design has the four small holes bored between the battery portion and the pad pieces, whereas the Registered Design has no small holes, but the holes are small and the shape is common, so that it should be said that it is not a factor influencing on the determination of similarity between the two designs.

(H) Regarding Different Feature 8 (pattern of a non-conductive portion in the electrode portion)

There is a corresponding different feeling in that in the Cited Design, it has a rounded-corner rectangular shape, and has small holes in rows in which the central three stages are large, the outer one stage is medium, and the outer two stages are small, and the small holes in each row are arranged so as to form a staggered pattern with the upper and lower small holes, whereas, in Registered Design, the upper stage and the lower stage are leaf-shaped with warped veins, and the middle stage has a rounded-corner rectangular shape with regular veins, due to a common feeling that the electrode portion is formed on almost the entire surfaces of the pad pieces while leaving the peripheral edges, a different feeling is compromised, and the effect of the different feeling on the determination of similarity is minute.

Incidentally, a design largely different from the Registered Design with regard to the electrode portion is also registered as a related design of the Registered Design.

(I) Regarding Different Feature 9 (configuration of the battery portion)

Although there is difference in that in the Cited Design, the thin groove is recessed in a circle outside a double circle of the battery portion, whereas, in the Registered Design, no thin groove is recessed, it is a very detailed difference, and its effect on the determination of similarity is minute.

(J) Regarding Different Feature 10 (base color of the pad portion)

Although there is difference in that the base color of the pad portion of the Registered Design is black, whereas the Cited Design is not colored, the Cited Design does not limit a color relating to a base color and includes the design inverting black and white, and it does not influence the determination of similarity between the two designs.

#### D Summary

As described above, although the Cited Design and the Registered Design are common in the primary part of the design, and bring the similarity of an aesthetic impression, it cannot be acknowledged that the design effects generated by Different Features 1 to 10 are stronger than the similarity of the aesthetic impression due to Common Features and influence on the determination of similarity.

Therefore, the Registered Design is similar to the Cited Design.

(4) Closing

Therefore, since the Registered Design is similar to the Cited Design, the Registered Design cannot be granted design registration pursuant to the provisions of Article 3(1)(iii) of the Design Act and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

3 Allegation in "the written refutation of the trial case"

(1) Reasons for invalidation of the Registered Design

A Regarding the similarity between the Registered Design and the Cited Design

The basic constitutions alleged by the Demandee about the Cited Design are wrong. That is,

(A) The basic constitutions of the Registered Design alleged by the Demandee are as follows.

a A training device having a pad portion composed of three pad pieces and a circular battery portion,

b wherein the three pad pieces are arranged in a three-stage structure composed of upper stage pads, middle stage pads, and lower stage pads in a substantially horizontally long rectangular shape that is horizontally symmetrical and vertically symmetrical,

c wherein the upper stage pads and the lower stage pads have a maple seed motif,

d wherein the battery portion is a circular controller (strength adjustment button) and is arranged in the center of the pad portion,

e wherein the battery portion projects out from the pad portion at a tip end, and + and – are indicated on a surface,

f wherein the electrode portion is arranged on a back surface of each pad piece and a part thereof is connected to the battery portion, and

g wherein four ventilation holes (small holes) are not bored between the battery portion and the pad pieces.

(B) The errors of the Demandee's allegation are as follows.

a The number of pad pieces configuring the Registered Design is not

"three," but apparently six in appearance.

Although the Demandee, in c above, alleges that the upper stage pad and the lower stage pad have a maple seed motif, since the maple seeds are two symmetrically attached pieces, as if a bird had spread its wings, the upper and lower pads have a structure in which two pad pieces are arranged horizontally symmetrically in appearance, and the Demandee's allegation that this is "three pad pieces" can only be said to be a matter of sophistry for making a difference in the basic constitutions.

b Next, the basic constitutions of a design means "a matter belonging to the basic constitutions when the form of the design is roughly grasped"; that is, "the skeletal constitutions of the design".

However, "+ and - are indicated and a power supply button are indicated on the surface of the battery portion" (e) is a detailed configuration and cannot be a basic constitution.

As described in the written request for trial, the Cited Design is a completely new design in this kind of product field, without any prior design, and the Demandant's product that implemented it has been very successful commercially, and today, its configuration is often seen in TV commercials and the like in daily life.

Thus, in the case of a highly innovative cited design that does not have a prior design, its basic constitutions should be widely and roughly grasped, and in fact, considering that there are many related designs and they are widely accepted, the basic constitutions thereof should be widely recognized as described in the written request for trial.

Then, as described in the written request for trial, the Registered Design is common with the Cited Design in the basic constitutions, and the common feeling of aesthetic impression of the two designs due to the high novelty of the basic constitutions far exceeds the different feeling in the specific constitutions of the two designs. Therefore, the Registered Design is similar to the Cited Design.

(C) Regarding the Cited Design and related designs thereof

Here, the related designs of the Cited Design will be described.

Although it is described in Evidence A No. 6 that six related designs are registered for the Cited Design, each related design with an explanatory number is presented here as Evidence A No. 6-2 (see Appendix 3), and the position of the registered design network of the Demandant consisting of the Cited Design and the six related designs and the Registered Design is alleged as follows.

a The configurations common to seven registered design networks

(a) A plurality of pad pieces are arranged horizontally symmetrically.

(b) A battery portion (operating portion) is arranged in the center of a pad portion.

b Variation width of the Cited Design seen from the related designs (the numbers in parentheses are the numbers attached to the related designs in Evidence A No. 6-2)

(a) The number of pad pieces covers increase/decrease within a range of two pieces (1, 2).

(b) The number of stages in a pad piece arrangement covers increase/decrease within a range of two stages (1, 2).

(c) The shape of left and right ends of the pad piece covers an arc shape (4).

(d) The arrangement of the pad pieces covers vertical symmetry (5).

(e) The pattern on the surface of the pad pieces covers the one (3) without a pattern, and a tip end arc shape (4).

(f) The shape of the electrode portion on the back surface of the pad pieces covers a square (3) and a circle (4) leaving a peripheral edge portion.

(g) The shape of the vertical center portion of the pad portion covers the one (6) without a notch.

(D) Regarding the range of a similar range of the Cited Design seen from seven registered design networks and the position of the Registered Design

a The pad pieces of the Registered Design are arranged in a two-row, threestage structure and horizontally symmetrically, and the Registered Design is common with the Cited Design.

b Although the pad pieces of the Registered Design are also arranged vertically symmetrically, this feature is covered by the range of the Demandant registered design network (5).

c Although regarding the pattern on the surface of the pad pieces of the Registered Design, the pad pieces in the upper stage and the lower stage consist of the bump portion leaving the peripheral edge portion and a line pattern at the peripheral edge, and the middle pad pieces consist of the bump portion leaving the peripheral edge portion, and the tip shape of the pad pieces in the upper stage and the lower stage forms an arc shape, all are covered by the range of the demandant registered design network (3, 4).

d Although the shape of the electrode portion on the back surface of the pad pieces of the Registered Design has the vein-shape of a leaf leaving the peripheral edge portion, it is covered by the range of the Demandant registered design network (3, 4).

e Although the shape of a notch in the vertical center portion of the pad

portion of the Registered Design forms an arc-shape at a tip end, the one without a notch of (6) is also registered as a related design, and is covered by the range of the Demandant registered design network.

Consider the above comprehensively, it is obvious that the Registered Design belongs to the similar range of the Cited Design.

#### 4 Allegation in "the oral proceedings statement brief"

(1) Regarding the written reply for the trial case and the allegation of the oral proceedings statement brief of the Demandee

The Demandee's allegation in the oral proceedings statement brief (see the below-mentioned No. 3-2 for the summary) is substantially identical with the allegation in the written reply (see the below-mentioned No. 3-1 for the summary). Then, the opinion of the Demandant to these allegations is largely devoted to the allegation in the written refutation of the trial case submitted on July 12, 2018 (see 3 above for the summary).

### (2) Comparison of the two designs

The Cited Design has [1] six pad pieces, [2] a two-row, three-stage/horizontally symmetrical arrangement, [3] a battery portion (operating portion) in the center, and [4] a pad portion of a substantially horizontally long rectangular shape arrangement, as primary parts, and the primary parts have high originality as compared with prior designs.

The Registered Design is common in the primary parts with the Cited Design, and has difference in the four points of a) the shape of the pad pieces in the upper and lower stages, b) vertical symmetry of the pad pieces in the upper and lower stages, c) a line pattern on a (front) surface, and d) the presence/absence of four small holes in the center portion. The Registered Design is common in the primary parts with the Cited Design, and has difference in the above mentioned four points.

(3) Summary (comprehensive evaluation)

The primary parts of the Cited Design, in light of prior designs, have extremely high originality and novelty, and strongly attract the attention of the viewer.

The common features of the Registered Design and the Cited Design are the primary parts of the Cited Design.

The different features of the Registered Design and the Cited Design are merely minute modifications.

Therefore, these different features do not predominate over the common aesthetic impression of the two designs that are common in the primary parts, and the two designs are similar to each other.

#### 5 Evidences submitted by the Demandant

The Demandant submitted the following Evidences A (all of them are recognized as copies) as the attached documents of the written request for trial and the refutation of the trial case.

Evidence A No. 1	The Registered Design (Design
bulletin of Design Registration No. 1593189)	
Evidence A No. 2	The Cited Design (Design bulletin of
Design Registration No. 1536247)	
Evidence A No. 3-1 to A No. 3-4	Prior design (a publicly known design
that was used as a reference design in the e	examination of the Cited Design, it is a
reference design)	
Evidence A No. 4	Report
Evidence A No. 5	Sales situation table of the latest EMS
training device	
Evidence A No. 6	Design Registration No. 1536247 and
the related design registration state	
Evidence A No. 6-2	Registered design network by the
Cited Design and related designs thereof	
Evidence A No. 7-1 to A No. 7-4	Written motion for provisional
disposition order, opinion document, provisio	nal disposition decision, and Correction
decision	
Evidence A No. 8	The Case of Design right
infringement injunction bill (Osaka District Co	urt)
Evidence A No. 9	INTAGE Inc. "Awareness of
SIXPAD Investigation report"	
Evidence A No. 10	Report related to Evidence A No. 9
Evidence A No. 11	Written reply of another case of
design right infringement (Demandee)	

No. 3 The Demandee's reply and the gist of the reasons

The Demandee submitted a written reply for the trial case and the object of the reply as

"The trial of the case was groundless.

We request a trial decision that the costs in connection with the trial shall be borne by

the Demandant.," and summarized grounds for that as follows (including the contents of "the oral proceedings statement brief").

1 Statement of the reply

Since the Registered Design is not similar to the Cited Design, and does not fall under the provisions of Article 3(1)(iii) of the Design Act, there are no reasons for invalidation. Hereinafter, the reasons therefor will be stated.

(1) Comparison between the Registered Design and the Cited Design

A Articles to the two designs

Although the article to the design of the Cited Design is "a training device" as described in the corresponding column of Design bulletin of Design Registration (Evidence A No. 2. See Appendix 2.), the Registered Design is also "a training device" and the articles are identical.

B Form of the two designs

[Common Features of the Registered Design and the Cited Design]

The Registered Design and the Cited Design are common in the following constitutions.

(A) Common Feature 1: The point that the whole is horizontally symmetrical when viewed from the front side.

(B) Common Feature 2: The point that the battery portion is a circular controller (strength adjustment button).

(C) Common Feature 3: The point that the battery is arranged in the center of the pad portion.

(D) Common Feature 4: The point that the battery projects out from the pad portion at a tip end, and + and - are indicated in upper and lower sides on the surface thereof.

(E) Common Feature 5: The point that the electrode portion is arranged on the back surface of each pad piece, and a part thereof is connected to the battery portion.

[Different Features of the Registered Design and the Cited Design]

The Registered Design and the Cited Design are different in the following constitutions.

As the basic constitution,

(A) Different Feature 1: The point that in the Registered Design, three pad pieces configure three pad portions of an upper stage pad, a middle stage pad, and a lower stage pad, whereas in the Cited Design, six pad pieces independently configures six pad portions, respectively.

(B) Different Feature 2: The point that regarding the arrangement structure of the pad pieces, the Registered Designs is vertically symmetrical and horizontally symmetrical around the battery portion, whereas the Cited Design is radially expanded around the battery portion.

(C) Different Feature 3: The point that in the Registered Design, the upper stage pads and the lower stage pads have a maple seed motif, whereas, in the Cited Design, each pad piece has a motif of six muscles that make up trained and tight abdominal muscles.

(D) Different Feature 4: The point that in the Registered Design, ventilation holes (small holes) are not bored, whereas, in the Cited Design, four ventilation holes (small holes) are bored between the battery portion and the pad pieces.

As the specific constitutions,

(E) Different Feature 5: The point that regarding clearances between the upper stage pads and the middle stage pads and between the middle stage pads and the lower stage pads, in the Registered Design, tip ends with the same width are arc-shaped, whereas, in the Cited Design, tapered tip ends are sharp.

(F) Different Feature 6: The point that regarding the arrangement structure of the pad pieces, as for the Registered Design, the pad pieces in the upper stage curve from the upper side to the side part, and the pad pieces in the lower stage curve from the lower side to the side part, whereas, in the Cited Design, the pad pieces in the upper stage do not curve from the upper side to the side part, and the side part, and the pad pieces in the lower stage in the lower stage do not curve from the upper side to the side part.

(G) Different Feature 7: The point that the Registered Design has a depression in the center portion between the upper side and the lower side of the pad portion, and a tip end thereof is arc-shaped, whereas, the Cited Design has a tapered notch in the center portion of the upper side and the lower side of the pad portion, and a tip end thereof is an acute angle.

(H) Different Feature 8: The point that regarding the pattern on the surface of the pad piece, the Registered Design has the bump portion in which the upper stage of M type, the lower stage of W type, the middle stage of a champion belt-shape, and a border line is provided at a part of the peripheral edge on each of the pad pieces in the upper stage and the lower stage, whereas, the Cited Design has a rounded-corner pentagonal bump portion and has three grooves on the outer peripheral edge of the bump portion, and the line pattern is provided on the outside along the peripheral edge of the pad piece

(I) Different Feature 9: The point that regarding the tapered inclined portion at the peripheral edge of the surface of the pad portion, the Registered Design does not have the same width, whereas the Cited Design has the same width.

(J) Different Feature 10: The point that regarding the electrode portion, in Registered Design, the upper stage and the lower stage are leaf-shaped with warped veins, and the middle stage has a rounded-corner rectangular shape with regular veins, whereas, in the Cited Design, it has a rounded-corner rectangular shape, and has substantially hexagonal shape small holes in rows in which the central three stages are large, the outer one stage is medium, and the outer two stages are small, and the small holes in each row are arranged so as to form a staggered pattern with the upper and lower small holes.

(K) Different Feature 11: The point that regarding the configuration of the center of the back surface of the pad portion, in the Registered Design, no thin groove is recessed at the peripheral edge of the battery lid, whereas, in the Cited Design, the thin groove is radially recessed at the peripheral edge of the battery lid.

(L) Different Feature 12: The point that in the Registered Design, the base color of the pad portion is black.

(2) Determination of similarity between the two designs

Evaluating and summarizing the effect of the identical features, common features, and different features mentioned above on the determination of similarity between the two designs, similarity between the two designs is deliberated as the entire design and judged.

A Evaluation of the articles to the two designs

Although the articles to the two designs are identical, a training device; that is, an device that stimulates muscles by passing a weak electric current through electrodes (hereinafter, referred to as "this kind of device") is commonly seen in addition to the two designs, so that the effect due to the correspondence of the articles to the two designs on the determination of similarity of the two designs is minute.

B Evaluation of Common Features for the form of the two designs

Common Features 1 to 5 are the points of (A) the whole is horizontally symmetrical when viewed from the front side, (B) the battery portion is a circular controller, (C) the battery is arranged in the center of the pad portion, (D) the battery projects out from the pad portion at a tip end, and + and - are indicated on the surface thereof, and (E) the electrode portion is arranged on the back surface of each pad piece, and a part thereof is connected to the battery portion.

Further, the Demandant filed the applications of a training device composed of eight pad pieces (Related Design 1. Appendix No. 3-1) and a training device composed of four pad pieces (Related Design 2. Appendix No. 3-2), as related designs

whose principal design is the Cited Design, after the Cited Design was filed.

According to the constitutions of the related designs, at the time of filing the applications, the Demandant regarded the form of each pad piece, a notch portion between the pad pieces, a rounded-corner pentagonal bump portion, a line pattern at a border, ventilation holes (small holes) bored around the battery portion and the like as the primary parts of the Cited Design, and filed the applications of the training device composed of the eight pad pieces and the training device composed of the four pad pieces that are common in those, as the related designs of the Cited Design.

That is, it is clear that the Demandant does not regard the configuration consisting of the six pad pieces as the primary part of the Cited Design, but expresses his intention to exclude it from the judgment criteria for the determination of similarity.

Further, even one of the primary parts of the Cited Design is not included in the constitutions of the Registered Design.

C Evaluation of Different Features about the form of the two designs

(A) Different Features of the basic constitutions

a Regarding Different Feature 1 (the number of the pad pieces)

Examining Different Feature 1, since the Registered Design has a substantially M type bump portion and a border pattern at a part of the peripheral edge thereof in the upper stage pad, a champion belt-shaped bump portion in the middle stage pad, and a substantially W type bump portion and a border pattern at a part of the peripheral edge thereof in the lower stage pad, the Registered Design gives the impression that it is composed of three pad pieces that are the upper pad, the middle pad, and the lower pad.

On the other hand, since the Cited Design has rounded-corner pentagonal bump portions on the pad pieces respectively and has three grooves on the outer periphery of the bump portion, and a line pattern is provided on the outside along the peripheral edge of the pad piece, it gives the impression that it configures six pad pieces independently.

Thus, the Registered Design gives the impression that it is a diet-oriented product aimed exclusively at reducing abdominal fat, whereas the Cited Design gives the impression that it is a (training) product exclusively for athletes to train their abdominal muscles, with the aim of training six muscles that make up the abdominal muscles.

Therefore, the effect of Different Feature 1 on the determination of similarity between the two designs is large.

Further, the Demandant, in the specification [0051] of Japanese Unexamined Patent Application Publication No. 2016-202690, describes that "(Omitted) Further, by recognizing such a shape, the user can be reminded of the image that the abdomen 3 is

tightened and the abdominal muscles are cracked. As a result, by using the muscle electrical stimulator 1, the effect of image training for making the abdomen 3 have the abdominal muscles cracked and tightened feature can be obtained. (The improvement of exercise effect by image training is generally well known.)" (Evidence B No. 4. See Appendix 4.)

Thus, it is clear that the Demandant regards the Cited Design as a training device that makes one imagine the abdominal muscles cracked into six that have been trained.

b Regarding Different Feature 2 (arrangement of the pad pieces)

Different Feature 2 gives the impression that in the Registered Design, the upper stage pads, the middle stage pads, and the lower stage pads are vertically symmetrical and horizontally symmetrical around the battery portion, whereas, in the Cited Design, those are radially expanded around the battery portion.

Thus, the different feeling in a lower part due to the vertical symmetrical arrangement of the pad pieces of the Registered Design is not embedded in the common feeling of the basic constitution of the horizontal symmetrical arrangement.

Therefore, the effect of Different Feature 2 on the determination of similarity between the two designs is large.

Further, although the Demandant mentions the related design of the Cited Design that is vertically symmetrical, even if comparing the related design and the Registered Design, the visual impressions of the two designs are completely different.

c Regarding Different Feature 3 (a motif of the pads)

As for Different Feature 3, since the upper stage pads and the lower stage pads of the Registered Design have a maple leaf motive, it is a continuous pad piece with curved in the upper and lower sides.

On the other hand, considering the six pad portions and the effect of the image training of the Cited Design which the Demandant intends, it can be inferred that in the Cited Design the motif of the six muscles makes up the abdominal muscles.

Then, it can be said that the difference in the motives is that the Registered Design gives a calm, gentle, and soft impression, whereas the Cited Design gives a dynamic and lively impression, and thus the two designs give opposite impressions.

Therefore, the effect of Different Feature 3 on the determination of similarity between the two designs is large.

d Regarding Different Feature 4 (the presence/absence of ventilation holes (small holes))

Different Feature 4 is that the Registered Design is not provided with ventilation holes (small holes), whereas the Cited Design is provided with substantially rounded-

corner triangular ventilation holes (small holes) on diagonally upper, lower, left and right sides of the controller. Then, considering that this kind of device is attached so that it is in close contact with the body, the Cited Design having the ventilation holes (small holes) gives the impression that careful consideration is made so that the center of the main body where air easily collects can be attached in close contact with a consumer and that ventilation by sweating is ensured.

On the other hand, the Registered Design does not give such an impression, even if the ventilation holes (small holes) themselves are small, the effect of Different Feature 4 on the determination of similarity between the two designs is large.

Although Different Features 1 to 4 are differences due to the basic constitutions of the two designs, considering that the articles to the two designs are mainly used for abdominal training, from the form of the Cited Design according to Different Features 1 to 4, not only is the consumer reminded of a trained and tightened abdominal muscle and given a strong impression, the consumer also gets the impression of being in line with the goals he or she is trying to achieve by using the article to the design.

On the other hand, since the pad form of the Registered Design does not give such a strong impression, the visual impressions due to Different Features 1 to 4 are completely different between the two designs.

(B) Different Features of the specific constitutions

e Regarding Different Feature 5 (clearances between the pad pieces)

As for Different Feature 5, since the clearances between the pad pieces of the Registered Design are of almost the same width and the tip end portions are arc-shaped, it gives a calm and quiet impression.

On the other hand, since the clearances between the pad pieces of the Cited Design are substantially "V"-shaped, it gives a sharp and vibrant impression. Thus, Different Feature 5 is not a very detailed difference.

Therefore, the effect of Different Feature 5 on the determination of similarity between the two designs is large.

f Regarding Different Feature 6 (outline of the pad portion)

Examining Different Feature 6, in the main body of the Registered Design, the upper stage pads and the lower stage pads have a curved propeller shape with a maple seed motif, and the middle stage pads have a substantially horizontally long rounded-corner rectangular shape, and have a curved outline as a whole, giving a gentle and soft impression.

On the other hand, in the Cited Design, the middle stage pads have a substantially horizontally long rounded-corner rectangular shape and right and left ends

are arranged so as to slightly incline upward, the upper stage pads have a substantially horizontally long rounded-corner pentagonal shape and right and left ends are arranged so as to incline upward from the middle pads, and the lower stage pads have a substantially horizontally long rounded-corner pentagonal shape and right and left ends are arranged so as to incline downward from the middle stage pads. Further, since it has a straight and sharp outline as a whole and gives a sharp and hard impression, the two designs give the opposite impressions.

Therefore, it should be said that the effect of Different Feature 6 on the determination of similarity between the two designs is large.

g Regarding Different Feature 7 (notch in the center portion between the upper side and the lower side of the pad portion)

As for Different Feature 7, the notch in the center of the upper sides and lower sides of the main body gives a gentle and quiet impression, because the Registered Design is a shallow depression and the tip end portion thereof is arc-shaped, whereas since the Cited Design is substantially "V"-shaped, it gives a sharp and vibrant impression. Thus, Different Feature 7 is not a very detailed difference.

Therefore, the effect of Different Feature 7 on the determination of similarity between the two designs is large.

h Regarding Different Feature 8 (pattern on the surface of the pad piece)

As for Different Feature 8, as the pattern on the surface of the pad piece, the Registered Design is provided with a substantially M type inclined portion in the upper stage pad, a champion belt-shaped inclined portion in the middle stage pad, and a substantially W type tapered inclined portion in the lower stage pad, and a line pattern that borders the outer periphery is provided at a part of the upper pad and the lower pad.

On the other hand, in the Cited Design, a total of six line patterns that border the outer periphery are provided for each pad, and three line grooves of substantially rounded-corner pentagonal shape that are similar to the outer shape of each pad are provided in a similar shape, in the inside thereof. Therefore, the Registered Design gives the impression that all the pads are integrated, whereas the Cited Design gives a strong impression that each pad is raised independently by the line patterns and line grooves. Thus, Different Feature 8 is an extremely important factor for the determination of similarity between the two designs, and determines the difference between the two designs.

Therefore, the effect of Different Feature 8 on the determination of similarity between the two designs is large.

i Regarding Different Feature 9 (tapered inclined portion)

The Registered Design is raised in a substantially M type on the upper stage pad, a champion belt-shape on the middle pad, and a substantially W type tapered shape in the lower stage pad, and a gentle inclined portion is provided toward the peripheral edge.

On the other hand, in the Cited Design, the surface is flat and is not provided with a tapered inclined portion. Since the article to the design is worn by holding it in the hand and touching the whole during use, it is a part that consumers are interested in observing, so that the effect of Different Feature 9 on the visual observation between the two designs is large.

j Regarding Different Feature 10 (pattern of the non-conductive portion in the electrode portion)

As for Different Feature 10, since in the Registered Design, the pattern of the non-conductive portion is based on light brown, which gives the image of leaves (fallen leaves), it gives the impression that the upper stage, middle stage, and lower stage pads are composed of three maple leaves respectively.

On the other hand, in the Cited Design, since the pattern of the non-conductive portion makes the image of a spatula, it gives the impression of an artificial object not found in natural objects.

Further, since the articles to the two designs are used by attaching the back surface so that they are in close contact with the body, the consumers also observe the back side with great interest.

Therefore, the visual impression that Different Feature 10 gives to the consumers is completely different in the two designs.

k Regarding Different Feature 11 (configuration of the battery portion)

In the configuration in the center on the back surface of the pad portion, in the Registered Design, radial thin grooves are not recessed at the peripheral edge of the battery lid, whereas in the Cited Design, thin grooves are recessed at the peripheral edge of the battery lid. It is presumed that such radial thin grooves are for passing and ventilation of air and sweat generated between the body and the article in cooperation with the four ventilation holes, and considering that the article to the design is a training device and consumers also pay attention to its functional aspects, the difference thereof is by no means small.

Different Feature 11 is a part that the consumers observe with interest, and the effect on the visual observation of the two designs is large.

1 Regarding Different Feature 12 (base color of the pad portion)

Although Different Feature 12 is that the base color of the pad portion is black in the Registered Design, whereas, in the Cited Design, it is not limited, since the base color of the pad portion is the part that consumers observe with interest, the effect on the visual observation of the two designs is large.

(3) Summary

Therefore, although the two designs are identical in the article to the design, the effect on the determination of similarity between the two designs due to that is minute, and since any of the effects of Common Features 1 to 5 on the determination of similarity between the two designs is small or minute, Common Features do not decide the determination of similarity between the two designs.

On the other hand, all of the effects of Different Features 1 to 12 on the determination of similarity between the two designs are large, and the effects of Different Features on the determination of similarity between the two designs exceed Common Features. When viewed as a whole design, the impression of Different Features exceeds the impression of Common Features, and the two designs have different visual impressions as a whole.

Therefore, the Registered Design is not similar to the Cited Design.

(4) Closing

As described above, the Registered Design is not similar to the Cited Design, and does not fall under the category of Article 3(1)(iii) of the Design Act, so that the registration of the Registered Design should not be invalidated for the Demandant's allegation and evidences.

2 Allegation in "the oral proceedings statement brief"

(1) Regarding a basic constitution

A the number of the pads

The number of the pad pieces in the Registered Design is not six, but three. As the Demandant alleges, the photograph of the maple seeds posted by the Demandant in the written refutation shows the state that two of that are horizontally symmetrically attached to each other, so that the expression of one blade (a set of two) is more appropriate.

In this regard, the Demandant has stated that it is a matter of sophistry that the basic constitutions of the Registered Design is "three pad pieces," but the allegation is not a matter of sophistry but a factual allegation.

B Indication of + and - on the surface of the battery portion and the power supply button

The indication of + and - on the surface of the battery portion and the power supply button is positioned at a front center of the Registered Design. Thus, since the

Registered Design is always seen by the consumer when it is purchased, it can be said that the indication is a skeletal constitution of the design; that is, a basic constitution.

Further, even if there is no prior design for the Cited Design and the related design is widely recognized, to the last, the range of the Cited Design should be limited to the same or similar range as the basic constitutions, and should not be grasped more broadly and roughly.

That is, the basic constitutions of the Registered Design is "three pad pieces," whereas the basic constitutions of the Cited Design is composed of "six pad pieces," and the basic constitutions such as "outline of each pad piece," "a line pattern," "a bump portion," "ventilation holes," are also completely different. Further, even if the Cited Design is commercially successful, such facts do not provide a ground for a broad interpretation of the similarity range of the Cited Design.

Therefore, since the different feeling in the basic constitutions between the Registered Design and the Cited Design far exceeds the common feeling of the two designs, the two are designs that are not similar to each other.

(2) Regarding the similarity range of the Cited Design

Regarding the similarity range of the Cited Design, although the Demandant mentions a registered design network, in the first place, there is no registered design network. That is, the Cited Design and the related design were only judged to be similar in a one-to-one comparison, and it is not permissible to extract the constitutions of the related design and certify the similarity range of the Cited Design too broadly (Article 10(3) of the Design Act).

Further, even examining the Registered Design alleged by the Demandant and the related design,

A The Registered Design is composed of "three pad pieces," and has no row, so that it is not the constitution of a two-row, three-stage, and is not common with the Cited Design.

B The vertically symmetrical related design has a completely different outline from the pad piece of the Registered Design (5).

C In the pad pieces in the upper stage of the Registered Design, the substantially M type bump portion and the line pattern at the peripheral edge thereof are recognized, in the pad pieces in the lower stage, the substantially W type bump portion and the line pattern at the peripheral edge thereof are recognized, and the champion belt-shaped bump portion is recognized in the pad piece in the middle stage; however, these are line patterns and shapes that are not found in the Cited Design and related designs (3, 4). In addition, the arc shape of the tip end portions of the pad pieces in the

upper stage and the lower stage of the related design does not remind one of the maple seeds (4).

D The vein-shaped pattern of leaves cannot be recalled from the electrode portion on the back surface of the related design (3,4).

E Since the related design has no notch, the shape is different from this case (6).

Considering the above comprehensively, the Registered Design and the Cited Design are different in the basic constitutions, and the outline of the pad piece, the bump portion, the line pattern, and the notch of the Registered Design are not similar to the constitutions of the related design, so that it is clear that the Registered Design does not belong to the similarity range of the Cited Design.

#### 3 Evidences submitted by the Demandee

The Demandee submitted the following Evidences B (all of them are recognized as copies) as the attached documents of the written reply for the trial case and the oral proceedings statement brief.

Evidence B No. 1	Notice (Japanese Design Application No. 2017-001528)
Evidence B No. 2	List of "training device"
Evidence B No. 3	Information posted on "EM20 sixpack"
Evidence B No. 4	Japanese Unexamined Patent Application Publication No.
2016-202690 (extract)	
Evidence B No. 5	Written trial decision (Invalidation No. 2017-880003)
Evidence B No. 6	Determination (2017 (Gyo-Ke) 10198)
Evidence B No. 7	"The lower stage pad portion of the Registered Design"
and "the photograph of a map	ple seed"
Evidence B No. 8	Demandee's brief (5)
Evidence B No. 9	Journal showing an example of a "notice"
Evidence B No. 10	Written reply to the inquiry
Evidence B No. 11	United States Patent No. US6445955
Evidence B No. 12	Design bulletin (Design Registration No. 1550074)
Evidence B No 13	Design bulletin (Design Registration No. 1550144)
Evidence B No. 14	Written opponent for preservation (extract)
Evidence B No. 15	Partial written withdrawal of the opposition

#### No. 4 Oral proceeding

The body performed the oral proceeding on October 3, 2018, and the chief administrative judge notified that the trial was concluded on the same date, ("1st oral

proceeding record dated October 5, 2018)

No. 5 Judgment by the body

1 The Registered Design (see Appendix 1)

(1) The article to the design of the Registered Design

The article to the design of the Registered Design is "a training device," and in [Description of the article to the design] in the application, it is described that "The article is a training device for stimulating muscles such as an abdomen by a current flowing from the back electrode portion and tightening the muscles in the relevant region. By pushing + side and – side of the strength adjustment button, a flow rate of the current is adjusted."

(2) Form of the Registered Design

The shape, patterns, or colors, or any combination thereof of the Registered Design (hereinafter, "the shape, patterns, or colors, or any combination thereof" are referred to as "the form"), are as described in the application for design registration and photographs in lieu of drawings attached to the application, and the following points regarding the form of the Registered Design are recognized by the body.

A Regarding the basic constitutions

(Form 1) When viewed from the front, the whole is a thin sheet, which is approximately symmetrical vertically and horizontally, and is composed of a main body made by a total of six pads in which upper pads and lower pads with upper and lower ends bulging in a bow shape are arranged on the upper and lower sides of a substantially rounded-corner trapezoidal center pad through a substantially flat "V" shaped clearance, and a substantially circular strength adjustment button that is provided in the front center of the main body.

(Form 2) Substantially "U"-shaped notch portions are formed in the center between the upper side and the lower side of the body, and the vicinity of corner portions of the upper side and the lower side of the main body on both sides of the notch portions is slightly bulged upward or downward.

(Form 3) On the front of the main body, on the upper pad and the lower pad, a brighttone streak pattern is arranged along the upper end or the lower end, and a light-tone substantially flat triangular pattern is arranged near the inner ridgeline. Further, on the upper pad and the lower pad, a strip-shaped portion of a substantially "M" type or a substantially "W" type that slightly projects over the left and right pads is formed, and on the center pad, a substantially inverted spindle-shaped portion that slightly projects over the left and right pads is formed so as to surround the strength adjustment button.

#### B Regarding the specific constitutions

(Form 4) One strength adjustment button that is a substantially truncated cone shape blocked on a front side is provided on the main body, and a base portion is not provided under the button.

(Form 5) On the center on the back surface of the main body, a circular line pattern larger than the strength adjustment button is provided, electrodes that are almost similar in shape to the outer circumference of each pad are placed on each pad while leaving a margin around them, each electrode on the left or right side is connected by a single line, and that line is connected to the circular pattern in the center, and a battery lid with a coin groove is provided in the center of the inside of the circular pattern.

(Form 6) A thick line pattern that imitates the outer shape of the leaf and the veins of the leaf is arranged inside the electrode, the thick veins that penetrate the center are represented in a bow shape on the upper and lower pads, and are represented in a horizontal shape on the middle pad.

(Form 7) On the main body, ventilation holes penetrating a front surface and a back surface are not provided, and very small circular holes are formed above and below the circular line pattern on the back surface.

(Form 8) The indication of "+" And "-" is provided in bright tone above and below the front of the strength adjustment button, and a power button in bright tone is provided between the strength adjustment buttons.

(Form 9) The peripheral edge of the main body is not formed as a vertical surface, because the gently inclined surface on the front side is continuous to the end.

(Form 10) Most of the front of the main body, the edge of the back surface of the main body, and the strength adjustment button except for the indication such as "+" are shown in dark tone, the thick line pattern on the back surface of the main body is shown in slightly dark tone, and the back surface of the main body except for the thick line pattern and the edge is shown in bright tone.

### 2 Gist of the reason for invalidation

The reasons for invalidation of registration of the Registered Design alleged by the Demandant are that the Registered Design is similar to the design of Design Registration No. 1536247 "training device" (hereinafter, referred to as "Design A-2") described in publications (Evidence A No. 2) that had been distributed in Japan or a foreign country prior to the filing of the Registered Design, falls under the category of Article 3(1)(iii) of the Design Act, and should not be registered under Article 3(1)(iii) of the Design Act, and thus the registration of the Registered Design falls under Article 48(1)(i) of the Design Act, and should be invalidated by the provisions of the Article 48(1)(i) of the Design Act.

# 3 Determination of Reasons for Invalidation

It will be examined whether or not the Registered Design is similar to Design A-2.

# (1) Design A-2 (see Appendix 2)

Design A-2 is the design of Design Registration No. 1536247 "training device," and the design bulletin containing Design A-2 (Evidence A No. 2. See Appendix 2.) was published on October 26, 2015 that is prior to the filing of the Registered Design. The article to the design of Design A-2, according to the description of Evidence A No. 2, is "a training device," and is described as "this article is a training device for stimulating abdominal muscles and the like with a weak electric current flowing from the back electrode portion and tightening the abdominal muscles and the like" in [Description of the article to the design] of the design bulletin.

(2) Form of Design A-2

The form of Design A-2 is as described in the design bulletin, and it is described that "in a reference front view and a reference rear view showing names of each portion, the part with parallel diagonal lines is printed" in [Description of the Design].

The body recognizes the following points regarding the form of Design A-2.

A Regarding the basic constitutions

(Form 1') When viewed from the front, the whole is a thin sheet, which is approximately symmetrical horizontally, and is composed of a main body made by a total of six pads in which substantially horizontally long rounded-corner square-shaped center pads are disposed so as to slightly upward on left and right ends, substantially horizontally long rounded-corner pentagonal shaped upper pads are disposed so as to incline upward at left and right ends from the center pad, and substantially horizontally long rounded-corner pentagonal shaped lower pads are disposed so as to incline downward at left and right ends from the center pads, and substantially horizontally long rounded-corner pentagonal shaped lower pads are disposed so as to incline downward at left and right ends from the center pads, under the center pads, and a substantially circular strength adjustment button provided in the center of the front surface of the main body. (Form 2') Substantially "V"-shaped notch portions are formed in the center between the upper sides and the lower side of the main body.

(Form 3') On the front surface of the main body, a total of six line patterns that border the outer periphery of each pad are provided for each pad, and three rounded-corner pentagonal line grooves that resemble the outer shape of each pad are provided in a similar shape, in the inside thereof.

#### B Regarding the specific constitutions

(Form 4') The strength adjustment button is concentrically arranged on the base of the substantially cylindrical strength adjustment button provided so as to project from the main body, and is substantially cylindrical in that the front side is closed, and is integrally provided in the main body.

(Form 5') A circular line pattern larger than the base of the button is provided in the center of the back surface of the main body, substantially horizontally long rounded-corner square-shaped electrodes of approximately the same shape and size are arranged on each pad while leaving a margin around them, each electrode is connected to a circular pattern in the center, a radial line pattern is applied to the inside of the circular pattern, and a battery lid with a coin groove is provided in the center.

(Form 6') Substantially hexagonal sections are arranged in a substantially staggered pattern in the electrodes, the central section is large, and the upper and lower sections are smaller as they move away from the center.

(Form 7') Substantially rounded-corner triangular ventilation holes penetrating the front surface and the back surface are provided on diagonally upper, lower, left, and right sides of the base of the button of the main body.

(Form 8') The indications of "+" and "-" are provided above and below the front surface of the strength adjustment button.

(Form 9') The peripheral edge of the main body is a very low vertical surface that is smoothly connected from the gently inclined surface on the front side.

(2) Comparison between the Registered Design and Design A-2

Since the article to the design of the Registered Design is "a training device," and the article to the design of Design A-2 is also "a training device," both of which are for stimulating abdominal muscles and the like with a current flowing from the back electrode portion and tightening the abdominal muscles and the like, the articles to the design of the Registered Design and Design A-2 are identical, and regarding the forms, the following common features and the different features are recognized.

A Common Features

(a) The basic constitutions

(A) When viewed from the front, the whole is a thin sheet, which is approximately symmetrical horizontally, and is composed of a main body in which a total of six pads of left and right upper pads, center pads, and lower pads is disposed, and a substantially circular strength adjustment button provided in the center of the front surface of the main body.

(B) Notch portions are formed in the center between the upper sides and the

lower side of the main body.

(b) The specific constitutions

(C) The strength adjustment button is blocked on the front side and is integrally provided with the main body.

(D) On the center on the back surface of the main body, a circular line pattern larger than the strength adjustment button is provided, electrodes are placed on each pad while leaving a margin around them, each electrode is connected to the circular pattern in the center, and a battery lid with a coin groove is provided in the center of the inside of the circular pattern.

(E) The indications of "+" and "-" are provided above and below the front surface of the strength adjustment button.

**B** Different Features

(A) The basic constitutions

(a) The point that regarding the main body, in the Registered Design, upper pads and lower pads with upper and lower ends bulging in a bow shape are arranged on the upper and lower sides of a substantially rounded-corner trapezoidal center pad, whereas, in Design A-2, substantially horizontally long rounded-corner square-shaped center pads are disposed so as to incline slightly upward on left and right ends, substantially horizontally long rounded-corner pentagonal shaped upper pads are disposed so as to incline upward at left and right ends from the center pads, and substantially horizontally long rounded-corner pentagonal shaped lower pads are disposed so as to incline downward at left and right ends from the center pads.

(b) The point that regarding the notch portions in the center between the upper side and the lower side of the main body and the peripheral aspects thereof, the notch portions of the Registered Design are substantially "U"-shaped, and the vicinity of corner portions of the upper side and the lower side of the main body on both sides of the notch portions is slightly bulged upward or downward, whereas, the notch portions of Design A-2 are substantially "V"-shaped.

(c) The point that regarding the front of the main body, in the Registered Design, on the upper pad and the lower pad, a bright-tone streak pattern is arranged along the upper end or the lower end, a light-tone substantially flat triangular pattern is arranged near the inner ridgeline, and on the upper pad and the lower pad, a strip-shaped portion of a substantially "M" type or a substantially "W" type that slightly projects over the left and right pads is formed, and on the center pad, a substantially inverted spindle-shaped portion that slightly projects over the left and right pads is formed, whereas, in Design A-2, a total of six line patterns that

border the outer periphery of each pad are provided for each pad, and three roundedcorner pentagonal line grooves that resemble the outer shape of each pad are provided in a similar shape, in the inside thereof.

(B) The specific constitutions

(d) The point that regarding the strength adjustment button, in the Registered Design, it is a substantially truncated cone shape and a base portion is not provided under the button, whereas, in Design A-2, it is substantially cylindrical, and is concentrically placed on the base of a substantially cylindrical strength adjustment button that protrudes from the main body.

(e) The point that regarding the inside of the center on the back surface of the main body, there is no pattern in the Registered Design, whereas in Design A-2, a radial line pattern is applied on the periphery.

(f) The point that regarding the shape of electrode, in Registered Design, it is almost similar to the outer circumference of each pad, each electrode on the left or right side is connected by a single line, a thick line pattern that imitates the outer shape of the leaf and the veins of the leaf is arranged inside the electrode, and the main vein that forms veins are represented in a bow shape on the upper and lower pads, and are represented in a horizontal shape on the middle pad, whereas, in Design A-2, it is a substantially horizontally long rounded-corner square-shape, substantially hexagonal sections are arranged in a substantially staggered pattern in the electrodes, the central section is large, and the upper and lower sections are smaller as they move away from the center.

(g) The point that the Registered Design is not provided with ventilation holes penetrating the front surface and the back surface of the main body, whereas Design A-2 is provided with substantially rounded-corner triangular ventilation holes penetrating the front surface and the back surface on diagonally upper, lower, left, and right sides of the strength adjustment button.

(h) The point that Design A-2, the indication of "+" and "-" is provided in bright tone, and a power button in bright tone is provided between the strength adjustment buttons, whereas in the Registered Design, the indication of "+" and "-" is not in bright tone, and a power button is not provided.

(i) The point that in the Registered Design, the peripheral edge of the main body is not formed as a vertical surface, because the gently inclined surface on the front side is continuous to the end, whereas in Design A-2, the peripheral edge of the main body is a very low vertical surface that is smoothly connected from the gently inclined surface on the front side. (j) The point that in Design A-2, most of the front of the main body, the edge of the back surface of the main body, and the strength adjustment button except for the indication such as "+" are shown in dark tone, the thick line pattern on the back surface of the main body is shown in slightly dark tone, and the back surface of the main body except for the thick line pattern and the edge is shown in bright tone, whereas, the Registered Design is not shown in bright tone or dark tone.

(3) Determination of similarity between the Registered Design and Design A-2

A Article to the design

As recognized above, the articles to the design of the Registered Design and Design A-2 (hereinafter, referred to as "the two designs") are identical.

B Regarding the determination of similarity between the Registered Design and Design A-2

The articles of the designs of the two designs are both "training machine," and are common in the point that those are for stimulating abdominal muscles with a current and tightening the abdominal muscles, so that all of the consumers are recognized as general consumers who have such needs. Then, since the articles to the design of the two designs are used by making electrodes provided on the back surface of the articles contact with the abdomen, although when putting on and taking off, there is an opportunity to look at the back surface which comes into direct contact with the skin, with some caution, it should be said that consumers mainly have many opportunities to see the surface of the articles from the front or diagonally upward. In light of the above, it will be examined whether or not aesthetic impressions visually brought to the consumers by the two designs are similar.

C Evaluation of Common Features regarding the form of the two designs

The two designs have a common form in the point that when viewed from the front, the whole is a thin sheet, which is approximately symmetrical horizontally, and is composed of a main body in which a total of six pads of left and right upper pads, center pads, and lower pads are disposed, and a substantially circular strength adjustment button provided in the center of the front surface of the main body (Common Feature (A)), the point that notch portions are formed in the center between the upper sides and the lower side of the main body (Common Feature (B)), the point that the strength adjustment button is blocked on the front side and is integrally provided with the main body (Common Feature (C)), the point that on the center on the back surface of the main body, a circular line pattern larger than the strength adjustment button is provided, electrodes are placed on each pad while leaving a margin around them, each electrode is connected to the circular pattern in the center, and a battery lid with a coin groove is

provided in the center of the inside of the circular pattern (Common Feature (D)), and the point that the indications of "+" and "-" are provided above and below the front surface of the strength adjustment button (Common Feature (E)).

Of these Common Features, since the design in which when viewed from the front, the whole is a thin sheet, which is approximately symmetrical horizontally, and is composed of a main body in which a plurality of pads is disposed, and a substantially circular strength adjustment button is provided in the center of the front surface of the main body, notch portions are formed in the center between the upper sides and the lower side of the main body, the strength adjustment button is blocked on the front side and is integrally provided with the main body, and the indications of "+" and "-" are provided on the front surface of the strength adjustment button, had already been found in the article field of "training device" prior to the filing of the Registered Design (for example, see Design Registration No. 1565074 (Appendix No. 5) described in the design bulletin issued on December 12, 2016, and Publicly Known Information in Design Division of Japan Patent Office No. HJ25031013 (Appendix No. 6) H18466555 posted on the Web page on August 6, 2013), it cannot be said that consumers of "the training device" pay particular attention to the above-mentioned Common Features (A) to (C) and (E), and it must be said that the effect of these Common Features on the determination of similarity between the two designs is small.

Further, also concerning Common Feature (D) that on the center on the back surface of the main body, a circular line pattern larger than the strength adjustment button is provided, electrodes are placed on each pad while leaving a margin around them, each electrode is connected to the circular pattern in the center, and a battery lid with a coin groove is provided in the center of the inside of the circular pattern, as described in B above, it is recognized that consumers are not so focused on the back surface of "the training device," and the design in which on the back surface of the main body, a circular line pattern larger than the strength adjustment button is provided, electrodes are placed on each pad while leaving a margin around them, each electrode is connected to the circular pattern in the center, and a battery lid with a coin groove is provided in the center of the inside of the circular pattern, had already been found in the article field of "training device" prior to the filing of the Registered Design (for example, Design Registration No. 1541180, see Appendix No. 7), so that it cannot be said that consumers of "the training device" pay particular attention to the Common Features (D), and it must be said that the effect of this Common Features on the determination of similarity between the two designs is small.

Then, it must be said that all of the effects of Common Features (A) to (E) on the

determination of similarity between the two designs are small.

D Evaluation of Different Features regarding the form of the two designs

Examining Different Feature (a), since in the Registered Design, upper pads and lower pads with upper and lower ends bulging in a bow shape are arranged on the upper and lower sides of a substantially rounded-corner trapezoidal center pad, and the six pads are vertically symmetrical as a whole, it is represented as a shape in which the upper left pad and the upper right pad undulate in a bow shape, and the lower left pad and the lower right pad undulate in a bow shape vertically symmetrically, it forms an aspect in which two undulations are mainly formed in the upward direction and the downward direction. On the other hand, in Design A-2, substantially horizontally long rounded-corner square-shaped center pads are disposed so as to incline slightly upward on left and right ends, substantially horizontally long rounded-corner pentagonal shaped upper pads are disposed so as to incline upward at left and right ends from the center pads, and substantially horizontally long rounded-corner pentagonal shaped lower pads are disposed so as to incline downward at left and right ends from the center pads, and it has a linear shape in which the upper side of the upper pad and the lower side of the lower pad configure a pentagonal shape and is represented as a vertically asymmetrical straight line, so that consumers observing the aspects of the pads of the two designs will have different visual impressions, and it should be said that the effect of Different Feature (a) on the determination of similarity between the two designs is large.

Further, as for Different Feature (b), regarding the notch portions in the center between the upper side and the lower side of the main body, the notch portions of the Registered Design are substantially "U"-shaped, and the vicinity of corner portions of the upper side and the lower side of the main body on both sides of the notch portions is slightly bulged upward or downward, and so to speak, it appears like an angry shoulder shape, whereas, the notch portions of Design A-2 are substantially "V"-shaped, there is no bulge in the vicinity of corners, and it appears like a shoulder being stroked, so that it gives different visual impressions to consumers and it can be said that the effect of Different Feature (b) on the determination of similarity between the two designs is also large.

Then, as for Different Feature (c), regarding the front of the main body, in the Registered Design, on the upper pad and the lower pad, a bright-tone streak pattern is arranged along the upper end or the lower end, a light-tone substantially flat triangular pattern is arranged near the inner ridgeline, and on the upper pad and the lower pad, a strip-shaped portion of a substantially "M" type or a substantially "W" type that slightly projects over the left and right pads is formed, and on the center pad, a substantially

inverted spindle-shaped portion that slightly projects over the left and right pads is formed so as to surround the strength adjustment button, whereas, in Design A-2, a total of six line patterns that border the outer periphery of each pad are provided for each pad, and three rounded-corner pentagonal line grooves that resemble the outer shape of each pad are provided in a similar shape, in the inside thereof. Design A-2 strongly gives the impression that the six pads are raised independently by the line patterns and line grooves, whereas the Registered Design strongly gives the impression that the upper pad and the lower pad are connected to the left and right due to the presence of the stripshaped portion having a substantially "M" type or a substantially "W" type, so that it can be said that aesthetic impressions visually brought to consumers are different, and thus the effect of Different Feature (c) on the determination of similarity between the two designs is large.

Furthermore, considering that the articles to the design of the two designs are mainly used for training abdominal muscles, according to the form of the pads of Design A-2 relating to Different Features (a) to (c), it can be said that consumers imagine the abdominal muscles that have been trained and raised by training and are given the strong impression (The image of cracked abdominal muscles is also described in Japanese Unexamined Patent Application Publication No. 2016-202690, see Appendix No. 4), whereas the form of the pad of the Registered Design does not give such an impression, so that it must be said that the visual impressions due to Different Features (a) to (c) are completely different in the two designs.

In addition, although as for Different Feature (i), in the Registered Design, the peripheral edge of the main body is not formed as a vertical surface, because the gently inclined surface on the front side is continuous to the end, whereas, in Design A-2, the peripheral edge of the main body is a very low vertical surface that is smoothly connected from the gently inclined surface on the front side, the difference in the presence or absence of a vertical plane gives consumers a different visual impression, and considering that there are many opportunities for consumers to see from diagonally above the front of the two designs, as described in B above, it can be said that the effect of Different Feature (i) on the determination of similarity between the two designs is also large.

On the other hand, although as for Different Feature (d), regarding the strength adjustment button, in the Registered Design, it is a substantially truncated cone shape and a base portion is not provided under the button, whereas, in Design A-2, it is substantially cylindrical, and is concentrically placed on the base of a substantially cylindrical strength adjustment button that protrudes from the main body, whether the

shape of the strength adjustment button is a substantially truncated cone shape or a substantially cylindrical shape is only a small difference in the part that is hard to see, and the same applies to the presence/absence of the base under the button and the presence/absence of the power button (Different Feature (h)), so that it cannot said that consumers pay particular attention to these differences, and thus the effects of Different Feature (d) and Different Feature (h) on the determination of similarity between the two designs are small.

Further, although as for Different Feature (g), the point that the Registered Design is not provided with ventilation holes penetrating the front surface and the back surface of the main body, whereas Design A-2 is provided with substantially rounded-corner triangular ventilation holes penetrating the front surface and the back surface on diagonally upper, lower, left, and right sides of the strength adjustment button, the ventilation holes of Design A2 are not so conspicuous, and the proportion of the ventilation holes in the whole is very small, so that it should be said that the difference in the impression given to consumers by the difference in the presence/absence of the ventilation holes is small, and the effect of Different Feature (g) on the determination of similarity between the two designs is small.

Then, Different Feature (e) and Different Feature (f) are both differences relating to the aspect of the back surface, and are only minor differences in very limited parts or the parts hard to see when viewing the two designs as a whole, and it cannot be said that they affect the aesthetic impressions of consumers of the two designs, so that the effects of Different Feature (e) and Different Feature (f) on the determination of similarity between the two designs are small.

Finally, although as for Different Feature (j), in Design A-2, most of the front of the main body, the edge of the back surface of the main body, and the strength adjustment button except for the indication such as "+" are shown in dark tone, the thick line pattern on the back surface of the main body is shown in slightly dark tone, and the back surface of the main body except for the thick line pattern and the edge is shown in bright tone, whereas, the Registered Design is not shown in bright tone or dark tone, in Design A-2, since most of the front surface of the main body, which consumers especially observe, is represented in uniform dark tone, and the light and dark patterns are not applied in a wide range, it cannot be said that the aesthetic impressions given to consumers are significantly different, as compared with the Registered Design in which the front surface of the main body is not represented in dark tone, and the effect of Different Feature (j) on the determination of similarity between the two designs is small.

Therefore, all of the effects of Different Features (a) to (c), and (i) on the

determination of similarity between the two designs are small, and even if the effects of the remaining Different Features on the determination of similarity between the two designs are small, summarizing Different Features, it must be said that the effects on the determination of similarity between the two designs are large.

E Demandant's allegation

The Demandant, as the gist of Design A-2, recognizes the basic constitutions thereof as "the six pad pieces are arranged in a two-row, three-stage structure in a substantially horizontally long rectangular shape symmetrically with respect to the battery part" and, as the gist of the Registered Design, recognizes the basic constitutions thereof as "the six pad pieces are arranged in a two-row, three-stage structure in a substantially horizontally long rectangular shape symmetrically with respect to the battery part" (No. 2-2 (2) above) and then alleges that "the Cited Design (Note by the body: referring to Design A-2)... has [4] a pad portion of a substantially horizontally long rectangular shape arrangement, as primary parts, and the primary parts have high originality as compared with prior designs. The Registered Design are common in the primary parts with the Cited Design,... these different features do not predominate over the common aesthetic impression of the two designs that are common in the primary parts, and the two designs are similar to each other." (No. 2-4 above).

However, as described in No. 5-1 (2) A above, in upper pads and lower pads of the Registered Design, upper and lower ends bulge in a bow shape, so that it is hard to see that those are substantially horizontally long rectangular shapes, and it can be said that the shape of the Registered Design in which the upper left pad and the upper right pad undulate in a bow shape, and the lower left pad and the lower right pad undulate in a bow shape vertically symmetrically, visually bring different aesthetic impressions from Design A-2 to consumers, even if the pad portions in the horizontally long rectangular shaped arrangement are the primary parts of Design A-2, it is not possible to adopt the Demandant's allegation that the Registered Design is common and shares the same aesthetic impressions with Design A-2.

Further, the Demandant alleges that "a different feeling in a lower part due to vertically symmetrical arrangement of the pad pieces of the Registered Design is embedded in a common feeling of the basic constitutions of the two-row, three-stage horizontally symmetrical arrangement, and the effect thereof on the determination of similarity is minute" (No. 2-2 (3) C (A) above), and regarding the registered design networks (Evidence A No. 6-2. See Appendix No. 3) composed of Design A-2 and the six related designs and the position of the Registered Design, alleges that "the pad pieces of the Registered Design are also arranged vertically symmetrically, and this is

covered by the range of the Demandant registered design network (5)." (No. 2-3 (1) A (D))

However, the fact that Design A-2 is similar to the related designs shown in Evidence No. 6-2 [5] does not directly relate to the determination of similarity between the Registered Design and Design A-2, and Common Features and Different Features of them are different, so that the evaluation of Different Features on the presence/absence of the vertical symmetry in Design A-2 and the Registered Design cannot be linked to the determination of similarity/dissimilarity between the Registered Design and Design A-2. The vertical symmetry of the upper pad and the lower pad seen in the Registered Design creates the above-mentioned regularity of the two undulations in the upward and downward directions, and is related not only to the vertical symmetry of the outer shape mentioned above, but also the vertical symmetry of the substantially "M" type projecting portion of the upper pad and the substantially "M" type projecting portion of the lower pad recognized in No. 5-1 (2) A; that is, it is the vertical symmetry of the components in the pad. Thus, as compared with Design A-2 which has no such two swells or projecting portions, it can be said that it gives consumers certain aesthetic impressions. Therefore, the Demandant's allegation on the premise of the registered design network cannot be adopted.

F Summary

As described above, the articles to the design of the Registered Design and Design A-2 are identical, and in the form, all of the effects of Common Features on the determination of similarity are small, whereas summarizing Different Features in the form, the effects on the determination of similarity are large, and overturning the aesthetic impressions that Common Features give to consumers, it impresses that the Registered Design and Design A-2 are different. Therefore, it cannot be said that the Registered Design is similar to Design A-2.

That is, the Registered Design is not similar to Design A-2 (the design of Design Registration No, 1536247 "training device") described in the publications (Evidence A No. 2) that had been distributed in Japan or a foreign country prior to the filing of the Registered Design, and thus does not fall under the category of Article 3(1)(iii) of the Design Act. Therefore it cannot be said that the Registered Design should not be registered under the provision of Article 3(1)(iii) of the Design Act.

Therefore, the reasons for invalidation of the Registered Design alleged by the Demandant are groundless.

No. 6 Closing

As described above, since the reasons for invalidation of the Registered Design alleged by the Demandant are groundless, it can be concluded that the registration of the Registered Design cannot be invalidated under the provisions of Article 48(1) of the Design Act.

The costs in connection with the trial shall be borne by the Demandant under the provisions of Article 61 of the Code of Civil Procedure applied mutatis mutandis in Article 169(2) of the Patent Act applied mutatis mutandis in Article 52 of the Design Act.

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

October 23, 2018

Chief administrative judge: NAITO, Hiroki Administrative judge: KOBAYASHI, Hirokazu Administrative judge: WATANABE, Kumi 別紙第1

甲第 / 号証

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【正面图】

別紙第1Appendix 1甲第1号証Evidence A No. 1



(2)

【平面図】

意匠登録1593189





(3)

【底面図】

【右側面図】





(5)

意匠登録1593189

別紙第2

# 甲第 2 号証



【正而図】

別紙第2Appendix 2甲第2号証Evidence A No. 2



(2)

【右侧面図】





意記登録1536247

意匠登録1536247



【各部の名称を示す参考正面図】



【使用状態を示す参考図】



(56)【参考文献】意登1135259 Beauty Viking エステティック総合カタログ 保存版、102頁、3374005、3374006、(特許庁意託課公知資料奉号HC25009889) 株式会社ディノス、ホームページ掲載実話あり、900-M251-02、(特許庁意匠課公知資料香号HJ2503 1013) 株式会社ディノス、ホームページ掲載実績あり、900-M251-03、(特許庁意活課公知資 料番号HJ25031014) 別紙第3

甲第 6 号証 = 2

引用意匠とその関連意匠による登録意匠網



別紙第3 Appendix 3 甲第6号証の2 Evidence A No. 6-2 別紙第4



JP 2016-202690 A 2016.12.8

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				1	DDO1	DD38					
			400	. 650	1102	1103	JJ12	JJ13	JJ15		
					1124	<b>JJ36</b>					

(54) 【発明の名称】筋肉電気刺激装置

(57)【要約】

【課題】筋肉を効率的に刺激することができるとともに 、長時間使用しても使用感がよく、使用者に積極的な継 続使用を促すことができる筋肉電気刺激装置を提供する こと。

【解決手段】筋肉電気刺激装置1は、電気刺激を筋肉に 与えるように構成されている。当該電気刺激は、筋肉に 不完全強縮及び完全強縮の少なくとも一方を起こさせる 第1電気信号としての第5パースト波(20Hz)が出 力される第1出力期間(2-1、3-1、4-1)と、 筋肉に単収縮を起こさせる第2電気信号としての第2パ ースト波(4Hz)が出力される第2出力期間(2-2 、3-2、4-2)と、が交互に繰り返されてなる。 【選択図】図8





HI-	H	H	+	+	+	ł	+	+	+	t	ŧ	ŧ	+	+	+	ŧ.
#-3 10n+														7	1.	1

別紙第4 Appendix 4甲第4号証 Evidence B No. 4

右側電極313よりも右方向X1に突出している。同様に、上側電極対301を構成する 第1左側電極321は、下側電極対303を構成する第3左側電極323よりも左方向X 2に突出している。

[0050]

そして、図2に示すように、第1右側基部331の下方外縁部331aは右方向X1に 膨出しており、第1左側基部341の下方外縁部341aは左方向X2に膨出している。 また、第2右側基部332の中央外縁部332aは右方向X1に若干膨出しており、第 2左側基部342の中央外縁部342aは左方向X2に若干膨出している。

さらに、第3右側基部333の上方外緑部333aは右方向X1に膨出しており、第3 右側基部333の下方外緑部333bは下方向(Y方向における下側方向)に膨出してい る。また、第3左側基部343の上方外緑部343aは左方向X2に膨出しており、第3 左側基部343の下方外緑部343bは下方向に膨出している。

#### [0051]

基材33における各基部331~333、341~343を上述のようにすることで、 図1及び図5に示すように、筋肉電気刺激装置1を正面側から見たとき、筋肉電気刺激装 置1が腹部3における腹直筋4を左右方向に包み込むように配される。また、電極配置も 腹直筋4の区面4aに併せた配置となる事で、各筋肉を効率よく刺激することが期待でき る。さらに、かかる形状であると認識されることにより、腹部3が引き締まって腹筋が割 れたイメージを使用者に想起させることができる。これにより、筋肉電気刺激装置1を使 用することにより、腹筋が割れて引き締まった腹部3とするためのイメージトレーニング の効果が得られる。(イメージトレーニングによる運動効果の向上は一般によく知られて いる。)

[0052]

また、図2に示すように、第1電極群31及び第2電極群32において互いに隣り合う 電極311~313、321~323の間には、本体部10に向かって切り込まれた切り 込み部17が形成されている。本例では、第1右側電極311と第2右側電極312との 間、第2右側電極312と第3右側電極313との間、第3右側電極312と第 4、323との間、第3左側電極323と第2左側電極322との間、第2左側電極322 と第1左側電極321との間、及び第1左側電極321と第1右側電極311との間、の 合計6カ所に切り込み部17が形成されている。さらに、本体部10の周囲には、貫通孔 18が4カ所形成されている。

#### [0053]

次に、本例の筋肉電気刺激装置1の構成について、ブロック図を用いて説明する。 図6に示すように、筋肉電気刺激装置1は、本体部10の内部に、電源部20、制御部 40、操作部50に加え、肌検知部402及び電池電圧検出部406を備える。 【0054】

肌検知部402は、電極部30が肌に接しているか否かを検知する。詳細には、肌検知 部402は、電極部30に電気的に接続され、第1電極群31と第2電極群32との間の 抵抗値を検出する。そして、検出した値と予め設定された閾値とを比較して、検出した値 が閾値よりも小さいときに、第1電極群31及び第2電極群32に肌が接していることを 検知する。

#### [0055]

電池電圧検出部406は、電源部20における電池21の電圧を検知し、検知された電 源部20における電池21の電池電圧Vが所定の閾値Vmよりも低いか否か判定する。本 例では電池21の公称電圧Vは3.0Vであって、閾値Vmは2.1Vである。 [0056]

図6に示すように、電源部20には、電池21が備えられる。また、制御部40には、 出力調整部401、電源オフカウンタ403、タイマー404、出力モード切替部405 及び出力モード記憶部405aが備えられる。出力調整部401は電極部30における出 力電圧(出力レベル)を調整する。本例では、最大出力電圧は40Vであり、出力レベル (26)

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2-2、3-2、4-2 第2出力期間
10本体部
10a中心線
20電源部
30電極部
31第1電極群
32第2電極群
33基材
35ゲルパッド
301上側電極対
302中央電極対
303下側電極対
40制御部
50操作部



x2 + x + X1

(27)

[図4]

















#### 別紙第5 意匠登録第1565074号

【意匠に係る物品】トレーニング機器

【意匠に係る物品の説明】本物品は、背面の電極部をジェルシートで腹 部に貼着し、電極部を通して微弱電流をコントローラから腹部に伝えて 腹部を刺激し、腹部の筋肉を引き締めるトレーニング機器である。コン トローラは本体のフックにフックボタンで着脱できる。

【意匠の説明】左側面図は右側面図と対称につき省略する。







内部機構を省略したA-A断面図





 別紙第5
 Appendix 5

 意匠登録第1565074号

フック

Design Registration No. 1565074

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別紙第6

【電気通信回線の種類】インターネット 【掲載確認日(公知日)】平成25年(2013年) 8月 6日 【受入日】特許庁意匠課受入平成25年(2013年) 8月30日 【掲載者】株式会社ディノス 【表 題】スポパッド お腹用の拡大写真1 - ディノス 【掲載ページのアドレス】http://www.dinos.co.jp/defaultMall/sitem ap/CSfDetailGdsImage\_001.jsp?GOODS\_N0=1011728&count=0&sorl\_img=1 に掲載された「腹部用痩身器」の意匠 (特許庁意匠課公知資料番号第HJ25031013号)



別紙第6

Appendix No. 6

別紙第7

特許庁が平成28年(2016年) 1月12日に発行した意匠公報記載 意匠登録第1541180号

【意匠に係る物品】トレーニング機器

【意匠に係る物品の説明】本物品は、脚や腕等に貼り付け、背面電極部 から流れる微弱電流により、脚や腕等の筋肉を刺激し、脚や腕等の筋肉 を鍛えるためのトレーニング機器である。

【意匠の説明】左側面図は右側面図と対称につき省略する。各部の名称 を示す参考正面図及び各部の名称を示す参考背面図において平行斜線を 施した部分は印刷が施されている。









Appendix No. 7



内部機構を省略したA-B-C-D線組合せ拡大端面図



各部の名称を示す参考正面図

