

Appeal decision

Appeal No. 2019-1971

Kyoto, Japan

Appellant

Kawashima Selkon Textiles Co., Ltd.

Patent Attorney

CHIBA, Shigeo

Patent Attorney

HORIKE, Kazuhiro

The case of appeal against the examiner's decision of refusal of Design Application No. 2017-19160, entitled "Flooring used side by side on tones", has resulted in the following appeal decision.

Conclusion

The examiner's decision is revoked.

The design in the application shall be registered.

Reason

No. 1 History of the procedures

The present application is an application for design registration filed on September 5, 2017, and the history of the main procedures after that is as follows.

May 10, 2018	Notification of reasons for refusal
June 22, 2018	Submission of a written opinion
September 25, 2018	Notification of reasons for refusal
November 5, 2018	Submission of a written opinion
November 5, 2018	Submission of a written amendment
December 17, 2018	Decision of Refusal
February 12, 2019	Submission of a written request for appeal
February 12, 2019	Submission of a written amendment
April 23, 2019	Implementation of an interview

No. 2 The design in the application

The article to the design in the application is "Flooring used side by side on floors," and the shape, patterns or colors, or any combination thereof (hereinafter, referred to as "the form") are as described in the application and the drawings attached to the application (see Appendix 1).

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

The reason for refusal stated in the examiner's decision (dated September 25, 2018. The same shall apply hereinafter) is that the design in the application is recognized as a design which could be easily created by a person of ordinary skill in the art of the design (hereinafter, referred to as "a person skilled in the art"), based on shape, patterns, or colors, or any combination thereof which had been publicly known in Japan or a foreign country, prior to the filing of the application for design registration, and thus falls under the provisions of Article 3(2) of the Design Act, and is specifically as follows.

"In the field of the article, creating a square board so that it may cross a grain direction of a board diagonally (for example, like as the following Design 1) had been generally performed prior to the filing of the present application.

Also, woodgrain of a color similar to that in the present application is commonly found. (For example, Design 2)

Then, the design in the application, which is just a certain degree that a square board is created by an ordinary technique so that a board of the woodgrain that can be seen since before the prior to the filing of the present application diagonally intersects its woodgrain could be easily created by a person skilled in the art.

Design 1 (Note for the body: in this appeal decision, see Appendix 2)

As described in publication of unexamined patent applications issued by JPO,
Japanese Unexamined Patent Application Publication No. H04-221602

Design of a construction board shown in [FIG. 2], [FIG. 3]

Design 2 (Note for the body: in this appeal decision, see Appendix 3)

TOLI Corporation print tile catalog 2013-2016 received by National Center for
Industrial Property Information and Training Office on December 6, 2013

Listed on Page 046

Design for a construction board

(Publicly Known Information in Design Division of Japan Patent Office No. HC25022074)"

No. 4 Judgment by the body

Hereinafter, we will consider and judge the adequacy for Article 3(2) of the Design Act of the design in the application; that is, whether or not the design in the application could be easily created by a person skilled in the art.

1 Recognition of the design in the application

(1) Article to the design

The article to the design in the application is "Flooring used side by side on floors," and the description column of the article to the design of the application describes that "by being used side by side on floors, the article in the application configures predetermined patterns and colors such as right-up, left-up, herringbone, almost square, random (zigzag) as shown in the top reference views A to E indicating a use state. Among these patterns and colors, for example, configuring the pattern and color rising to the right shown in the top reference view A, as shown in the top reference view F, the article in the application can be used side by side on floors, so that streaks starting from the arrow 1 extend substantially parallel to one diagonal line in each of the plurality of the articles in the application used side by side (in other words, substantially along one diagonal line of each of the plurality of the articles in the application) to the arrow 1', and streaks starting from the arrow 2 also become a pattern and color extending substantially parallel to one diagonal line in each of the plurality of the article in the present application used side by side to the arrow 2'. As shown in the top reference views G to J, the same applies to cases when configuring the left-up, herringbone, substantially square, and random (zigzag) patterns and colors shown in the top reference views B to E. The size of the article in the application is 100 mm to 1000 mm in length (for example, 500 mm, 300 mm, etc.), 100 mm to 1000 mm in width (for example, 500 mm, 300 mm, etc.), and 1 mm to 10 mm in thickness (for example, 5 mm, 3 mm, etc.)."

(2) Form

The form of the design in the application is as follows.

A Regarding the whole

The design in the application is a thin platy body that is a square in a top view, and patterns and colors are presented only on the upper surface (plane surface portion) thereof.

B Patterns and colors on the upper surface

Along with a diagonal line (rising to the right side) of a square, streaks and nodes of woodgrain configure a pattern over the entire surface, and from the top left vertex to the bottom right vertex in a top view, a strip part of a bright color tone and a strip part of a dark color tone are alternately repeated, thereby configuring generally 9 parallel strip parts.

Further, although the applicant made amendment in the written amendment dated February 12, 2019 the column of "Article to the design", "Description of the article to the design" of the application, and adding four reference views to the drawings attached to the application, it is recognized that the application does not change the gist of the description of the application at the initial application or the drawings attached to the application.

2 Recognition of the Cited Design

It is recognized that Design 1 and Design 2 listed as Cited Designs, as described in No. 3 above, are designs that were publicly known prior to the filing of the application for design registration. Design 1 and Design 2 are recognized according to the same direction as the design in the application.

(1) Design 1

The article to the Design 1 is a construction board. Also, a form thereof is as follows.

A Regarding the whole

A slightly thick platy body laminated with three single plates, which is a square in a top view.

B Regarding pattern on the upper surface

The woodgrain of the first layer of the platy body appears along a diagonal line of the square, and three cutting lines parallel to the diagonal line are shown (e, f, and g in FIG. 2).

(2) Design 2

The article to Design 2 is a construction board. Also, a form thereof is as follows.

A Regarding the whole

It is a vertically long diamond shape in a top view, and no specific thickness is shown. Patterns and colors appear on a upper surface (top view portion).

B Regarding patterns on the upper surface

A strip part of a bright color tone and a strip part of a dark color tone are repeated by streak of woodgrain extending downward to the right side to configure a plurality of parallel strip parts. Further, although it is woodgrain, nodes-pattern is not shown. Also, the arrangement of the streaks of the woodgrain is different, and 2 construction boards are shown side by side, PWT634 (left side) with a light color overall and PWT635 (right side) with a dark color overall as compared with the former.

3 Regarding creative difficulty of the design in the application

Although the form of the design in the application is as described in 1 above, the configuration of the parallel strip parts with the bright and dark color tone provided on the upper surface of the design in the application is intended to form various predetermined patterns and colors, such as right-up, left-up, and herringbone, when used side by side, according to the description of the application. In the field of the article, although it is a conventional technique to form a strip part by laminating a plurality of narrow plates on a upper surface of one plate material and create various patterns when a plurality of plates are arranged, the design in the application forms the parallel strip part with bright and dark color tones in streaks and nodes of woodgrain rather than the bonding of narrow plates, and it should be said that this point is a characteristic form unprecedented in this kind of field.

Against that, Cited Design 1 is merely an example in which a grain is represented as a diagonal line of a square. Although Cited Design 2 represents the parallel strip parts of bright and dark color tones with the pattern of woodgrain, since it is a diamond shape in a top view in the first place, it cannot become a pattern formed when the design in the application is arranged when used side by side, and the parallel strip parts on the upper surface just express a texture of woodgrain, so that it must be said that it is different from what is intended to form various predetermined patterns and colors as in the design in the application.

Then, it should be said that the design in the application was created based on an original idea in the field of the article, and it cannot be said that it could be easily created by a person skilled in the art based on a publicly known shape.

No. 5 Closing

As described above, since the design in the application does not correspond to a design that could have been easily created by a person ordinary skilled in the art of the design to the filing of the application for design registration, based on a combination of shapes that were publicly known in Japan, which is stipulated in Article 3(2) of the Design Act, it cannot be decided that this application shall be rejected based on the reasons for refusal of the examination's decision.

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

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

June 6, 2019

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