

Appeal decision

Appeal No. 2019-4619

Appellant	HOEI METAL Co., Ltd.
Patent Attorney	OMORI, Junichi
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The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2018-4029 entitled "ALUMINUM INGOT PACKED BODY" 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 February

27, 2018, and the history of the further procedures is as follows.

Dated August 24, 2018	Notification of reasons for refusal
October 9, 2018	Submission of written opinion
Dated December 17, 2018	Examiner's decision of refusal
April 8, 2019	Submission of written request for appeal
Dated September 26, 2019	Interrogation
October 24, 2019	Submission of written reply

No. 2 The descriptions of the application and the attached drawings of the design in the application

The article to the design in the application is an "ALUMINUM INGOT PACKED BODY," and the shape, patterns or colors, or any combination thereof (hereinafter, "the shape, patterns or colors, or any combination" thereof are referred to as "the form") are as described in the application and the drawings attached to the application (hereinafter, referred to as "the design in the application." See Appendix.).

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

The reasons for refusal stated in the examiner's decision are that it is not recognized that the present application is filed for each design in accordance with a classification of articles as provided by an Ordinance of the Ministry of Economy, Trade and Industry or a classification of the same degree, and thus it does not fall under the category of Article 7 of the Design Act. Concretely, the reasons for refusal are as follows.

"The design in the application for design registration, according to the descriptions of the application and the attached drawings, expresses designs of plural aluminum ingots and plural binding bands, and thus it is not recognized that the application was filed for each design."

No. 4 The appellant's allegation and the reply to the interrogation

1 Allegation in a written request for appeal

The appellant, in a written request for appeal, alleged generally as follows.

Although the article to the design in the application is carried to a factory for being used; that is for being melted in a melting furnace, after a sale (Evidence A No. 1 to Evidence A No. 5), after being carried, the article is placed on a forklift as a packed body (Evidence A No. 1), is further placed on a carriage (Evidence A No. 2), is carried to a feeding device inlet of a tower-type melting furnace (a melting furnace of a type in which an object to be melted is carried to a feeding port above a tower by a feeding device that can raise and lower the tower and then is charged) (Evidence A No. 3), and is carried to a feeding port above a tower by the feeding device as the packed body and fed from the feeding port as the packed body (Evidence A No. 4 and Evidence A No. 5).

That is, since an aluminum ingot packed body that is the design in the application is used (fed into a melting furnace) in a state of a packed body without removing a binding band at use and without being decomposed into each aluminum ingot, it is the form not only at the time of distribution and sale, but also at the time of use, is always carried out integrally, and is recognized as one design from a generally accepted perspective.

2 Interrogation and Reply

The body interrogated about the appellant's allegation of 1 above, and asked the appellant for a rational description that it is not necessary to remove the binding band at use (when feeding into the melting furnace), such that the "binding band" configuring the "aluminum ingot packed body" that is the article to the design in the application is made from the same material as that of the ingot, or that there is no problem in feeding the binding band made of plastic such as polypropylene into the melting furnace as it is.

Against this, the appellant submitted a written reply, and replied that since the binding band of the packed body according to the present application is made of polypropylene and there is no problem in feeding that into the melting surface as it is, it is not necessary to remove the binding band at use (when feeding into the melting furnace).

No. 5 Judgment by the body

1 Regarding one design in Article 7 of the Design Act

In order for the application for design registration to meet the requirement

stipulated in Article 7 of the Design Act, it is necessary that the application is filed (1) for one article, (2) as one form.

(1) Unity of article

The article to the design in the application is "ALUMINUM INGOT PACKED BODY," and in the configuration thereof, a plurality of aluminum ingots with the same form are stacked and put together by four binding bands to be one "packed body" as a whole.

Then, each ingot is provided with a groove, and it is recognized that after being stacked, it is designed to be tightly bound while keeping the overall balance by passing a binding band through the groove after stacking. Further, it can be understood that a space between an installation surface and a bottom surface is created in a lower part by the pedestals of three rows in a front view, and a fork of a forklift for transportation is inserted into the space.

From the above, it is recognized that the design in the application is distributed and traded in a unit of a "packed body" rather than in each ingot unit, and also considering the written reply to the inquiry, it is recognized that at use, the "packed body" bundled with the binding bands is fed into the melting furnace as it is without removing the binding band.

Therefore, it is recognized that "ALUMINUM INGOT PACKED BODY" that is the article to the design in the application is one article having one specific purpose and function from a generally accepted perspective.

(2) Unity of form

The drawings attached to the present application show the aluminum ingots which are stacked, and are bundled with the binding bands to form a lump. It cannot be said that two or more forms were drawn together.

Therefore, it is recognized that the form according to the design in the application is single.

2 Summary

As described above, the present application is what is filed for one article as one

form; that is, is an application related to one design.

No. 6 Closing

As described above, the present application falls under the category of Article 7 of the Design Act, and thus the present application cannot be rejected due to the reasons for refusal stated in the examiner's decision.

In addition, apart from the above, no other reasons for refusal of the present application were found.

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

December 3, 2019

Chief administrative judge: KOBAYASHI, Hirokazu

Administrative judge: KITASHIRO, Shinichi

Administrative judge: SHODA, Takeshi