

## Appeal decision

Appeal No. 2019-7393

Appellant                                      Yahoo Japan Corporation

Patent Attorney                              RYUKA IP Law Firm

The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2017-10008, entitled "ELECTRONIC COMPUTER WITH RANKING DISPLAY FUNCTION", 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 May 11, 2017, and a written opinion was submitted on June 18, 2018 in response to the notice of reasons for refusal dated April 24, 2018. However, an examiner's decision of refusal was issued on February 28, 2019, and against this, an appeal against the examiner's decision of refusal was requested on June 5, 2019.

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

The present application was filed to request a design registration of a part of an article, and the design of the present application (hereinafter, referred to as "the design in the application"), according to the descriptions of the application and the drawings attached to the application, the article to the design is "Electronic Computer with Ranking Display Function," 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. According to the descriptions of the application, the description of the article to the design is that "this article is an electronic computer provided with a function which displays ranking. An image denoted by a front view displays information which is ranked in various categories in a ranking form. Specifically, one piece of evaluation information

based on a ranking object is displayed in one evaluation information region, and as shown in a reference drawing, a number according to the ranking is displayed on the inside of a circular figure which was arranged in the evaluation information region. According to the number of the evaluation information, the evaluation information regions of a plurality of quadrangles are displayed side by side in the ranking order, and depending on the number, are displayed by increasing lines. Thereby, users can grasp various ranking easily." The description of the design is that "the part indicated by solid lines refers to the part for which the design registration is requested as a partial design" (hereinafter, the part for which the design registration is requested as a partial design is referred to as "the image part 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 the design in the application does not fall under the industrially applicable design stipulated in the main paragraph of Article 3(1) of the Design Act. Concretely, the reasons for refusal are as follows.

"In the columns of 'Article to the design' and 'Description of the article to the design,' are described that the image of the design of the application for design registration displays information which is ranked in various categories in a ranking form; however, in an image relating to ranking display, it is usually considered to display a ranking for one type of target. For the image of the design of the application for design registration, it is unclear what specifically the ranking will be displayed for, and what kinds of functions (for example, news browsing, product search) are ultimately aimed at, so that the design of the application for design registration cannot be specified. Further, in the design including images, when a changing image satisfies a specific condition, although it can be recognized as one design even if including a plurality of images, principally, one image is displayed for one design. (See Examination Guidelines for Design 74.7.1.3.)"

#### No. 4 Judgment by the body

Hereinafter, we will examine whether or not the design in the application falls under the industrially applicable design stipulated in the main paragraph of Article 3(1) of the Design Act.

##### 1 The design in the application

In the body, the design in the application is recognized as follows.

##### (1) Article to the design

Article to the design in the application (hereinafter, referred to as "the article in the application") is an "ELECTRONIC COMPUTER WITH RANKING DISPLAY FUNKTION," and an electronic computer having a specific function (ranking display function).

(2) Use and function of the image part in the application

According to the description of the article to the design in the application of No. 2 above, since the image part in the application is explained as "displays information which is ranked in various categories in a ranking form," the use and function thereof is understood as software used by downloading to an electronic computer such as a smartphone via the Internet, and a function that is activated in conjunction with this by allowing the user to access various Internet sites provided by providers on the Internet and display information (contents), and displays the first to fifth rankings of the contents. Further, it is common in the field of the article that in addition to a display function, this kind of ranking display has a hyperlink function so that it is possible to jump to the place (page) where the displayed contents exist by selecting one of evaluation information display regions (hereinafter, referred to as "the display regions"), and the image part in the application can be said to be an image provided for operating the electronic computer (an operation image of Article 2(2) of the Design Act).

(3) Position, size, and scope of the image part in the application

The image part in the application, in a front view, is a display screen with a vertical and horizontal length ratio of about 1:1.4 represented by a broken line, is disposed at a position closer to a slightly upper part from a vertical center and closer to the right edge, and the size and scope thereof are such that the horizontal width is about one-half of the display screen and the vertical width occupies about 1/11 of the display screen.

(4) Form of the image part in the application

In the image part in the application, the outer shape is made to be a horizontal rectangle with a vertical and horizontal length ratio of about 7:50, and the inside thereof is horizontally divided into five parts by a vertical line and divided into 5 horizontally long evaluation information display regions. At the left corner of the upper end of each display region, a circular pattern whose diameter is about 1/3 of the vertical length of the display region is provided, and in the center of the inside, one arithmetic number from 1 to 5 is displayed in order from the leftmost region. Furthermore, in the center of the upper end of the circular pattern, a substantially M-shaped crown pattern whose both ends are about slightly more 1/3 the diameter of the circular pattern and the vertical and horizontal length ratio is about 8:7 is integrally displayed to form a pattern like as a medal combined with a crown.

## 2. Judgment whether or not the image part in the application is an industrially applicable design

When requesting a design registration for a design that includes images, it is necessary that the image included in the design is "an image provided for the operation of an article (it is limited to those performed to bring the article into a state where it can exhibit its function) stipulated in Article 2(2) of the Design Act, and it is considered that in the image provided for the operation of the article, a figure and the like used for the operation of the article are selectively displayed, and the operation of the article can be performed by using the figure and the like.

Then, examining the image part in the application, since it is obvious that the image part in the application, as recognized in 1 (2) above, is software that is used by downloading to an electronic computer and is programmed to be activated in conjunction with this by allowing the user to access Internet sites to display specific contents, has a function displaying the first to fifth rankings of the contents, and displays the page where the contents of each ranking exist, it is considered that the image part in the application is an image (operation image) provided for the operation of the electronic computer stipulated in Article 2(2) of the Design Act. Further, the position, size, and scope thereof are as recognized in 1 (3) above, and the form thereof is as recognized in 1 (4) above, so that it can be said that it displays one specific design, and the image part in the application specifically displays the image provided for the operation of the article.

Therefore, since it can be said that the image part in the application configures the design on the Design Act, it can be said that the design in the application falls under the industrially applicable design stipulated in the main paragraph of Article 3(1) of the Design Act.

## No. 5 Closing

As described above, it cannot be said that the design in the application does not fall under the industrially applicable design stipulated in the main paragraph of Article 3(1) of the Design Act, by the reasons for refusal stated in the examiner's decision.

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

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

February 3, 2020

Chief administrative judge: KITASHIRO, Shinichi

Administrative judge: NAITO, Hiroki

Administrative judge: MIYATA, Souhei