

## Appeal decision

Appeal No. 2019-7567

Appellant Japan Display Inc.

Patent Attorney Sakai International Patent Office

The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2018-15442, entitled "IMAGE DISPLAY MACHINE FOR GOGGLES", 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 July 12, 2018, and the history of the main procedures after that is as follows.

Dated December 7, 2018	Notification of reasons for refusal
January 25, 2019	Submission of written opinion
Dated March 27, 2019	Examiner's decision of refusal
June 6, 2019	Submission of written request for appeal

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

The application was filed to request a design registration of a part of an article. Concerning the design, the article to the design is "IMAGE DISPLAY MACHINE FOR GOGGLES," 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 description of the application and the drawings attached to the application (hereinafter, referred to as "the design in the application"). The part for which the design registration is requested as a partial design is such that "the part

indicated by solid lines refers to the part for which the design registration is requested as a partial design. Dash-dotted lines are the lines expressing only metes and bounds between the part for which the design registration is requested as a partial design and the other parts. The part for which the design registration is requested as a partial design is specified by including 'A-A Enlarged Sectional View on B-B part with an inner mechanism omitted,' and 'B-B, C-C Enlarged Sectional views'." (Hereinafter, referred to as "the part in the application") (See Appendix 1).

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

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

The design cited in the notice of reasons for refusal is as follows (Hereinafter, referred to as "Cited Design", see Appendix 2).

"As described in publication of unexamined patent applications issued by JPO  
Japanese Unexamined Patent Application Publication No. 2005-230460

A part corresponding to the part for which the design registration is requested of the design in the application of the design 'GAME DEVICE' (GAME MACHINE) shown in FIG. 26 (a bar-shaped part separating two screens)"

Hereinafter, in this appeal decision, the part which is compared with the part in the application and is judged; that is, a part corresponding to the part in the application, is referred to as "Cited Part".

#### No. 4 Comparison

In comparison between the design in the application and the Cited Design, assuming that a figure showing the Cited Design corresponds to a front view in the design in the application, the two are compared as follows.

## 1 Comparison with the article to the design

The article to the design of the design in the application, according to the description of the application, is "IMAGE DISPLAY MACHINE FOR GOGGLES" and is an image display machine held in goggles for viewing VR (Virtual Reality) images. Specifically, it has a usage as a part to be incorporated inside VR goggles and has a function of displaying parallax images for a left eye and a right eye to show VR images. On the other hand, the article to the design of the Cited Design is "GAME MACHINE" as a complete product that has operation buttons on a main body. Specifically, it has a usage of executing game programs and has a function of executing games by the operating buttons.

The articles to the design of the design in the application and the Cited Design (hereinafter referred to as "the two designs") are common in a point of having an image display portion, but are different in their usages and functions.

## 2 Comparison of application and function of the part in the application and the Cited Part

Although the part in the application and the Cited Part (hereinafter, referred to as "the two parts") both have a space between two display panel portions, the part in the application has usage for displaying parallax images for a left eye and a right eye to show a VR image, whereas in the Cited Design, it has usage for displaying different game images. Further, the part in the application has a function of fixing the two-panel portion, whereas it is unclear whether or not the Cited Part has a similar function.

Therefore, the two parts are different in the usage (purposes) for having the space between the two display panel, and are also different in the functions in the point of whether or not the panel portions are fixed.

## 3 Comparison of the position, size, and scope of the two parts

Although the position, size, and scope of the two parts are common in the point of the space between the two display panel portion and the bar portion vertically provided at a generally center in a front view, they are different in the following features. (Different Feature 1) Position in the height (vertical) direction in a front view

The part in the application, regarding a height direction of the main body, is located on a slightly upper side and is not symmetrical with respect to the horizontal center axis of the main body, whereas the Cited Part is located at a generally center portion and is generally symmetrical with respect to the horizontal center axis of the main body.

(Different Feature 2) Size occupied in the height (vertical) direction in a front view

In the part in the application, assuming that the total height of the main body is 1, the size occupied in the height direction is about 0.85, whereas in the Cited Part, assuming that the total height of the main body is 1, the size occupied in the height direction is smaller, about 0.76.

(Different Feature 3) Size occupied in the width (lateral) direction in a front view

In the part in the application, assuming that the total width of the main body is 1, the size occupied in the width direction is about 0.03, whereas in the Cited Part, assuming that the total width of the main body is 1, the size occupied in the width direction is smaller, about 0.016.

#### 4 Comparison of the forms of the two parts

In comparison of the forms of the two parts, mainly, there are the following common features and different features.

(1) Common Features of the forms of the two parts

(Common Feature 1) The form of a front surface portion of a bar portion

It is made to be a vertically long rectangular bar-shape in a front view.

(Common Feature 2) The form of an upper surface of a bar portion

It is made to be a smooth surface at the same height as an upper surface (an upper side surface turning a front view side upward) of the main body.

(2) Different features of the forms of the two parts

(Different Feature 1) Overall configuration

In a front view, in the part in the application, a ratio of height (vertical) : width (lateral) is about 1 : 0.07, whereas, in the Cited Part, it is about 1 : 0.05, and the Cited Part is thinner than the part in the application.

(Different Feature 2) The form of a side surface portion of a bar portion

In the part in the application, as shown in "A-A Enlarged Sectional View on B-B part with an inner mechanism omitted," the two panel portions are divided into left and right, and the left and right panel portions are located at a position one step lower than the upper surface of the main body. So as to fix the left and right panel portions, the bar portion of the part in the application is provided with a side surface portion shown

as a vertical surface with a thickness of 0.12, assuming that the thickness of the main body is 1, whereas for the Cited Design, there is only a figure corresponding to a front view, and the form of a side surface portion of the bar portion is unclear.

## No. 5 Judgment

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

The articles to the design of the two designs are different in usage and functions, and thus it cannot be said that the two are similar to each other.

### 2 Determination of the similarity of usage and functions of the two parts

The usage and functions of the two parts are different in the usage for having the space between the two display panel, and are also different in the functions in the point of whether or not the panel portions are fixed, and thus it cannot be said that the two are similar to each other.

### 3 Evaluation of the position, size, and scope of the two parts

The position, size, and scope of the two parts are generally common, and it is recognized that an influence exerted by Different Features 1 to 3 on determination of similarity between the two parts is small.

### 4 Evaluation of Common Features and Different Features of the forms of the two parts

#### (1) Regarding Common Features

(Common Feature 1) generally takes the form of the whole of the two parts, but relates to the basic constitution of the whole of the two parts, so that it is admitted that there is a certain degree of impact of the common feature on determination of similarity.

(Common Feature 2) is not a unique form of the two parts, and is a form commonly seen in general, and thus an influence exerted by this point on determination of similarity is limited.

#### (2) Regarding Different Features

The difference in an aspect ratio in the overall configuration of (Different Feature 1) is not a great difference numerically, but is the most visible part of the two parts, and thus it cannot be accepted that there is no influence on determination of similarity.

(Different Feature 2), in the part in the application, is a part in which the usage and function of fixing the panel portions are shown as the form, whereas in the Cited Part, that point is unclear, and an influence exerted on determination of similarity between the two parts is large.

#### 5 Determination of similarity between the forms of the two parts

On the basis of the evaluation of Common Features and Different Features in the forms of the two parts, the two parts are observed as a whole.

Although the influence exerted by (Common Feature 2) on determination of similarity of the two parts is limited, that of (Common Feature 1) is recognized to a certain degree. Even if the influence of (Different Feature 1) specifically seeing the aspect ratio can be absorbed, the influence exerted by (Different Feature 2) on determination of similarity of the two part is large, and when observing the two parts as a whole, the influence exerted by their differences is larger than that exerted by (Common Feature 1), and thus it cannot be said that the forms of the two parts are similar to each other.

#### 6 Determination of similarity between the two designs

"The articles to the design" of the two designs are not similar to each other, and neither "the usage and functions" nor "the forms" of the two parts are similar to each other. Although the two are common in "the position, size, and scope," when those are comprehensively determined, the two designs are not similar.

#### No. 6 Closing

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

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

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

December 9, 2019

Chief administrative judge: KOBAYASHI, Hirokazu

Administrative judge: KITASHIRO, Shinichi

Administrative judge: SHODA, Takeshi