

## Appeal decision

Appeal No. 2019-15472

Appellant	Burberry Limited
Patent Attorney	INABA, Yoshiyuki
Attorney	MIYAGAWA, Mitsuko
Patent Attorney	HATASHI, Miwa
Patent Attorney	AKANEGAKUBO, Koji

The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2018-18293 entitled "Woven cloth fabric" 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 on August 22, 2018, and the history of the subsequent procedures is as follows

Dated February 1, 2018: Notice of reasons for refusal

May 5, 2019: Submission of written opinion

Dated August 16, 2019: Examiner's decision of refusal

November 19, 2019: Submission of written request for appeal

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

An article to the design in the application (hereinafter, referred to as "the design in the application") is "woven cloth fabric". In the description of the design column, it is described that "the design is continuous up, down, left, and right in a front view. A rear view is omitted because it has no pattern," 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 (see Appendix 1).

#### No. 3 Reason for refusal stated in the examiner's decision and cited patterns

The reason for refusal stated in the examiner's decision is that the design in the application for design registration falls under the provisions of Article 3(2) of the Design Act, since it is recognized that, as described below, the design in the application could have been easily created by a person who has ordinary skill in the field of the design (hereinafter, referred to as "a person skilled in the art") on the basis of the shape, patterns, or colors, or any combination thereof that were publicly known in Japan or a foreign country prior to the filing of the application. Concretely, the reason for refusal is as follows.

" An article to the design in the application for design registration is 'woven cloth fabric,' and in the field of the article, it has been quite common to use picture patterns such as patterns or monograms that were publicly known before the filing of the present application as the surface patterns of the woven cloth fabric almost as they are.

Therefore, a person skilled in the art could have easily created the design in the application in which a monogram pattern (Design 1) publicly known prior to the filing of the application is changed to monotone by a common method and expressed as the surface pattern of the woven cloth fabric almost as is.

(Design 1)

Monogram pattern published in

Name of author: Burberry

Title: Burberry is on Instagram:

'The #ThomasBurberryMonogram August 2018'

Type of media: online

Date of publication: August 2, 2018

Search Date: January 30, 2019

Source of information: Internet

Address of information: URL:

[https://www.instagram.com/p/BlcMBcHhFD/?utm\\_source=ig\\_embed&utm\\_campaign=embed\\_loading\\_state\\_control](https://www.instagram.com/p/BlcMBcHhFD/?utm_source=ig_embed&utm_campaign=embed_loading_state_control)" (see Appendix 2)

#### No. 4 Judgment by the body

Hereinafter, we will examine and judge the applicability of Article 3(2) of the

Design Act of the design in the application; that is, whether or not the design in the application could have been easily created by a person skilled in the art.

## 1 The design in the application

### (1) Article to the design

The article of the design in the application is "woven cloth fabric".

### (2) Form

#### A Shape

The design is continuous up, down, left, and right in a front view (horizontally long rectangle).

#### B Patterns

##### (A) Front surface

a A unit pattern (hereinafter referred to as "the unit pattern") in which a generally "T"-shaped pattern (hereinafter referred to as "T") is entwined with a generally "B"-shaped pattern (hereinafter referred to as "B") is continuously in a staggered pattern to make a basic configuration.

b Assuming that B is a combination of a "1"-shaped part and a "3"-shaped part, the unit pattern is a pattern in which a vertical rod of T is inserted in B to hide a lateral rod in the center of the "3"-shaped part.

c The unit patterns are arranged in a straight line in the vertical rod direction of T to make continuous patterns.

d The unit patterns do not make patterns continuous in a straight line, in the lateral rod direction of T. A left end of the lateral rod of T contacts with a lower right side of the "3"-shaped part of the left adjacent B, and a right end contacts with a center slightly upper side of the "1"-shaped part of the right adjacent B. Therefore, the lateral rod of T does not continue on a straight line.

e T and B are made of lines with almost the same thickness. Therefore, the overall patterns on the front surface are dense with few gaps.

f In a front view, a vertical direction and a lateral direction of the unit pattern coincide with each other in the vertical direction and the horizontal direction of the figure, and the unit patterns are arranged vertically.

##### (B) Back surface

There is no pattern.

## C Colors

The overall front surface is monochromatic and has a very slight purple color.

The brightness of T, B and the backgrounds thereof are different. The brightness of T is made to be the lowest, the background is made to be the next lowest, and the brightness of B is made to be extremely high.

### (B) Back surface

It is unknown, since it is not stated in the application.

## 2 Cited patterns

There is no description indicating the article in the reasons for refusal stated in the examiner's decision of No. 3 above. It is recognized that "Design 1" of No. 3 is patterns and colors.

The pattern appears in the upper left on Page 2 of Appendix 2 while being divided into rectangles, and its form is as follows.

### (1) Patterns

It is the same as the recognition of 1 (2) B (A) a to e above.

The unit patterns are arranged at an angle of about 45 degrees to the left.

### (2) Colors

The whole are mainly 3 colors.

T is vermilion, B is white, and their background is light brown.

## 3 Determination of the ease of creation of the design in the application

In the field of the article, woven cloth fabrics with various patterns and colors have been created commonly for various purposes of use such as scarves, handkerchiefs, and clothing fabrics. It can be recognized that a person skilled in the art of woven cloth fabrics freely performs creation without specializing in each purpose of use.

A The overall patterns on the front surface of the design in the present application are the publicly known patterns of "Cited patterns" of 2 (2) (A) above, and it cannot be recognized that it requires particular creation. Further, since it is a common technique that patterns are made on one side while leaving the other side without patterns,

creativity cannot be recognized in the fact that the front surface of the design in the application has patterns while the back surface has no pattern.

B As compared with the design in the application, in "Cited patterns," the whole of the patterns is inclined at an angle of about 45 degrees to the left. However, it is merely a difference in how the patterns appear in the cited document. That is, even if inclined, the patterns and colors are not changed. Accordingly, no creativity cannot be found in that.

C However, the colors of the cited pattern are mainly three colors; that is, T is vermilion, B is white, and their background is light brown, and such multicoloring is not expressed in the design in the application, so that it must be said that it has a certain degree of creativity.

Then, in the field of woven cloth fabrics, although creativity cannot be found in the pattern, it can be said that colors were created by a unique idea in the field of the article, and it cannot be said that the form of the design in the application could have been easily created on the basis of the form of "Cited patterns". Therefore, it must be said that the form of the design in the application was created by a unique idea in the field of the article, and it cannot be said that a person skilled in the art could have easily created the design in the application on the basis of the publicly known form.

#### No. 5 Closing

As described above, since the design in the application does not fall under the category of Article 3(2) of the Design Act due to the reason for refusal stated in the examiner's decision, it cannot be decided that the present application shall be rejected based on this reason for refusal.

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

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

August 3, 2020

Chief administrative judge: KOBAYASHI, Hirokazu  
Administrative judge: MIYATA, Souhei

Administrative judge: KOYANAGI, Takashi

【意匠に係る物品】織物地

【意匠の説明】この意匠は、正面図において上下左右に連続するものである。背面図は、無模様であるから省略する。

正面図



別紙第2 引用意匠

【著者の氏名】 Burberry

【表題】 BurberryさんはInstagramを利用しています：  
「The #ThomasBurberryMonogram August 2018」

【媒体のタイプ】 [online]

【掲載年月日】 2018年 8月 2日

【検索日】 [2019年 1月30日]

【情報の情報源】 インターネット

【情報のアドレス】 URL : [https://www.instagram.com/p/B1-cMBcHhFD/?utm\\_source=ig\\_embed&utm\\_campaign=embed\\_loading\\_state\\_control](https://www.instagram.com/p/B1-cMBcHhFD/?utm_source=ig_embed&utm_campaign=embed_loading_state_control)  
に掲載された モノグラム柄



BurberryさんはInstagramを利用しています:「The #ThomasBurberryMonogram Augus... 1/2 ページ

検索

検索

ログイン

登録



BURBERRY burberry ・フォローする

burberry The #ThomasBurberryMonogram August 2018

他のコメントを表示

rustafan 😊

andreaandcoco Hate it.

bellucciraffaele 🙄

felipeabq Podre

n.sg98 It's not bad it's beautiful... but It's not unique it reminds me alot of Goyard logo. It would be really great for a limited

いいね！ 58,374件

2018年8月2日

ログインすると「いいね！」やコメントができます。

INSTAGRAMについて サポート プレス API 求人

プライバシー 利用規約 ディレクトリ プロフィール

ハッシュタグ 言語

© 2019 INSTAGRAM

2018-018293

[https://www.instagram.com/p/Bl-cMBcHhFD/?utm\\_source=ig\\_embed&utm\\_campaign=...](https://www.instagram.com/p/Bl-cMBcHhFD/?utm_source=ig_embed&utm_campaign=...) 2019/01/30