Appeal decision

Appeal No. 2020-1100

Appellant Panasonic Intellectual Property Management Co., Ltd.

Patent Attorney KAMATA, Kenji

Patent Attorney NOMURA, Koichi

The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2019-2017, entitled "Projector" 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

February 1, 2019	Application for design registration
Dated July 29, 2019	Notification of reasons for refusal
September 3, 2019	Written opinion
Dated October 25, 2019	Examiner's decision of refusal
January 27, 2020	Written demand for appeal

No. 2 The design in the application

The present application is to request a design registration of a part of an article. According to the description of the application of the present application, an article to the design of the design in the application is "PROJECTOR," 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") is as described in the application and

the drawings attached to the application. In the column of "Description of the design" of the application, it is described that "The portion represented by the solid line including a sectional view (Note by the body: hereinafter, referred to as "the part in the application") is the part for which the design registration is requested as a partial design. A dash-dotted line is a line which shows only the boundary of the part for which the design registration is requested for a partial design and other portions" (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 was described in a distributed publication, or a design that was 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 under the provisions of Article 3(1)(iii) of the Design Act because of its similarity to a prior, publicly known design). The design cited in the reasons for refusal is as follows.

The design of Design Registration No. 1371149 (the article to the design, a liquid crystal projector) (hereinafter, referred to as "the Cited Design", see Appendix 2) described in the design bulletin issued by the Japan Patent Office on October 19, 2009.

Further, the part to be compared in form in the determination of similarity is a part corresponding to the part in the application of the Cited Design (hereinafter, referred to as "the part in the Cited Design").

No. 4 Comparison

1 Comparison with the article to the design

The articles to the design of the design in the application and the Cited Design (hereinafter, referred to as "the two designs") are a projector that projects an image on a wall surface and the like, and thus the usage and function of the two designs are common.

2 Comparison of the usage and function of the part in the application and the part in the Cited Design

The usage and function of the part in the application and the part in the Cited Design (hereinafter, referred to as "the two parts") are common in that they both configure front surface outer peripheral corner portions of a projector housing. On the other hand, although front left and right parts of the part in the Cited Design configure a handle portion, the design in the application has no handle portion, and thus the usage and function of the two parts are different in this point.

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

The two parts are both located at the front surface outer peripheral corner portions of the projector housing, and a part close to a front surface of a corner portion connecting a plane, a bottom surface, and a side surface is included in the scope, so that the position, size, and the scope of the two parts are common.

4 Comparison of the form of the two parts

(1) Common features of the two parts

(Common Feature 1) The two parts have narrow strip shapes that are roughly hollow

rectangle in a front view, are represented in a substantially wide U-shape in a left side view (wide U-shape in a right side view), are represented in a substantially flat U-shape in a top view, and are represented in a substantially flat inverted U-shape in a bottom view.

(Common Feature 2) The form seen from the front, side, and top

When seen from the front, side, and top, the narrow strip shape that is represented on the outer periphery is doubly formed with the same width. The width of the outer strip-shaped portion is larger than the width of the inner strip-shaped portion and is inclined, and the inner strip-shaped portion is formed vertically or horizontally in each surface.

Four corners in a front view of the outer strip-shaped portion, upper corners in a side view, and left and right corners in a top view are all inclined by about 45 degrees.

(2) Different features in the form

(Different Feature 1) The shape of the outer strip-shaped portion

In the part in the application, flat deformed hexagonal surfaces are respectively formed at two corner portions where the front surface, the side surface, and the top surface intersect, and two corner portions where the front surface, the side surface, and the bottom surface intersect, and rectangular sections are arranged in three directions in the vicinity thereof.

On the other hand, the part in the Cited Design does not have such deformed hexagonal surface and rectangular section. Near the above four corner portions, vertical partition lines are provided from the front surface to the top surface or bottom surface, and vertical partition lines are also provided from the side surface to the top surface or bottom surface.

(Different Feature 2) The shape of the inner strip-shaped portion

The width of the inner strip-shaped portion of the part in the application represented on the front surface, the side surface, and the top surface is about 1/7 of the width of the outer strip-shaped portion, whereas it is about 2/3 in the part in the Cited Design. Further, there are the inner strip-shaped portions on the bottom surface of the part in the application, whereas there is no inner strip-shaped portion on the bottom surface of the part in the Cited Design.

In the part in the Cited Design, the inner strip-shaped portions near the four corners in a front view, near upper and lower corners in a side view, and near left and right corners in a top view, and the inside of outer strip-shaped portions near the left and right corners in a bottom view are formed in a round shape, whereas, in the part in the application, those are inclined by about 45 degrees.

In the part in the Cited Design, the vicinity of the center in a left-and-right direction of the inner strip-shaped portion on the lower side in a front view is formed in a gentle arc shape that is convex downward, whereas, in the part in the application, such an arc shape is not formed.

(Different Feature 3) The presence or absence of a vertically long small rectangular portion

In an upper right half in a front view of the part in the Cited Design, seven narrow vertically long sections are arranged left and right and side by side at equal intervals from the inner strip-shaped portion on the top surface side to the inner strip-shaped portion on the front surface side, and one slightly wide vertically long small section is arranged on the right side thereof, whereas, in the part in the application, there is no such a plurality of vertically long small rectangular portions.

No. 5 Judgment

1 Determination of similarity of the article to the design

The articles to the design of the two designs are common in usage and function, and thus are similar.

2 Evaluation of the usage and function of the two parts

The usage and function of the two parts have common features as recognized in No. 4-2 above, but also have different features, and thus do not significantly affect determination of similarity between the two designs.

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

Since the position, size, and scope of the two parts are common as recognized in No. 4-3 above, it is admitted that there is a certain degree of effects on the determination of similarity between the two designs.

4 Evaluation of the common features and the different features in the form of the two parts

(1) Evaluation of the common features in the form

Concerning the shape of the part corresponding to the two parts, since it had been seen prior to the filing of the present application in the field of the article of "Projector" to represent it in a substantially wide U-shape in a left side view (wide U-shape in a right side view), represent it in a substantially flat U-shape in a top view, and represent it in a substantially flat inverted U-shape in a bottom view, as a narrow strip

shape that is roughly hollow rectangle in a front view, and to incline four corners in a front view of the narrow strip-shaped portion, upper corners in a side view, and left and right corners in a top view by about 45 degrees (for example, the design of Design registration No. 1430814 (Reference Design), see Appendix 3), it cannot be said that consumers pay particular attention to these common features.

Further, concerning the common feature that the width of the inclined outer strip-shaped portion is larger than the width of the inner strip-shaped portion, as described in the next section, the width of the inner strip-shaped portion with respect to the width of the outer strip-shaped portion is largely different in the two parts; namely, it is highly evaluated as a different feature, and thus the common feature cannot be emphasized.

Therefore, the effects of Common Feature 1 and Common Feature 2 on the determination of similarity between the two parts are little.

(2) Evaluation of the different features in the form

On the other hand, the deformed hexagonal surfaces represented at the four corner portions of the part in the application and the rectangular sections in the three directions in the vicinity thereof are noticeable by consumers at a glance, and it can be said that it has aesthetic impression largely different from the part in the Cited Design in which only vertical partition lines are provided near the four corner portions. Since the difference is a difference at a prominent position of the corner portion, it should be said that the effects of Different Feature 1 on the determination of similarity between the two parts are large.

Further, it is a large difference whether the width of the inner strip-shaped portion represented on the front surface, the side surface, and the top surface is about 1/7 (the part in the application) or about 2/3 (the part in the Cited Design) of the width

of the outer strip-shaped portion, and provides different visual impression to consumers, along with the difference whether the inner strip-shaped portions near the four corners in a front view, near upper and lower corners in a side view, and near left and right corners in a top view, and the inside of outer strip-shaped portions near the left and right corners in a bottom view are formed in a round shape (the part in the Cited Design) or are inclined by about 45 degrees (the part in the application). Therefore, even if the difference of whether or not the vicinity of the center in a left-and-right direction of the inner strip-shaped portion on the lower side in a front view is formed in a gentle arc shape that is convex downward is inconspicuous, it has to be said that the effects of Different Feature 2 on the determination of similarity between the two parts are comprehensively large.

Then, since it should be said that Different Feature 3 relating to the presence/absence of the vertically long rectangular portions changes the aesthetic impression of consumers who carefully observe the projector, it is admitted that there is a certain degree of effects of Different Feature 3 on the determination of similarity between the two designs.

Therefore, it has to be said that the effects of the different features in the form of the two parts on the determination of similarity between the two designs are large.

5 Determination of similarity between the two designs

On the basis of the evaluation of the common features and the different features in the form of the two parts, when comprehensively observing the design as a whole, while the effects of the common features on the determination of similarity between the two parts are generally small, the effects of the different features on the determination

of similarity between the two parts are large.

Therefore, although the articles to the design of the two designs are similar, and the common features of the position, size, and scope of the two parts can be evaluated to some extent, the usage and function of the two parts do not have a decisive influence on the determination of similarity between the two designs, and the effects of the different features in the form of the two parts on the determination of similarity between the two parts are large. Hence, the design in the application is not similar to the Cited Design.

No. 6 Closing

As described above, since it cannot be said that the design in the application falls under the category of Article 3(1)(iii) of the Design Act based on the design cited in the reasons for refusal by the body, it cannot be judged that the design in the application should be rejected under the provisions of Article 3(1)(iii) of the Design Act.

Moreover, as the result of the further examination by the body, no other reason for rejecting the present application can be found.

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

July 14, 2020

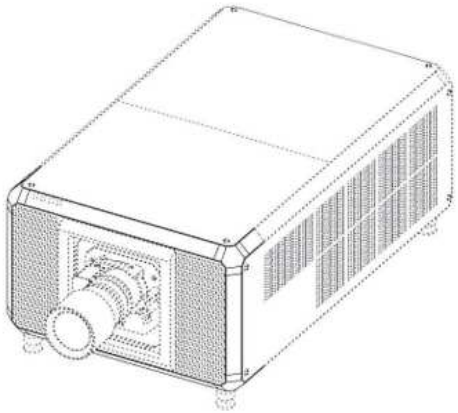
Chief administrative judge: KITASHIRO, Shinichi
Administrative judge: KOBAYASHI, Hirokazu
Administrative judge: HAMAMOTO, Fumiko

別紙第１　　本願意匠（意願２０１９－００２０１７）

【意匠に係る物品】プロジェクター

【意匠の説明】断面図を含む実線で表された部分が、部分意匠として意匠登録を受けようとする部分である。一点鎖線は、部分意匠として意匠登録を受けようとする部分と、その他の部分との境界のみを示す線である。

斜視図



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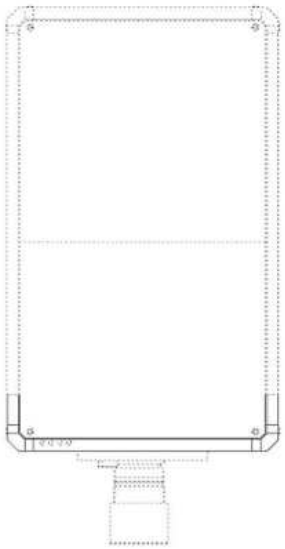

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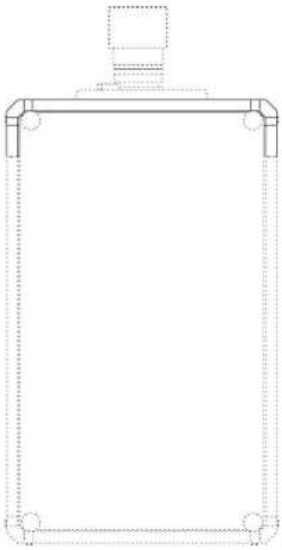
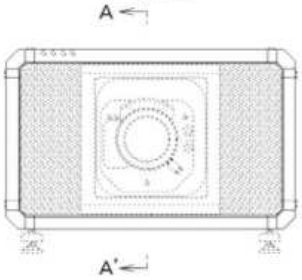


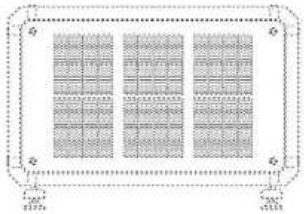
別紙第１　　Appendix 1

本願意匠（意願２０１９－００２０１７）　The design in the application (Japanese Design Application No. 2019-002017)

正面図



背面図



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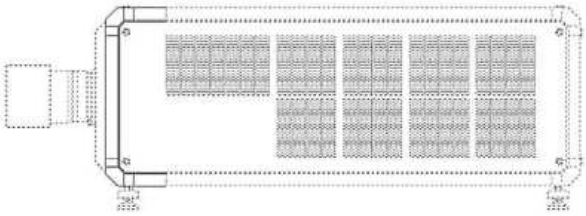

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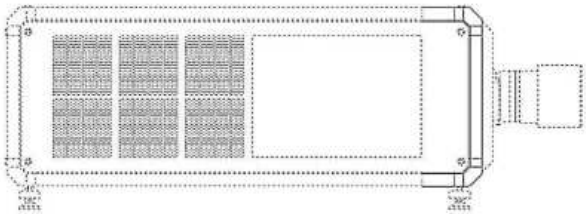
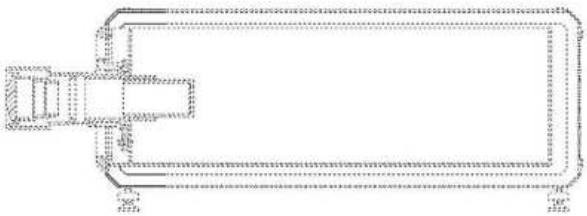


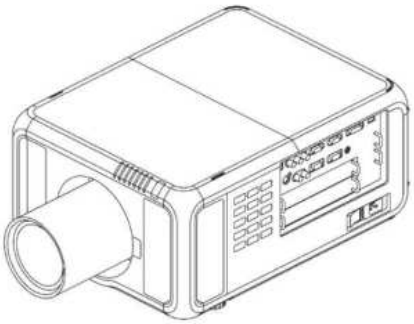
内部機構を省略したＡ－Ａ’断面図



別紙第２　　引用意匠

特許庁発行の意匠公報記載
意匠登録第１３７１１４９号
（意匠に係る物品、液晶プロジェクター）の本願意匠相当部分に係る意匠

斜視図



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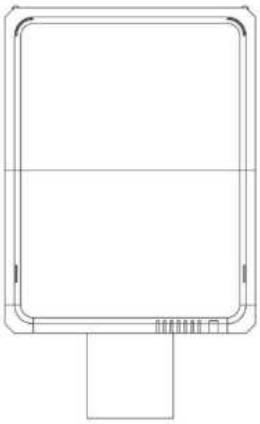

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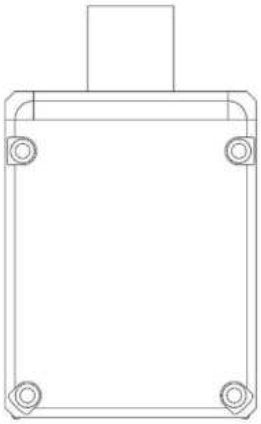

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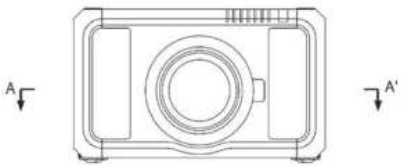

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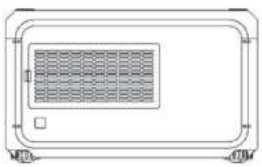
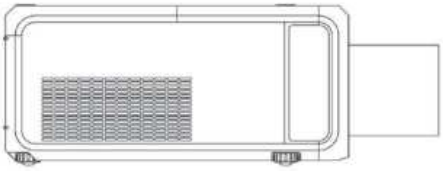


別紙第２　　Appendix 2
引用意匠　　The Cited Design

左側面図



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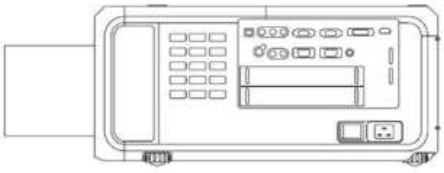
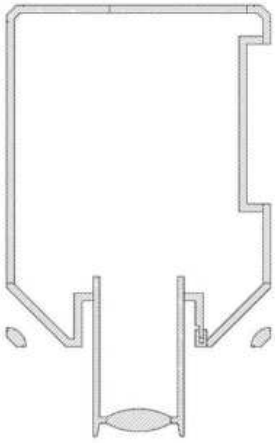
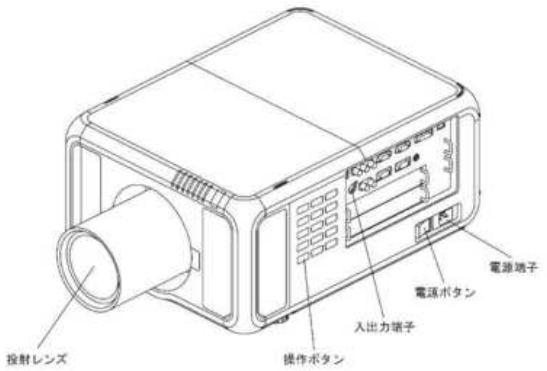


内部機構を省略したＡ－Ａ’端面図



各部の名称を示す参考斜視図



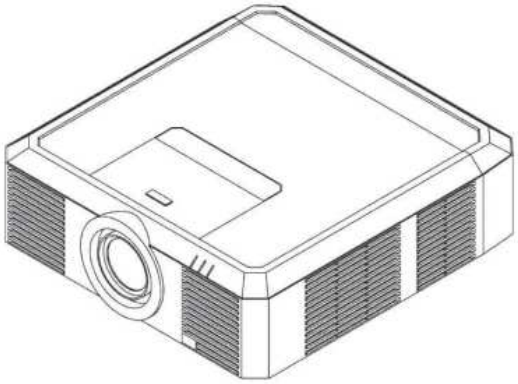
別紙第３　　参考意匠

特許庁が平成２４年（２０１２年）　１月１０日に発行した意匠公報記載
意匠登録第１４３０８１４号

【意匠に係る物品】プロジェクター

【意匠の説明】透光部分を濃墨であらわした参考図において、濃墨部は透光性を有する。

斜視図



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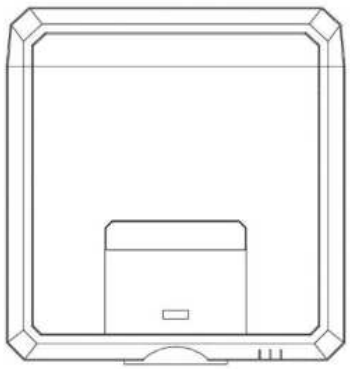

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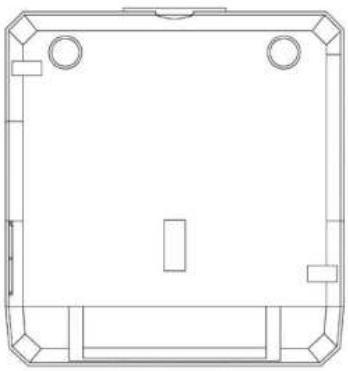

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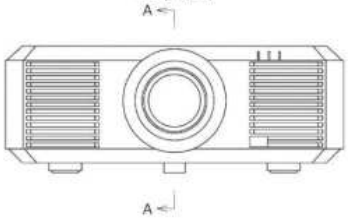
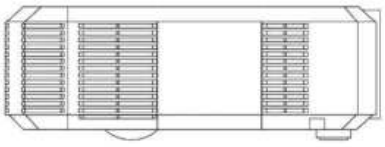


背面図

別紙第３　　Appendix 3
参考意匠　　Reference Design

左側面図



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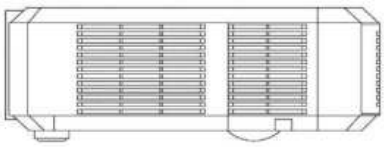
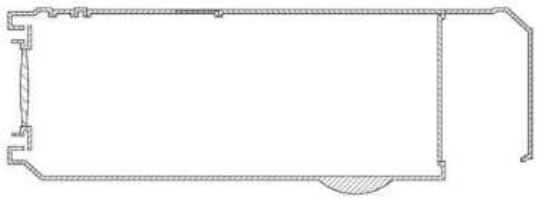


参考Ａ－Ａ切断部端面図



透光部分を濃墨であらわした参考図