

Appeal decision

Appeal No. 2020-3523

Appellant SONY CORPORATION

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The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2018-18826 entitled "ELECTRONIC COMPUTER WITH CAMERA 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 August 29, 2018, and the main history of the procedures is as follows.

Dated March 27, 2019	Notice of reasons for refusal
May 8, 2019	Submission of written opinion
May 8, 2019	Submission of written amendment
Dated July 10, 2019	Decision to dismiss amendment
Dated December 4, 2019	Examiner's decision of refusal
March 13, 2020	Appeal against the examiner's decision of refusal
April 22, 2020	Submission of written amendment

No. 2 The design in the application

The design in the application was filed to request a design registration of a part of an article. According to the description of the application of this application, the article to the design of the design in this application is ""ELECTRONIC COMPUTER WITH CAMERA FUNCTION," and the shape, patterns or colors, or any combination thereof (hereinafter, "the shape, patterns or colors, or any combination thereof" are also referred to as "the form") are as described in the application and the drawings attached

to the application (See Appendix 1).

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 acknowledged that the design in the application could have been easily created by a person who has ordinary skill in the field of the article (hereinafter, referred to as "a person skilled in the art") based on 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 for design registration, and thus it falls under the provisions of Article 3(2) of the Design Act. Concretely, the reason for refusal is as follows.

"It is acknowledged that the design in the application for design registration requests the design registration for a part of an image displayed in a display portion of 'ELECTRONIC COMPUTER WITH CAMERA FUNCTION' as partial designs.

In articles widely including images for operation, which includes 'ELECTRONIC COMPUTER WITH CAMERA FUNCTION' relating to the design in the application for design registration, as shown in Design 1 to Design 4 for example, it was a form publicly known before the filing of the application that a rectangular frame for displaying a thumbnail image of a taken photograph is superimposed and displayed small at various positions on a display screen.

Further, as shown in FIGS. 5 to 7 of Design 1 and Design 5, it was also a form publicly known before the filing of the application that a vertically long rectangular frame for displaying an image including a thumbnail image is displayed at the upper right of a display screen with a slight space from a frame of the display screen.

Therefore, the design in the application superimposes and displays just a vertically long rectangular frame for displaying a thumbnail image at the upper right of the display screen in a publicly known form, and merely expresses it as a design of an image relating to an electronic computer with a camera function, so that it is acknowledged that it could have been easily created by a person skilled in the art.

Design 1

US Patent and Trademark Gazette September 29, 2015

Design of image relating to Screen of Portable information terminal (Registration No. US D739880S)

(Publicly Known Information in Design Division of Japan Patent Office No. HH27320865)

Design 2

Description in publication of unexamined patent applications issued by JPO

Japanese Unexamined Patent Application Publication No. 2005-033384

Design of image relating to a digital camera shown in FIG. 8

Design 3

Description in publication of unexamined patent applications issued by JPO

Japanese Unexamined Patent Application Publication No. 2009-260600

Design of image relating to an electronic camera shown in FIG. 4

Design 4

South Korean Design Trademark Gazette No. 13-07 on March 8, 2013

Design of image relating to Digital Camera (Registration No. 30-0683789)

(Publicly Known Information in Design Division of Japan Patent Office No. HH25408272)

Design 5

US Patent and Trademark Gazette April 11, 2017

Design of Image for Display Screen (Registration No. US D783640S)

(Publicly Known Information in Design Division of Japan Patent Office No. HH29307838)"

No. 4 Judgment by the body

In the following, it will be examined whether or not the written amendment by the Appellant on April 22, 2020 changes the gist of the description of the initial application and the drawing attached to the application, and it will be examined and judged whether or not the design in the application falls under the provision of Article 3(2) of Design Act; that is, whether or not the design in the application could have been easily created by a person skilled in the art.

1 Regarding whether or not the written amendment changes the gist of the drawings

(1) The description of the initial application and the drawing attached to the application (see Appendix 1)

A The description of the initial application

In the description of the initial application, it is described that the article to the design is "ELECTRONIC COMPUTER WITH CAMERA FUNCTION," and "Description of the article to the design" and "Description of the design" are described as follows.

(A) Description of the article to the design

The article relating to the design in the application is a smart phone type

electronic computer, which is mainly held in a palm for use. On a side surface, a sensor is embedded, and a user can take a photograph by touching an optional place on the side surface while holding the article in the application in his/her palm. When touching the side surface as represented in Reference View 1 showing a state of use, an image is changed to the state in Reference View 2 showing a state of use, and then a photograph is taken. When the photograph is taken, as shown in a front view, a thumbnail image of the taken photograph is displayed at a position where operation such as tapping with a thumb is easy in the state based on the touched place. If the user taps on this, the photograph is enlarged and the user can check the content of the photograph just taken. In the application, there is shown a state in which a user takes a photograph of a man playing a guitar, and a thumbnail image thereof is displayed on a display screen.

(B) Description of the design

The part represented by the solid line is the part for which the design registration is requested as a partial design. A partial enlarged front view is an enlarged view of the image part displayed on the display screen. Since only portions other than the part for which the design registration is requested appear, a rear view, a left side view, and a bottom view are omitted.

B Regarding the description of the initial application and the gist of the drawings attached to the application

According to the description of the initial application, the article to the design of the application (hereinafter, referred to as "the article in the application") is a smart phone type electronic computer having a camera function. When a user taps an optional position on a side surface to take a photograph, a thumbnail image of the photograph is displayed at a position that is easy to tap with a thumb, and the thumbnail image is enlarged and displayed by thumb tapping.

Then, in "Reference View 1 showing a state of use " attached to the application, it is shown that a user taps the upper part of the right side surface portion that is an optional position on the side surface of the article in the application with a thumb of a hand holding the article in the application, and in a "front view," the thumbnail image is displayed at a position that can be tapped with the thumb of the hand at the same holding position (upper right of a front surface portion of the article in the application). Then, it is acknowledged that the user performs the operation of sequentially tapping the upper part of the right side surface portion and the upper right of the front surface portion with the thumb of the hand at the same holding position.

The thumbnail image displayed by the first operation, according to the "front

view" (and the "partial enlarged front view"), is "the part represented by the solid line" at the upper right in the front surface display portion, and this portion is the part for which the design registration is requested as a partial design. "The part represented by the solid line" has a vertically long rectangular shape (an aspect ratio of about 1.8:1), occupies about 1/3.4 (vertical direction) and 1/3.1 (lateral direction) of the entire front surface display portion, and slightly separates from the right end of the front surface display portion (separates only by about 1/6 of the lateral width of "the part represented by the solid line").

(2) The written amendment dated April 22, 2020 (see Appendix 2)

A Changes of "Description of the article to the design"

(A)

The description "When touching the side surface as represented in Reference View 1 showing a state of use, an image is changed to the state in Reference View 2 showing a state of use, and then a photograph is taken" of the initial application was changed to " When touching an optional place on the side portion as represented in Reference View 1 showing a state of use, an image is changed to the state in Reference View 2 showing a state of use, and then a photograph is taken".

(B)

The description "If touching an optional place A shown in the figure showing that the user touches the optional place A, a thumbnail image is displayed as shown in a figure of an image appearing when touching the optional place A. If touching an optional place B shown in the same way, a thumbnail image is displayed in a figure appearing when touching the optional place B, and if touching an optional place B in the same way, a thumbnail image is displayed as shown in a figure appearing when touching the optional place C" was added.

(C)

The description "On a side surface, a sensor is embedded, and a user ... touching an optional place on the side surface while holding the article in the application in his/her palm" of the initial application was changed to "on the side portion, a sensor is provided, and a user ... touching an optional place on the side portion while holding the article in the application in his/her palm".

B Addition of drawings

"The figure showing that the user touches the optional place A," "the figure of an image appearing when touching the optional place A," "the figure showing that the user touches the optional place B," "the figure of an image appearing when touching the optional place B," and "the figure showing that the user touches the optional place C,"

"the figure of an image appearing when touching the optional place C," were added.

In "the figure showing that the user touches the optional place A," it is shown that the user taps slightly below the center of the left side surface portion of the article in the application with a thumb of a hand holding the article in the application. In "the figure showing that the user touches the optional place B" and "the figure showing that the user touches the optional place C," it is shown that the user taps the lower part of the right side surface portion and the upper part of the left side surface portion, respectively. In "the figure of an image appearing when touching the optional place A," the thumbnail image is displayed at a position that can be tapped with the thumb of the hand at the same holding position (slightly below the center on the left side of the front surface portion of the article in the application), and it is acknowledged that the user performs the operation of sequentially tapping slightly below the center of the left side surface portion and slightly below the center on the left side of the front surface portion with the thumb of the hand at the same holding position. Similarly, in "the figure of an image appearing when touching the optional place B" and "the figure of an image appearing when touching the optional place C," the thumbnail images are displayed at the lower right of the front surface portion and the upper left of the front surface portion, and it is acknowledged that the user taps with the thumb of the hand at the same holding position.

In "the figure of an image appearing when touching the optional place A," "the figure of an image appearing when touching the optional place B," and "the figure of an image appearing when touching the optional place C," "the part represented by the solid line" (thumbnail image) has a vertically long rectangular shape (an aspect ratio of about 1.8:1), occupies about 1/3.4 (vertical direction) and 1/3.1 (lateral direction) of the entire front surface display portion, and slightly separates from the right end of the front surface display portion (separates by about 1/6 of lateral width of "the part represented by the solid line"), and slightly separates from the left end, the right end, and the left end of the front surface display portion, respectively (all of them separate only by about 1/6 of the lateral width of "the part represented by the solid line").

(3) Judgment as to whether or not the gist is changed

A In the description of the initial application and the gist of the drawings attached to the application, as described in (1) B above, it is acknowledged that the user takes a photograph by tapping an optional position on the side surface, so that the description changes of (2) A (A) above that explains that "Reference View 1 showing a state of use " shows that an optional position on the side surface is tapped, does not change the gist.

B In the description of the initial application and the gist of the drawings attached to the application, as described in (1) B above, it is acknowledged that the user performs the operation of sequentially tapping the upper part of the right side surface portion and the upper right of the front surface portion which are optional positions on the side surface of the article in the application with the thumb of the hand at the same holding position, so that the addition of "the figure showing that the user touches the optional place A" and "the figure of an image appearing when touching the optional place" does not change the gist. Similarly, the addition of "the figure showing that the user touches the optional place B," "the figure of an image appearing when touching the optional place B," "the figure showing that the user touches the optional place C," and "the figure of an image appearing when touching the optional place C" does not change the gist.

Accordingly, the description changes of (2) A (B) above and the addition of the drawings of (2) B above do not change the gist.

C Although the description changes of (2) A (C) above are the changes from "a side surface" to "a side portion" and from "is embedded" to "is provided," the former two words are synonymous, and the latter two explanations have the same spirit, so that neither changes the gist of the description of the application.

D Therefore, the written amendment dated April 22, 2020 does not change the description of the initial application and the gist of the drawings attached to the application.

2. Regarding whether or not the design in the application could have been easily created

(1) Recognition of the design in the application

In the body, the design in the application is recognized as follows (see Appendix 1). Further, "Description of the article to the design" of the application and "the figure showing that the user touches the optional place A," "the figure of an image appearing when touching the optional place A," "the figure showing that the user touches the optional place B," "the figure of an image appearing when touching the optional place B," "the figure showing that the user touches the optional place C," and "the figure of an image appearing when touching the optional place C," which are the drawings attached to the application, were changed or added by the written amendment submitted on April 22, 2020 (see Appendix 2).

A Article to the design

The article to the design of the design in the application (hereinafter, referred to as "the article in the application") is "an electronic computer with a camera function,"

and in "Description of the article to the design" of the application, it is described as follows.

"The article relating to the design in the application is a smart phone type electronic computer, which is mainly held in a palm for use. On a side portion, a sensor is provided, and a user can take a photograph by touching an optional place on the side portion while holding the article in the application in his/her palm. When touching an optional place on the side portion as represented in Reference View 1 showing a state of use, an image is changed to the state in Reference View 2 showing a state of use, and then a photograph is taken. When the photograph is taken, as shown in a front view, a thumbnail image of the taken photograph is displayed at a position where operation such as tapping with a thumb is easy in the state based on the touched place. If touching an optional place A shown in the figure showing that the user touches the optional place A, a thumbnail image is displayed as shown in a figure of an image appearing when touching the optional place A. If touching an optional place B shown in the same way, a thumbnail image is displayed in a figure appearing when touching the optional place B, and if touching an optional place B in the same way, a thumbnail image is displayed as shown in a figure appearing when touching the optional place C. If tapping this, the photograph is enlarged and the user can check the content of the photograph just taken. In the application, there is shown a state in which a user takes a photograph of a man playing a guitar, and a thumbnail image thereof is displayed in a display screen".

Further, in "Description of the design," it is described as follows.

"The part represented by the solid line is the part for which the design registration is requested as a partial design. A partial enlarged front view is an enlarged view of the image part displayed on the display screen. Since only portions other than the part for which the design registration is requested appear, a rear view, a left side view, and a bottom view are omitted".

B Usage and function of the article in the application

According to "Description of the article to the design" above and the drawings attached to the application, the article in the application is a smart phone type electronic computer having a camera function, and has the usage and function that a user takes a photograph by tapping an optional position on a side portion.

C Image displayed on a front surface

On a front surface of the design in the application, a rounded-corner vertically long rectangular display portion (physical screen) is arranged while a margin portion remains on a periphery thereof, and a rounded-corner laterally long rectangular image

(hereinafter, referred to as "the image in the application") is displayed in the whole area in the display portion. The part for which the design registration is requested as a partial design is "the part represented by the solid line" in the image in the application (hereinafter, referred to as "the image part in the application"), and the part represented by the broken line does not configure the image part in the application. Further, the part represented by the broken line in the image in the application is a man (subject) playing a guitar, and the part represented by the broken line in the image part in the application is a content of the taken photograph.

Since the image part in the application is a thumbnail image, and is enlarged and displayed by tapping, it is an image that is provided for use in the operation carried out in order to perform the camera function of the article in the application. It can be assumed that it is an image recorded in the article in the application. And it is acknowledged that the article in the application is an article subjected to Design Act. Therefore, it is acknowledged that the image in the application configures an image stipulated in Article 2(2) of the Design Act (Design Act revised in 2006).

D Usage and function of the image part in the application

The image part in the application is a thumbnail image of the taken photograph, and as shown in "Reference View 1 showing a state of use," "the figure showing that the user touches the optional place A," "the figure showing that the user touches the optional place B," and "the figure showing that the user touches the optional place C," has a function of being displayed at a position that can be tapped (position of the front surface portion close to the optional position of the side portion) with a thumb of the hand at the same holding position in a front view, when a user taps an optional position on a side portion of the article in the application with the thumb of the hand holding the article in the application.

The usage of the image part in the application is to check the content of the taken photograph as a reduced image (thumbnail image), and also to enable a user to enlarge and display the image part in the application by thumb tapping to check the content of the enlarged photograph.

E Position, size, and scope of the image part in the application in the image in the application

The image part in the application is located at the upper right of the image in a "front view," and is located slightly below the center on the left side of the front surface portion, the upper right of the front surface portion, and the upper left of the front surface portion, respectively in "the figure of an image appearing when touching the optional place A," "the figure of an image appearing when touching the optional place

B," and "the figure of an image appearing when touching the optional place C".

In the "front view," "the figure of an image appearing when touching the optional place A," "the figure of an image appearing when touching the optional place B," and "the figure of an image appearing when touching the optional place C," the vertical width of the image part in the application is about 1/3.4 of the vertical width of the image in the application, and the lateral width of the image part in the application is about 1/3.1 of the lateral width of the image in the application. Further, in each view, the image part in the application slightly separates from the left end or the right end, and an interval between the left end and the right end is about 1/6 of the lateral width of the image part in the application.

F Form of the image part in the application

The form of the image part in the application is a vertically long rectangular shape, and an aspect ratio thereof is about 1.8:1.

(2) Recognition of the Cited Design

The designs cited in reasons for refusal stated in the examiner's decision are recognized as follows. All of the designs are described in the bulletins issued by the Japan Patent Office or the Patent Offices of other countries, and the types of the bulletins or the name of the drawings are as described in No. 3 above.

A Design 1 (the issue date of the design bulletin is September 29, 2015. See Appendix 3)

(A) Regarding Design 1

Design 1 represents a screen of a portable information terminal, and a thumbnail image is included in a landscape image.

(B) Position, size, and scope of the part corresponding to the image part in the application

The part corresponding to the image part in the application in Design 1 (hereinafter, referred to as "Design 1 Part") is the thumbnail image displayed in the image. In FIG. 2 to FIG. 4, it is arranged slightly to the right side in contact with an upper end of the image while a margin portion remains at a left end, a lower end, and a right end of the image, and in FIG. 5 to FIG. 7, it is located at the upper right of the image.

In FIG. 2, the vertical width of Design 1 Part is about 1/1.1 of the entire image, and the lateral width thereof is the same (Design 1 Part has a shape similar to the entire image). In FIG. 3, FIG. 4, FIG. 5, FIG. 6 and FIG. 7, the vertical width of Design 1 Part is about 1:1.4, about 1:1.9, about 1:2.6, about 1:5.4, and about 7.3 of the vertical

width of the entire image, respectively and the lateral width thereof is the same (Design 1 Part has a shape similar to the entire image).

Further, an interval between Design 1 Part and the left end of the image in FIG. 2 is about $1/14$ of the entire image, and an interval between Design 1 Part and the right end of the image is about $1/57$ of that. An interval between Design 1 Part and the left end of the image in FIG. 3 is about $1/6$ of the entire image, and an interval between Design 1 Part and the right end of the image is about $1/12$ of that. An interval between Design 1 Part and the left end of the image in FIG. 4 is about $1/3$ of the entire image, and an interval between Design 1 Part and the right end of the image is about $1/9$ of that. An interval between Design 1 Part and the right end of the image in FIG. 5 is about $1/12$ of the entire image, and an interval between Design 1 Part and the upper end of the image is about $1/31$ of that. An interval between Design 1 Part and the right end of the image in FIG. 6 is about $1/14$ of the entire image, and an interval between Design 1 Part and the upper end of the image is about $1/21$ of that. An interval between Design 1 Part and the right end of the image in FIG. 7 is about $1/19$ of the entire image, and an interval between Design 1 Part and the upper end of the image is about $1/23$ of that.

(C) Usage and function of Design 1 Part

From FIG. 2 to FIG. 7, Design 1 Part has a function of gradually reducing and moving to the upper right of the entire screen.

The usage of Design 1 Part is to check the content of a taken photograph as a reduced image (thumbnail image).

(D) Form of Design 1 Part

The form of Design 1 Part is a vertically long rectangular shape, and an aspect ratio thereof is about 1.4:1.

B Design 2 (the issue date of the design bulletin is February 3, 2005. See Appendix 4)

(A) Regarding Design 2

Design 2 represents a liquid crystal screen of a digital camera, and a thumbnail image is pop-up displayed at the upper left of the last taken subject image 68. In FIG. 8 (A), the subject image is lateral, and the thumbnail image 69 is also lateral. In FIG. 8 (B), the subject image is lateral, and the thumbnail image 70 is vertical.

(B) Position, size, and scope of the part corresponding to the image part in the application

The part corresponding to the image part in the application in Design 2 (hereinafter, referred to as "Design 2 Part") is the thumbnail image displayed in the

image, and in FIG. 8 (A) and (B), it is arranged closer to the upper left corner of the image while a margin portion remains at a left end and an upper end of the image.

In FIG. 8 (A), the vertical width of Design 2 Part is about 1/3 of the vertical width of the entire image, and the lateral width is the same (Design 2 Part has a shape similar to the entire image). Design 2 Part of FIG. 8 (B) is a sideways version of that of FIG. 8 (A), and a ratio occupied in the entire image is the same.

Further, an interval between Design 2 Part and the left end of the image in FIG. 8 (A) and (B) is about 1/43 of the lateral width of the entire image, and an interval between Design 2 Part and the upper end of the image is about 1/24 of the entire image.

(C) Usage and Function of Design 2 Part

In FIG. 8 (A), "Thumbnail A" of a list (90) pop-up displayed at the upper right of the subject image is selected, and a thumbnail image 69 among thumbnail images 69 to 72 is displayed. In FIG. 8 (B), "Thumbnail B" is selected and the thumbnail image 70 is displayed. Design 2 Part has a function of displaying one of four types of thumbnails with different orientations by a user selecting from the four types of the thumbnails in the list.

The usage of Design 2 Part is to check a subject image as a reduced image (thumbnail image).

(D) Form of Design 2 Part

In FIG. 8 (A), the form of Design 2 Part is a laterally long rectangular shape, and an aspect ratio thereof is about 1.5:1. In FIG. 8 (B), the form of Design 2 Part is a vertically long rectangular shape, and an aspect ratio thereof is about 1:1.5.

C Design 3 (the issue date of the design bulletin is November 5, 2009. See Appendix 5)

(A) Regarding Design 3

Design 3 represents a screen displayed when a photographing mode is set in an electronic camera, and thumbnail images 31, 32, 33 reducing a picked-up image are arranged and superimposed on the picked-up image.

(B) Position, size, and scope of the part corresponding to the image part in the application

The part corresponding to the image part in the application in Design 3 (hereinafter, referred to as "Design 3 Part") comprises three thumbnail images displayed in the image of FIG. 4. The thumbnail image 31 on the left side is located slightly to the left of the center of the image, and the center thumbnail image 32 and the thumbnail image 33 on the right side are located slightly to the right of the center of the image and

slightly above the center of the right end portion, respectively.

Ratios occupied in the entire image of the three thumbnail images are the same, the vertical width of the thumbnail images is about $1/8.3$ of the entire image, and the lateral width thereof is about $1/8.6$ of the entire image.

Further, there is a very small interval between the thumbnail image on the right side and the right end of the image.

(C) Usage and function of Design 3 Part

Design 3 Part has a function of deciding a display position thereof according to a photographing position.

The usage of Design 3 Part is to check a picked-up image as a reduced image (thumbnail image).

(D) Form of Design 3 part

The form of Design 3 Part is a laterally long rectangular shape, and an aspect ratio is about 1.5:1.

D Design 4 (the issue date of the design bulletin is March 8, 2013. See Appendix 6)

(A) Regarding Design 4

Design 4 represents a screen of a digital camera, and a thumbnail image is included in an image of a person.

(B) Position, size, and scope of the part corresponding to the image part in the application

The part corresponding to the image part in the application in Design 4 (hereinafter, referred to as "Design 4 Part") is a thumbnail image displayed in an image. It is arranged while a margin portion remains on a periphery thereof in FIG. A1.1, and is arranged at the lower left in FIG. B1.1 to FIG. E1.1.

In FIG. A1.1, the vertical width of Design 4 Part is about $1/1.1$ of the vertical width of the entire image, and the lateral width is the same (Design 4 Part has a shape similar to the entire image). In FIG. B1.1 and FIG. C1.1, the vertical width of Design 4 Part is about $1/1.3$ and about $1/2.1$ of the vertical width of the entire image, respectively, and the lateral width thereof is the same (Design 4 Part has a shape similar to the entire image). In FIG. D1.1 and FIG. E1.1, the vertical width of Design 4 Part is about $1/4.1$ of the vertical width of the entire image, and the lateral width thereof is about $1/7.3$.

Further, intervals between Design 4 Part and the left end of the image and the right end of the image in FIG. A1.1 are about $1/18$ of the lateral width of the entire

image, and intervals between Design 4 Part and the upper end of the image and the lower end of the image are about $1/20$ of the vertical width of the entire image. An interval between Design 4 Part and the left end of the image in FIG. B1. 1 and FIG. C1. 1 is about $1/102$ of the lateral width of the entire image, and an interval between Design 4 Part the lower end of the image is about $1/44$ of the vertical width of the entire image. An interval between Design 4 Part and the left end of the image in FIG. D1.1 and FIG. E1.1 is about $1/35$ of the lateral width of the entire image, and an interval between Design 4 Part and the lower end of the image is about $1/22$ of the vertical width of the entire image.

(C) Usage and function of Design 4 Part

From FIG. A1.1 to FIG. D1.1, Design 4 Part has a function of gradually reducing and moving to the lower left of the entire screen.

The usage of Design 4 Part is to check the content of a taken photograph as a reduced image (thumbnail image).

(D) Form of Design 4 Part

In FIG. A1.1 to FIG. C1.1, the form of Design 4 Part is a laterally long rectangular shape, and an aspect ratio thereof is about 1:1.8. In FIG. D1.1 to FIG. E1.1, Design 4 Part is a form in which two generally rounded-corner square shapes are overlapped while slightly and diagonally deviating in position.

E Design 5 (the issue date of the design bulletin is April 11, 2017. See Appendix 7)

(A) Regarding Design 5

Design 5 represents an image for a display screen, and three icons and one section are included in the image.

(B) Position, size, and scope of the part corresponding to the image part in the application

The part corresponding to the image part in the application in Design 5 (hereinafter, referred to as "Design 5 Part") is a section displayed in the image and is located at the upper right of the entire image.

The vertical width of Design 5 Part is about $1/4.2$ of the vertical width of the entire image represented by the broken line, and the lateral width thereof is the same (Design 5 Part has a shape similar to the entire image).

Further, an interval between Design 5 Part and the right end of the image is about $1/14$ of the lateral width of the entire image, and an interval between Design 5 Part and the upper end of the image is about $1/26$ of the vertical width of the entire

image.

(C) Usage and function of Design 5 Part

In the lower part in the image, a reverse icon, an end icon, and a mute icon are lined up in order from the left, so that Design 5 is presumed to be a video phone image, and it is acknowledged that a face of a partner during a call is displayed in the entire image, and the user's face is displayed in Design 5 Part. Accordingly, the usage and function of Design 5 Part is for the user to check his/her own face during a video phone call.

(D) Form of Design 5 Part

The form of Design 5 Part is a vertically long rectangular shape, and an aspect ratio thereof is about 1.8:1.

(3) Regarding the creative difficulty of the design in the application

It will be examined whether or not the design in the application falls under the provisions of Article 3 (2) of Design Act; that is, whether or not a person skilled in the art could have easily created the design in the application.

First, although the article in the application is a smart phone type electronic computer having a camera function, and has the usage and function of enabling a user to take a photograph by tapping an optional position on a side portion, all of Design 1 to Design 5 lack such usages and functions. Therefore, since the form of the article taking a photograph by tapping an optional position on the side part is not represented in Design 1 to Design 5, it cannot be said that it could have been easily created by a person skilled in the art.

Next, although the usage of the image part in the application; that is, the usages of checking the content of the taken photograph as a reduced image (thumbnail image) and enlarging and displaying the image part in the application by tapping to check the content of the enlarged photograph were widely known before the filing of the application without citing an example, Design 1 to Design 5 do not have the function of the image part in the application; that is, the function that the user taps an optional position on the side portion of the article in the application with a thumb of a hand holding the article in the application and the image part in the application (thumbnail image) is displayed at a position (position of the front surface portion close to the optional position on the side portion) that can be tapped with the thumb of the hand at the same holding position. Therefore, it cannot be said that the form of the image having the function of the image part in the application could have been easily created by a person skilled in the art, based on Design 1 to Design 5.

Then, the form of the image part in the application is a vertically long rectangular shape with an aspect ratio of about 1.8:1, and although an image having a section with the same aspect ratio was common before the filing of the application (for example, Design 5), as recognized in (1) E above, the image part in the application slightly separates from the left end or the right end in any of the figures, and has a regularity that the interval is constant at about 1/6 of the lateral width of the image part in the application. Such an arrangement is not represented in Design 1 to Design 5, so that it cannot be said that it could have been easily created by a person skilled in the art.

Therefore, it cannot be said that the design in the application could have been easily created by a person skilled in the art, based on the designs cited in reasons for refusal stated in the examiner's decision.

No. 5 Closing

As described above, it cannot be said that the design in the application could have been easily created by a person who has ordinary skill in the field of the article based on 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 for design registration, under Article 3(2) of the Design Act, and thus the present application should not be rejected based on the reasons for refusal of the examiner's decision.

In addition, as the result of the further body's examination, no other reason for rejecting the application concerned is found.

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

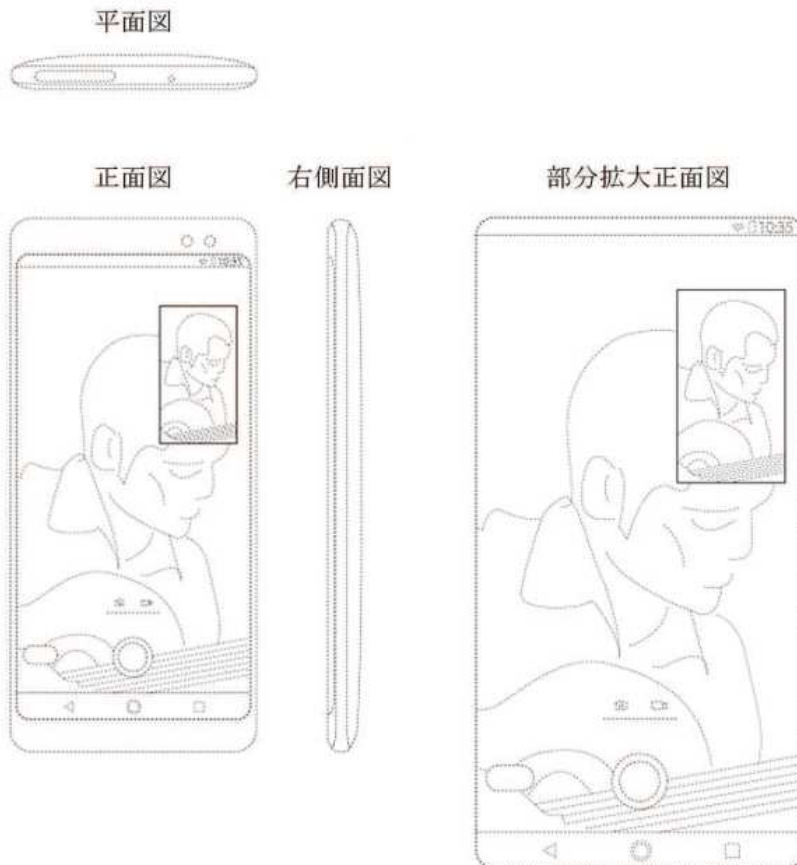
September 30, 2020

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

【意匠に係る物品】カメラ機能付き電子計算機

【意匠に係る物品の説明】本願意匠に係る物品は、スマートフォンタイプの電子計算機であり、主として手のひらで保持して使用する。側面にはセンサーが埋設されており、ユーザが手のひらで本願物品を保持した状態において側面の任意の箇所タッチすることによって写真を撮影することができる。使用状態を示す参考図 1 に表示するように側面をタッチすると、同図 2 の状態に画像が変化した上で、写真が撮影される。写真が撮影されると、正面図に示すように、当該タッチした箇所を基準としてその状態において親指でタップ等の操作をすることが容易な位置に、撮影した写真のサムネイル画像が表示される。これをタップすると当該写真が拡大表示され、ユーザは今撮影した写真の内容を確認することができる。本願では、ユーザがギターを弾く男性を撮影し、そのサムネイル画像が表示画面に表示された状態を示している。

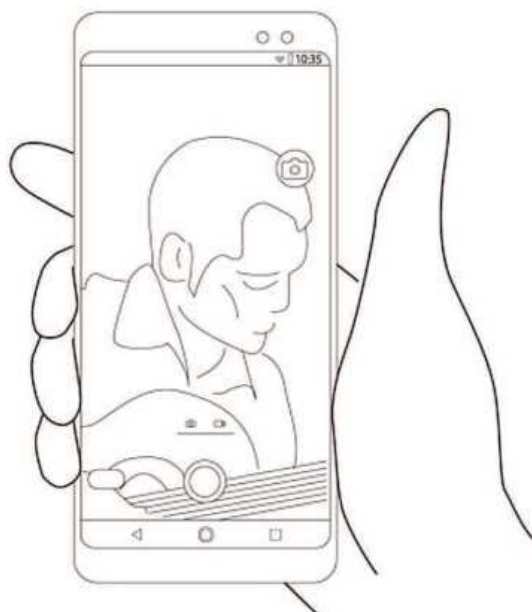
【意匠の説明】実線で表した部分が部分意匠として意匠登録を受けようとする部分である。部分拡大正面図は表示画面に表示された画像部分の拡大図である。背面図、左側面図及び底面図は、意匠登録を受けようとする部分以外の部分のみ現れるので省略する。



使用状態を示す参考図 1



使用状態を示す参考図 2



別紙第2 令和2年4月22日の「手続補正書」で
補正された願書の記載及び図面

【手続補正1】

【補正対象書類名】 意匠登録願

【補正対象項目名】 意匠に係る物品の説明

【補正方法】 変更

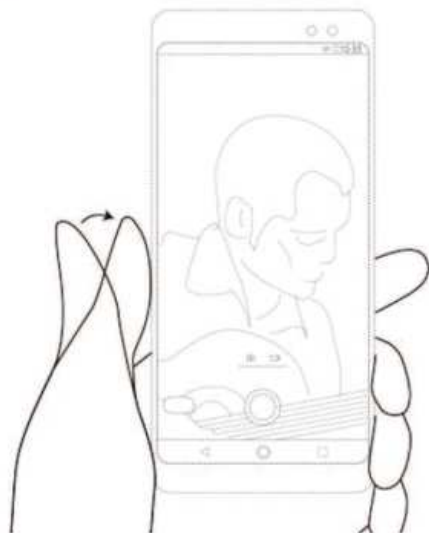
【補正の内容】

【意匠に係る物品の説明】 本願意匠に係る物品は、スマートフォンタイプの電子計算機であり、主として手のひらで保持して使用する。側部にはセンサーが具わっており、ユーザが手のひらで本願物品を保持した状態において側部の任意の箇所をタッチすることによって写真を撮影することができる。使用状態を示す参考図1に表すように側部の任意の箇所をタッチすると、同図2の状態に画像が変化した上で、写真が撮影される。写真が撮影されると、正面図に示すように、当該タッチした箇所を基準としてその状態において親指でしゅップ等の操作をすることが容易な位置に、撮影した写真のサムネイル画像が表示される。ユーザが任意の箇所Aにタッチした様子を示す図に示す任意の箇所Aにタッチした場合には、任意の箇所Aにタッチした際に現れる画像の図に表すようにサムネイル画像が表示される。同任意の箇所Bにタッチした場合には、任意の箇所Bにタッチした際に現れる画像の図に表すように、同任意の箇所Cにタッチした場合には、任意の箇所Cにタッチした際に現れる画像の図に表すように、サムネイル画像が表示される。これをタップすると当該写真が拡大表示され、ユーザは今撮影した写真の内容を確認することができる。本願では、ユーザがギターを弾く男性を撮影し、そのサムネイル画像が表示画面に表示された状態を示している。

別紙第2 令和2年4月22日の「手続補正書」で補正された願書の記載及び
図面 Appendix 2 The descriptions and drawings of the application amended by "the
written amendment" dated April 22, 2020

【手続補正2】

- 【補正対象書類名】 図面
- 【補正対象項目名】 ユーザが任意の箇所Aにタッチした様子を示す図
- 【補正方法】 追加
- 【補正の内容】
【ユーザが任意の箇所Aにタッチした様子を示す図】



【手続補正3】

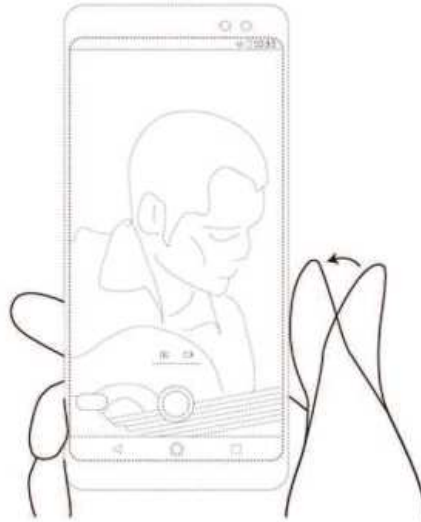
- 【補正対象書類名】 図面
- 【補正対象項目名】 任意の箇所Aにタッチした際に現れる画像の図
- 【補正方法】 追加
- 【補正の内容】
【任意の箇所Aにタッチした際に現れる画像の図】



【手続補正4】

- 【補正対象書類名】 図面
- 【補正対象項目名】 ユーザが任意の箇所Bにタッチした様子を示す図
- 【補正方法】 追加
- 【補正の内容】

【ユーザが任意の箇所Bにタッチした様子を示す図】



【手続補正5】

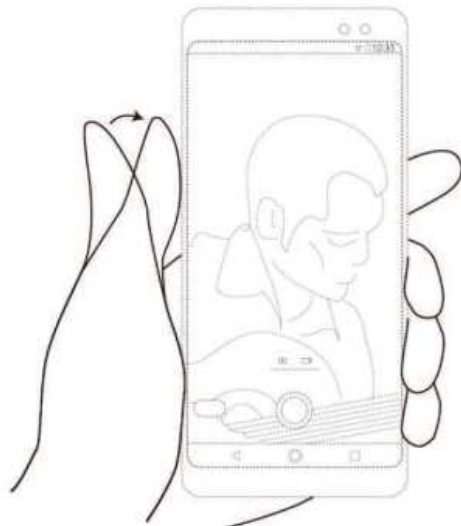
- 【補正対象書類名】 図面
- 【補正対象項目名】 任意の箇所Bにタッチした際に現れる画像の図
- 【補正方法】 追加
- 【補正の内容】

【任意の箇所Bにタッチした際に現れる画像の図】



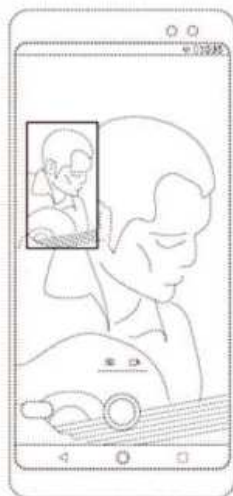
【手続補正6】

- 【補正対象書類名】 図面
- 【補正対象項目名】 ユーザが任意の箇所Cにタッチした様子を示す図
- 【補正方法】 追加
- 【補正の内容】
【ユーザが任意の箇所Cにタッチした様子を示す図】



【手続補正7】

- 【補正対象書類名】 図面
- 【補正対象項目名】 任意の箇所Cにタッチした際に現れる画像の図
- 【補正方法】 追加
- 【補正の内容】
【任意の箇所Cにタッチした際に現れる画像の図】



別紙第3 意匠1

米国特許商標公報 2015年 9月29日
携帯用情報端末機の画面（登録番号US D739880S）に係る
画像の意匠
（特許庁意匠課公知資料番号第HH27320865号）

(12) **United States Design Patent** (10) Patent No.: **US D739,880 S**
Robertson (45) Date of Patent: **** Sep. 29, 2015**

(54) **DISPLAY PANEL WITH AN ANIMATED
COMPUTER ICON**

(21) Appl. No.: 29/470,738

(22) Filed: Oct. 24, 2013

(57) **CLAIM**

The ornamental design for a display panel with an animated computer icon, substantially as shown and described.

DESCRIPTION

FIG. 1 is a front view of a display panel, showing a first image in a sequence for an animated computer icon;

FIG. 2 is a second image thereof;

FIG. 3 is a third image thereof;

FIG. 4 is a fourth image thereof;

FIG. 5 is a fifth image thereof;

FIG. 6 is a sixth image thereof; and,

FIG. 7 is a seventh image thereof.

During animation, the images transition sequentially among the images shown in FIGS. 1 through 7. The process or period in which one image transitions to another forms no part of the claimed design.

The broken line showing of a mobile device illustrates environmental matter, and the broken lines within the display panel, including the images within the thumbnails, illustrate portions of the article that form no part of the claimed design.

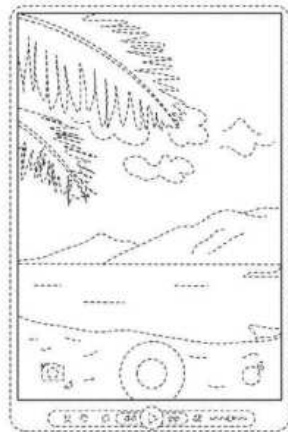


FIG. 1

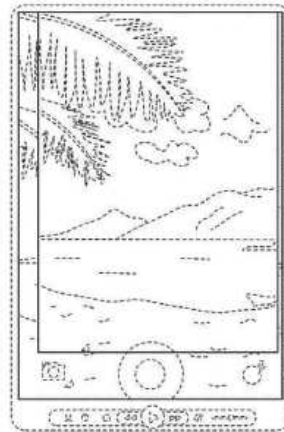


FIG. 2

携帯用情報端末機の画面（登録番号US D739880S）に係る画像の意匠 Design of image relating to Screen of Portable information terminal (Registration No. US D739880S)

（特許庁意匠課公知資料番号第HH27320865号） (Publicly Known Information in Design Division of Japan Patent Office No. HH27320865)

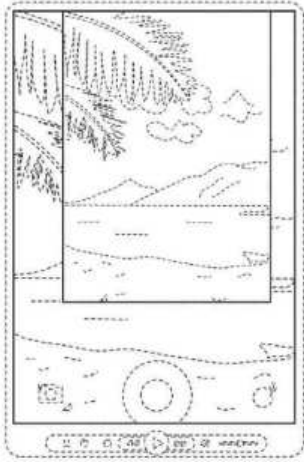


FIG. 3

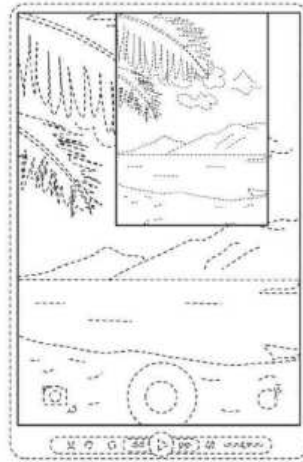


FIG. 4

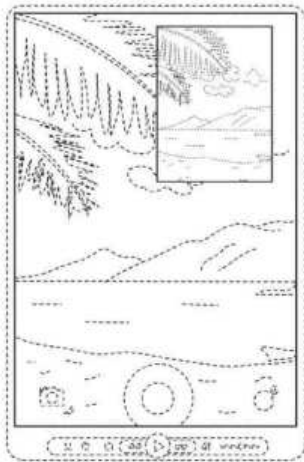


FIG. 5

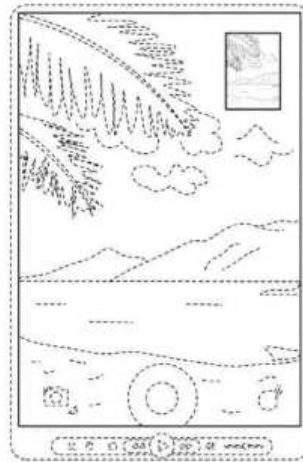


FIG. 6

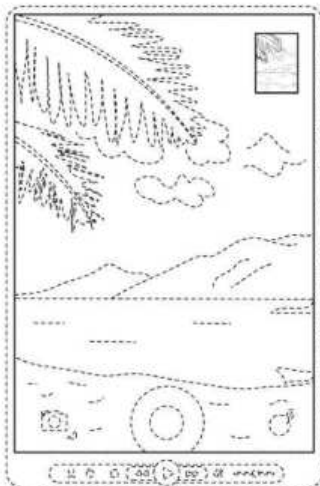


FIG. 7

別紙第 4 意匠 2

特許庁発行の公開特許公報記載
特開 2005-033384
図 8 にあらわされたデジタルカメラに係る画像の意匠

(19) 日本国特許庁 (JP)

(12) 公開特許公報 (A)

(11) 特許出願公開番号

特開 2005-33384

(P2005-33384A)

(43) 公開日 平成 17 年 2 月 3 日 (2005. 2. 3)

(21) 出願番号 特願 2003-194569 (P2003-194569)

(22) 出願日 平成 15 年 7 月 9 日 (2003. 7. 9)

(54) 【発明の名称】 デジタルカメラ

【図面の簡単な説明】

【図 8】 液晶画面にポップアップウインド形式でサムネイル画像が表示された状態を示す説明図である。

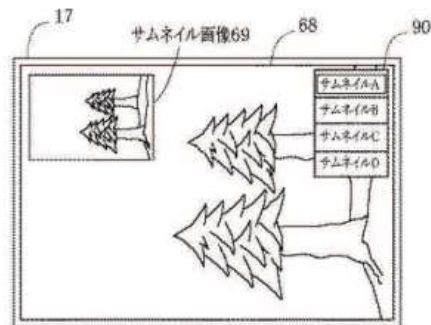
【符号の説明】

17 液晶画面

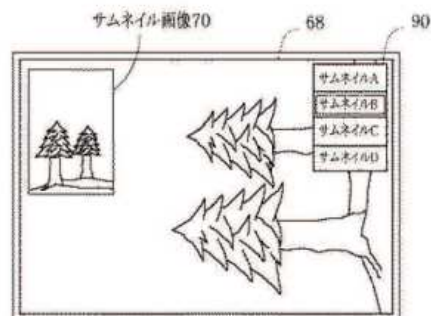
68 被写体画像

【図 8】

(A)



(B)



別紙第 4 意匠 2

Appendix 4 Design 2

特許庁発行の公開特許公報記載
applications issued by JPO

Description in publication of unexamined patent

特開 2005-033384 Japanese Unexamined Patent Application
Publication No. 2005-033384

図 8 にあらわされたデジタルカメラに係る画像の意匠 Design of image
relating to a digital camera shown in FIG. 8

特許庁発行の公開特許公報記載
特開2009-260600
図4にあらわされた電子カメラに係る画像の意匠

(19) 日本国特許庁(JP)

(12) 公開特許公報(A)

(11) 特許出願公開番号

特開2009-260600

(P2009-260600A)

(43) 公開日 平成21年11月5日(2009.11.5)

(21) 出願番号 特願2008-106517(P2008-106517)

(22) 出願日 平成20年4月16日(2008.4.16)

(54) 【発明の名称】 電子カメラ

【図面の簡単な説明】

【図4】 撮影モードが設定されたときに表示される画面の例を示す図である。

【発明を実施するための最良の形態】

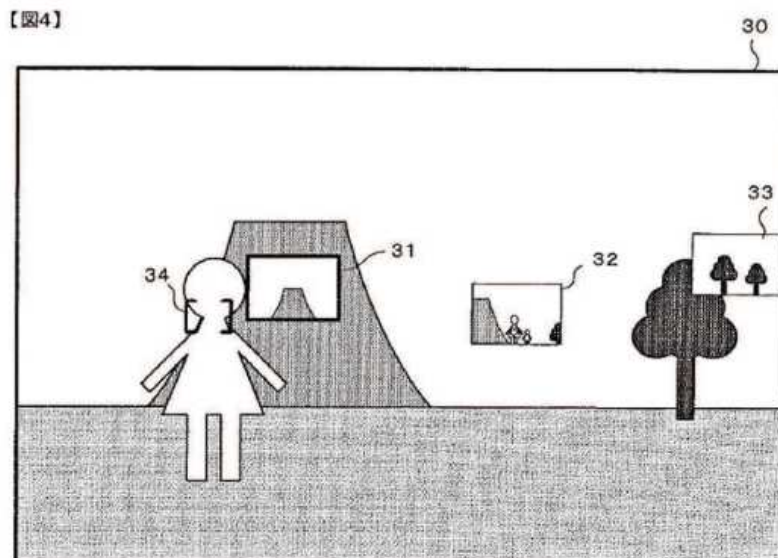
【0036】

図4は、撮影モードが設定されたときにモニタ104に表示される画面の例である。撮影モードにおいてシャッターボタン11が押されていないときには、このような画面が表示される。

【0037】

図4の画面では、スルー画像に重ねて、撮像画像を縮小したサムネイル画像31、32および33が表示されている。このサムネイル画像31～33は、いずれも前述のようにして検索された撮像画像を縮小した画像である。すなわち、メモ리카ード115、サーバ装置3のデータベース、またはデジタルカメラ4のうちで撮像画像の検索先に選択されたものから検索された撮像画像であって、その撮像位置と撮像方向がデジタルカメラ1において検出されたカメラ位置およびカメラ方向に対応する撮像画像に基づいて、サムネイル画像31～33が表示される。このときの画面中におけるスルー画像上のサムネイル画像31～33の表示位置は、当該撮像画像の撮影位置に応じて決定される。

【図4】



applications issued by JPO

特開 2009-260600 Japanese Unexamined Patent Application

Publication No. 2009-260600

図 4 にあらわされた電子カメラに係る画像の意匠 Design of image relating to
an electronic camera shown in FIG. 4

別紙第 6 意匠 4

大韓民国意匠商標公報
2013年 3月 8日 13-07号
デジタルカメラ(登録番号30-0683789)に係る画像の意匠
(特許庁意匠課公知資料番号第HH25408272号)



(19) 대한민국특허청(KR)
(12) 등록디자인공보(S)

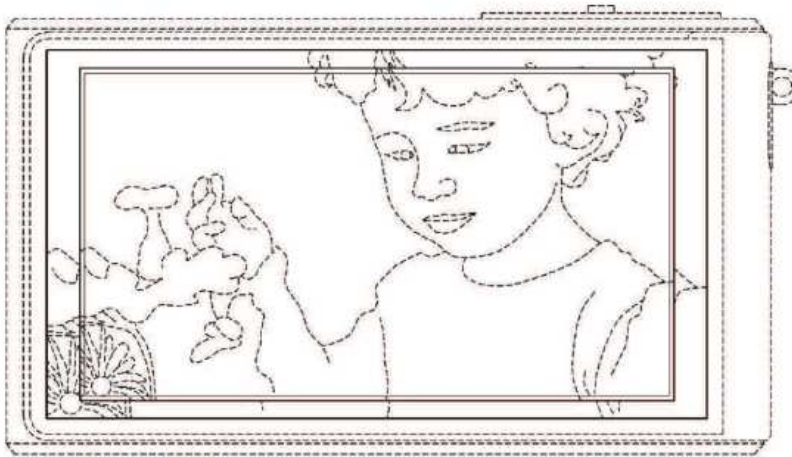
(45) 공고일자 2013년03월08일
(11) 등록번호 30-0683789
(24) 등록일자 2013년03월03일

(21) 출원번호 30-2012-0062000

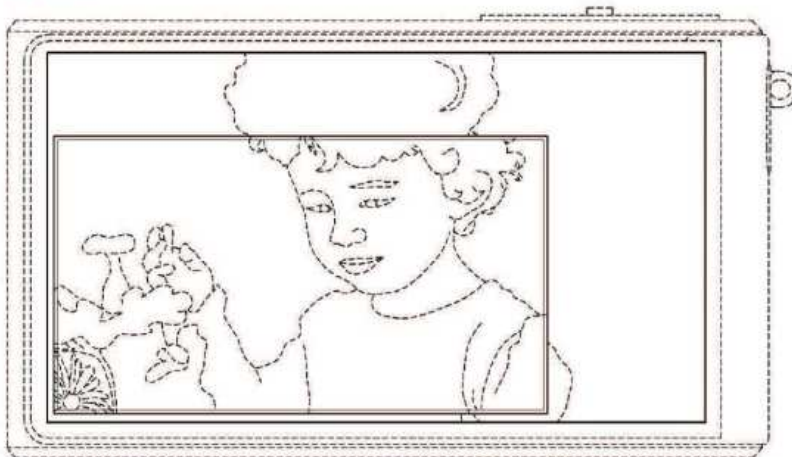
(22) 출원일자 2012년10월31일

(64) 명칭 화상디자인이 표시된 디지털 카메라

도면 A 1.1



도면 B 1.1



別紙第 6 意匠 4

Appendix 6 Design 4

大韓民国意匠商標公報 2013年 3月 8日 13-07号

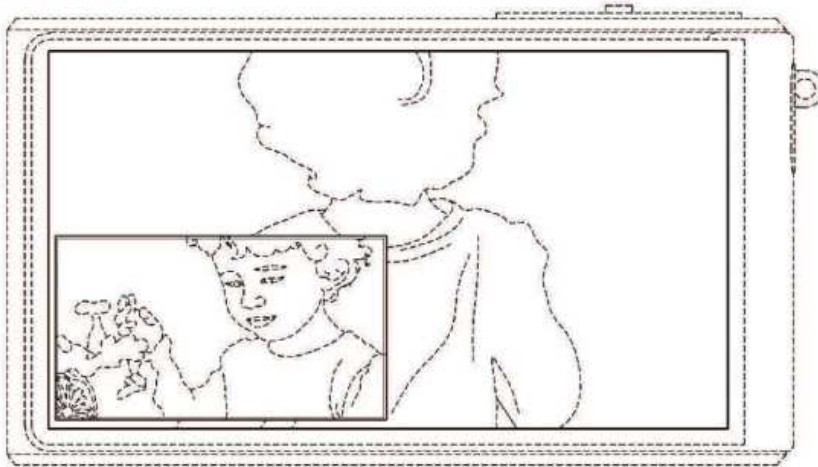
South Korean

Design Trademark Gazette No. 13-07 on March 8, 2013

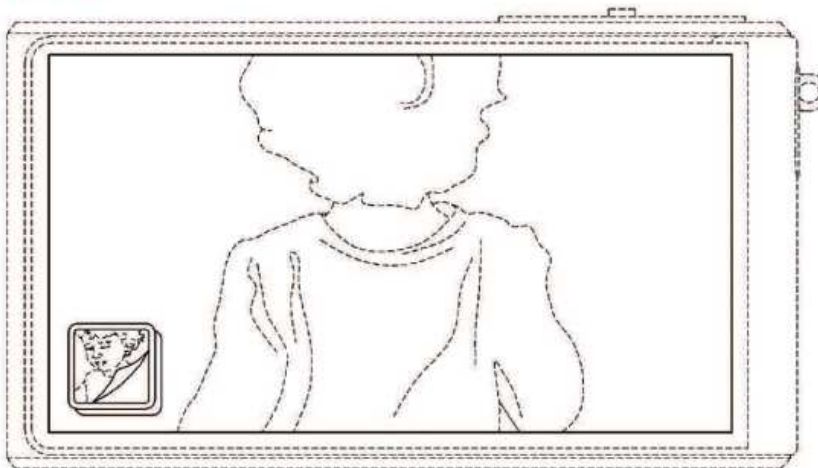
デジタルカメラ（登録番号30-0683789）に係る画像の意匠 Design
of image relating to Digital Camera (Registration No. 30-0683789)

（特許庁意匠課公知資料番号第HH25408272号） (Publicly Known
Information in Design Division of Japan Patent Office No. HH25408272)

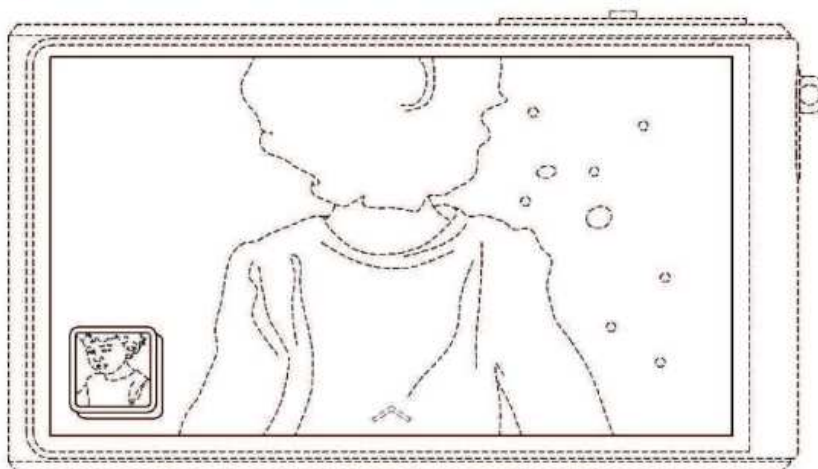
도면 C 1.1



도면 D 1.1



도면 E 1.1



別紙第7 意匠5

米国特許商標公報
2017年4月11日発行
ディスプレイスクリーン用画像（登録番号US D783640S）の
意匠
（特許庁意匠課公知資料番号第HH29307838号）

(12) **United States Design Patent** (10) Patent No.: **US D783,640 S**
Apodaca et al. (45) Date of Patent: **** Apr. 11, 2017**

(54) DISPLAY SCREEN OR PORTION THEREOF
WITH GRAPHICAL USER INTERFACE

DESCRIPTION

(21) Appl. No.: 29/576,134

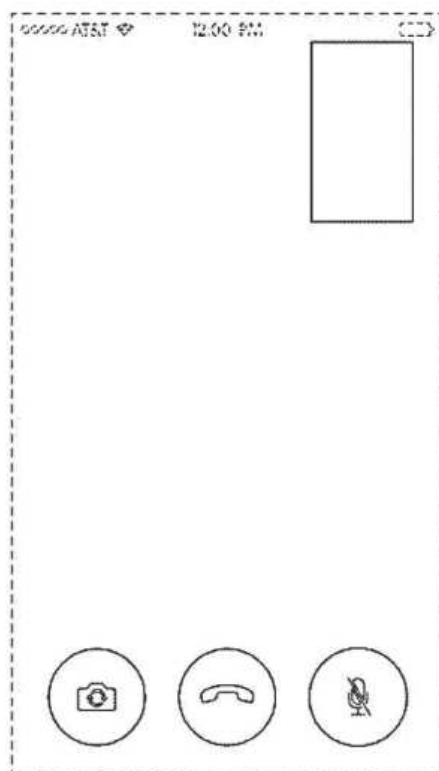
(22) Filed: Aug. 31, 2016

The FIGURE is a front view of a display screen or portion thereof with graphical user interface showing the claimed design.

The outermost broken lines in the FIGURE show a display screen or portion thereof and form no part of the claimed design. The other broken lines in the FIGURE show portions of the graphical user interface that form no part of the claimed design.

(57) **CLAIM**

The ornamental design for a display screen or portion thereof with graphical user interface, as shown and described.



別紙第7 意匠5 Appendix 7 Design 5
米国特許商標公報 2017年4月11日発行
Gazette April 11, 2017

US Patent and Trademark

ディスプレイスクリーン用画像（登録番号US D783640S）の意匠
Design of Image for Display Screen (Registration No. US D783640S)
（特許庁意匠課公知資料番号第HH29307838号） (Publicly Known
Information in Design Division of Japan Patent Office No. HH29307838)