Appeal Decision

Appeal No. 2020-5339

Appellant Clarity Inc.

Patent Attorney KIYOHARA, Yoshihiro

The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2018-26781, entitled "CUP" 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 December 7, 2018 claiming a priority under the Paris Convention (the first application: United States, June 7, 2018), and the main history of the procedures is as follows.

Dated July 29, 2019	Notice of reasons for refusal
October 18, 2019	Submission of written opinion
Dated January 20, 2020	The examiner's decision of refusal
April 20, 2020	Written request for appeal

No. 2 The design in the application

According to the description of the present application, an article to the design of the design in the application is a "CUP" 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 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 it is acknowledged 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 in accordance with the provisions of Article 3(1)(iii) because of its similarity to a prior, publicly known design). The cited design in the reason for refusal is the following design (hereinafter, referred to as "the Cited Design").

The Cited Design is the design of Design registration No. 1436977 (the article to the design, a cup with a lid) described in the design bulletin (issued on March 26, 2012 by the Japan Patent Office) (see Appendix 2).

No. 4 Comparison of the design in the application and the Cited Design

1 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 a "cup" with a lid, having usage and functions in which an outer peripheral edge (projecting portion) near a lower end of a lid portion is fitted and adhered to a double-line (a recessed portion is presumed) near an upper end of an inner peripheral surface of a body portion to enable portability.

Against this, the article to the design of the Cited Design (hereinafter, referred to as "the Cited Article") is "a cup with a lid" which has usage and functions of enabling portability. A lower end of an outer peripheral portion of a lid portion is merely placed on a double-line (projecting portion) near an upper end of an inner peripheral surface of a body portion, and the lid portion not as tightly fitted as the design in the application, so that consumers have to be careful about vibration when using it.

2 The form of the design in the application and the Cited Design

In comparison of the design in the application and the Cited Design (hereinafter, referred to as "the two designs"), mainly, the following common features and different features are recognized. Further, the form of the Cited Design is recognized according to the orientation of the design in the application.

(1) Common features in the form

(A) Overall constitution

The whole is a substantially inverted conical trapezoid bottomed cylinder (hereinafter, referred to as "the body portion") provided with a lid portion continued to the body portion by a hinge portion, and the lid portion is arranged at a lower position than an upper end of the body portion when the lid portion is fitted with an inner upper

portion of the body portion.

(B) The body portion

A tip end rib thicker than a peripheral surface is formed at the upper end portion of the body portion.

(C) The lid portion

In a top view, at a lower half portion of the lid portion fitted with the body portion, two substantially tongue piece-shaped claw portions for lifting the lid portion with fingers are symmetrically provided. The claw portions extend from an outer periphery of the lid portion and rise in an inclined plate-shape along an inner periphery of the body portion (hereinafter, referred to as "the inclined portion"), and bend outward at a position locked onto the upper end of the body portion to bulge out in a horizontal plate-shape (hereinafter, referred to as "the horizontal portion").

Further, near a lower end of the lid portion, a substantially horizontally long track-shaped drinking spout portion is formed in which an inner peripheral side end portion is slightly recessed.

(D) The hinge portion

In a top view, an upper end of the hinge portion continued to an upper part of the lid portion fitted with the body portion appears horizontally, and a ratio of the lateral width of the hinge portion to the lateral width (maximum diameter) of the body portion is about 1/3. In a rear view, a position of the hinge portion is located at a lower position than the upper end of the body portion, and the upper end of the body portion descends in an arc-shape to continue to both ends of the hinge portion (hereinafter, referred to as "the arc-shaped descending portion").

(2) Different features in the form

(a) The body portion

Near an upper end of an outer peripheral surface of the body portion of the design in the application, a projecting rib slightly projecting outward from the outer peripheral surface and having small vertical width is formed in a circumferential direction. It is presumed that a recessed groove having small vertical width is formed in the circumferential direction, near the upper end of the inner peripheral surface of the body portion (the outer peripheral edge (projecting portion) near the lower end of the lid portion is fitted in the recessed groove).

Against this, in the Cited Design, a very slight stepped portion is formed in the circumferential direction near an upper end of an outer peripheral surface of the body portion, and the stepped portion is represented as a horizontal line in a front view.

Near the upper end of the inner peripheral surface of the body portion corresponding to the position of the stepped portion, a projecting portion is formed in the circumferential direction (a very thin width projecting portion is recognized on the inner side of a tip end rib of the body portion in "the top view showing the state where the lid is opened"). Further, on the outer peripheral surface of the body portion of the Cited Design, a recessed groove having small vertical width is formed in the circumferential direction, under the stepped portion.

(b) The lid portion

(b-1) The presence/absence of a straw hole

At the center of the lid portion of the design in the application, a circular straw hole is provided, and a diameter thereof is about 1/10 of the maximum diameter of the lid portion, whereas the lid portion of the Cited Design does not have a straw hole.

(b-2) The thickness and shape of the lid portion

The lid portion of the design in the application is thick, and the thickness width thereof corresponds to the vertical width from the lower end of the hinge portion to a lower end of the projecting rib in a rear view. Against this, the lid portion of the Cited Design is thin, and the thickness width thereof corresponds to the vertical width from the lower end of the hinge portion to the stepped portion in a rear view. Further, the outer peripheral edge near the lower end of the lid portion of the design in the application is formed in a projecting shape, whereas there is no unevenness like the design in the application on the outer peripheral edge of the lid portion of the Cited Design.

(b-3) The presence/absence of a bulge

According to "the front view showing the state where the lid is opened" and "the right side view showing the state where the lid is opened" of the Cited Design, an upper surface of the lid portion when opening the lid of the Cited Design (a lower surface of the lid portion when fitted with the body portion) gradually bulges out toward the center. Against this, it is unclear whether or not there is such a bulge on the lid portion of the design in the application.

(b-4) The edge shape of the lid portion

In the design in the application, an edge shape of the lid portion fitted with the body portion is inclined inward and is represented in a double-line in a top view (hereinafter, referred to as "the inward inclined portion), whereas it is almost not inclined in the Cited Design, and is represented in a triple-line in a top view (hereinafter, referred to as "the triple-line portion").

(b-5) The position and shape of the drinking spout portion

In the design in the application, there is a gap between an outer peripheral side end portion of the drinking spout portion and the inward inclined portion, whereas, in the Cited Design, there is no gap, and an outer peripheral side end portion of the drinking spout portion is in contact with the triple-line portion. Further, a recession of an inner peripheral side end portion of the drinking spout portion has a gentle arc-shape in the design in the application, but is very slight in the Cited Design.

(b-6) The shape and layout of the claw portions

Regarding the shape of the claw portions in a top view, the inclined portion of the design in the application slightly decreases the lateral width toward the upper side, whereas the lateral width of inclined portion in the Cited Design remains equal width. Then, an outer periphery of the claw portion of the Cited Design is represented in the double-line, but an outer periphery of the claw portion of the design in the application is not represented in a double-line.

Further, an angle between the center of the two claw portions and the center of the lid portion is about 90 degrees in the design in the application, but about 100 degrees in the Cited Design.

(c) The shape of the hinge

An upper left corner portion and an upper right corner portion of the hinge in a top view have a round-corner shape in the design in the application, but have an angular shape in the Cited Design. Further, the shape of the arc-shaped descending portion in a rear view is a substantially inverted J-shape in the design in the application, but is a substantially 1/4 arc-shape in the Cited Design.

(d) The overall aspect ratio

A ratio of the total height: the maximum lateral width (maximum diameter) while the lid portion is fitted with the body portion is about 1.2:1 in the design in the application, but is about 1.9:1 in the Cited Design.

No. 5 Determination of similarity

1 Article to the design

The articles to the design of the two designs are both a cup with a lid to hold a beverage, the cup enabling portability, so that although there is a difference that the design in the application has a stronger degree of adhesion between the lid portion and the body portion as compared with the Cited Design, the usage and functions of the two designs are generally common.

2 Determination of similarity of a cup with a lid

A cup with a lid has the function of holding a beverage, and whether or not to use a straw and how to fit the lid will differ depending on the temperature and amount of the beverage. Then, consumers actually pick up the cup with a lid and observe the whole of it in consideration of such a using method, and in particular, will pay attention to the aspect of fitting the lid and the main body, the presence/absence and aspect of the straw hole, and the position and shape of the drinking spout portion. Therefore, in the determination of similarity of the design of the cup with a lid, by particularly evaluating these aspects and combining with the evaluation of other shapes, the evaluations are put together to determine the similarity of the design as a whole.

3 Evaluation of the common features in the form of the two designs

The common feature (A) about the overall constitution pointed out in the common feature in the form of the two designs; that is, the form in which a continuous lid portion is provided by a substantially inverted conical trapezoid bottomed cylinder and a hinge portion, and the lid portion is arranged at a lower position than an upper end of the body portion, and the form in which a tip end rib thicker than a peripheral surface is formed at the upper end portion of the body portion, which is pointed out in the common features (B), was widely known prior to the filing of the present application, so that it cannot be said that this form draws special attention of consumers. Further, concerning the common feature (D) related to the hinge portion, about the point that an upper end of the hinge portion appears horizontally, although a shaft part of the rotating hinge portion appears horizontally, the form of such a hinge is common. The point that the upper end of the body portion in a rear view descends in an arc-shape to continue to both ends of the hinge portion is also a common feature within a narrow range, and neither is something that the consumers pay particular attention to.

On the other hand, concerning the form of the lid portion, although the common feature that the drinking spout portion is a substantially horizontally long track-shaped is common as the form of a drinking spout portion, the form that two substantially tongue piece-shaped claw portions symmetrically provided at a lower half portion of the lid portion rise in an inclined plate-shape and bend outward to bulge out in a horizontal plate-shape gives a certain visual impression on the consumers, so that it can be said that it has a certain effect on the determination of similarity between the two designs.

4 Evaluation of the different features in the form of the two designs

Against this, the different features in the form of the tow designs are evaluated as follows, and summarizing these different features, it has to be said that that those much

affect the determination of similarity between the two designs.

First, the different feature (a) related to the body portion; that is, the difference that in the design in the application, a projecting rib (outer peripheral surface) and a recessed groove (inner peripheral surface) are formed in a circumferential direction, whereas, in the Cited Design, a very slight stepped portion (outer peripheral surface) and a projecting portion (inner peripheral surface) are formed in a circumferential direction, and furthermore, a recessed groove is formed in the circumferential direction under the stepped portion, is a difference which consumers perceive at a glance and gives a different aesthetic impression to the consumers, along with the different feature (b-2) in the thickness and shape of the lid portion.

Then, it should be said that the different feature (b-1) in the presence/absence of the straw hole draws the attention of the consumers, even if it is due to the difference in the usage of the design in the application for holding cold beverages and the Cited Design for holding hot beverages and it is common that a straw hole is circular and arranged at the center. Further, the point that both the straw hole and the drinking spout portion are arranged on the lid portion is the form peculiar to the design in the application, and along with the presence/absence of the gap between the drinking spout portion and the edge of the lid portion which are pointed out in the different feature (b-5), it can be said that it draws the attention of the consumers paying particular attention to the position and shape of the drinking spout portion.

Therefore, it has to be said that the effects of the different features (a), (b-1), (b-2), and (b-5) on the determination of similarity between the two designs are large.

On the other hand, the bulge of the upper surface of the lid portion when the lid of the Cited Design is opened, which is pointed out in the different feature (b-3), is gentle and inconspicuous, and the different feature (b-4) related to the edge shape of the lid portion and the different feature (c) related to the shape of the hinge are also a different feature within a narrow range. Neither is something that the consumers pay particular attention to.

Further, the difference in the shape of the claw portions (whether or not the lateral width of the inclined portion is equal width, and whether or not the outer periphery is in a double-line) or the difference in the layout of the claw portions (an angle of the design in the application is 90 degrees, and an angle of the Cited Design is 100 degrees), which are pointed out in the different feature (b-6), are both slight differences and cannot be said to be the differences that consumers pay particular attention to. Also, concerning the difference that a ratio of the total height: the maximum lateral width (maximum diameter) is about 1.2:1 (the design in the

application), but is about 1.9:1 (the Cited Design), considering that there are various aspect ratios in the design of cups, it is hard to say that the consumers pay particular attention to the difference.

Therefore, the effects of the different features (b-3), (b-4), (c), and (d) on the determination of similarity between the two designs are small.

5 Determination of similarity between the two designs

On the basis of the evaluations of the common features and different features in the form of the two designs, when comprehensively observing the design as a whole, in the two designs, although the common feature about the two substantially tongue piece-shaped claw portions has a certain effect on the determination of similarity between the two designs, the effects of the other common features in the form of the two designs on the determination of similarity between the two designs are comprehensively small. Then, the effects of the different features (a), (b-1), (b-2), and (b-5) on the determination of similarity between the two designs are all large, and even if the effects of the other different features on the determination of similarity between the two designs are small, it has to be said that those overwhelm the common features in the form and much affect the determination of similarity between the two designs.

Therefore, although the usage and functions of the articles to the design of the two designs are generally common, since concerning the form of the two designs, the different features overwhelm the common features and give the impression that the two designs differ from each other, 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 similarity to the Cited Design in the examiner's decision, it cannot be judged that the design in the application should be refused under the provision of Article 3(1)(iii) of the Design Act.

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

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

October 14, 2020

Chief administrative judge: KITASHIRO, Shinichi

Administrative judge: KOBAYASHI, Hirokazu

Administrative judge: HAMAMOTO, Fumiko

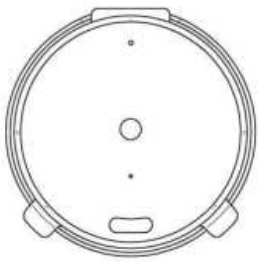
別紙第１　　本願意匠（意願２０１８－０２６７８１）

【意匠に係る物品】カップ

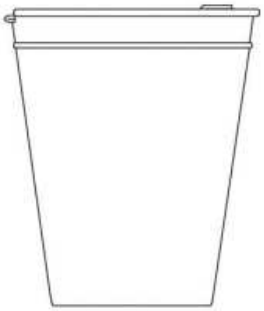
【意匠に係る物品の説明】本願意匠に係る物品は、一体成型ヒンジと、内側デュアルシールを有する凹状の蓋とを備えたカップである。

【意匠の説明】陰影および破線は意匠を構成しない。

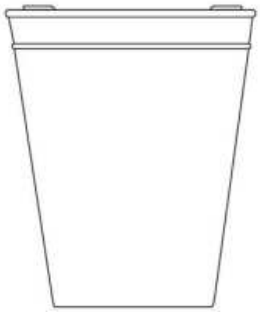
平面図



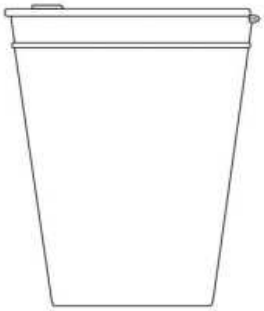
左側面図



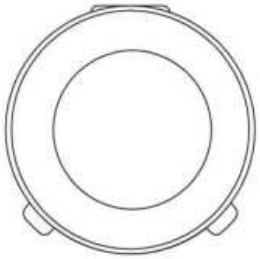
正面図



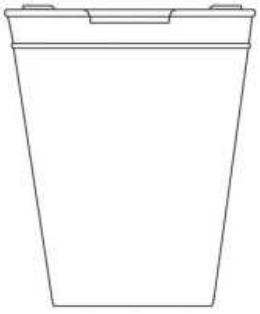
右側面図



底面図



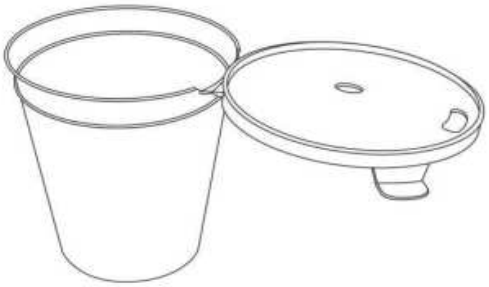
背面図



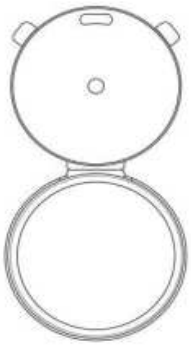
design in the application (Japanese Design Application No. 2018-026781)

参考斜視図

蓋を開けた状態の参考斜視図

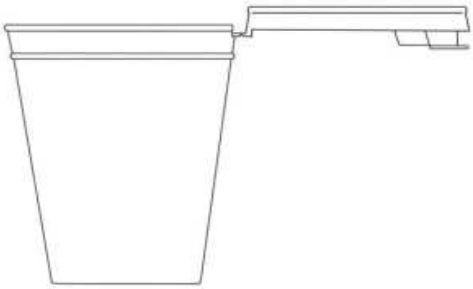


蓋を開けた状態の参考平面図



蓋を開けた状態の正面の参考図

蓋を開けた状態の右側面の参考図



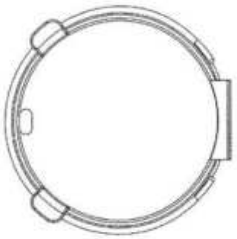
別紙第２　　引用意匠

特許庁が平成２４年(２０１２年)　３月２６日に発行した意匠公報記載
意匠登録第１４３６９７７号

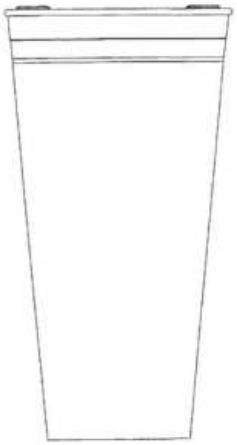
【意匠に係る物品の説明】本物品は、熱い液体を維持でき、かつ蓋を開け閉めできる蓋付きカップである。

【意匠の説明】背面図は正面図と同一にあらわれるため省略する。

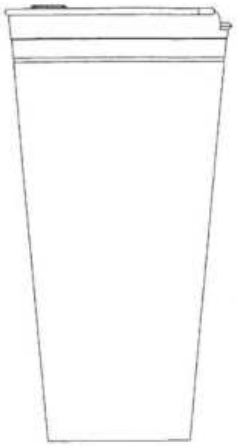
平面図



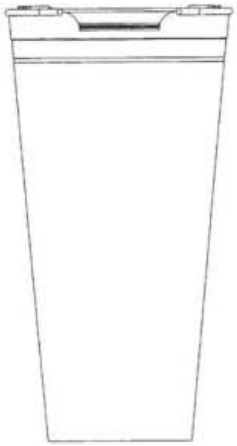
左側面図



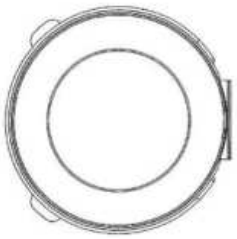
正面図



右側面図



底面図



別紙第２　引用意匠　　Appendix 2　The Cited Design
特許庁が平成２４年（２０１２年）３月２６日に発行した意匠公報記載

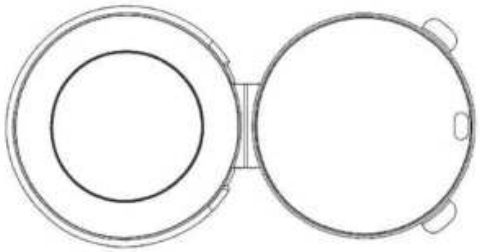
Description in the design bulletin issued on March 26, 2012 by the Japan Patent Office

意匠登録第１４３６９７７号　　Design registration No. 1436977

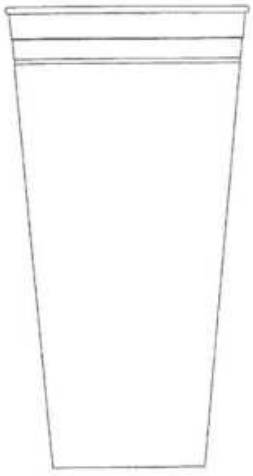
参考図

蓋を開けた状態を示す参考図

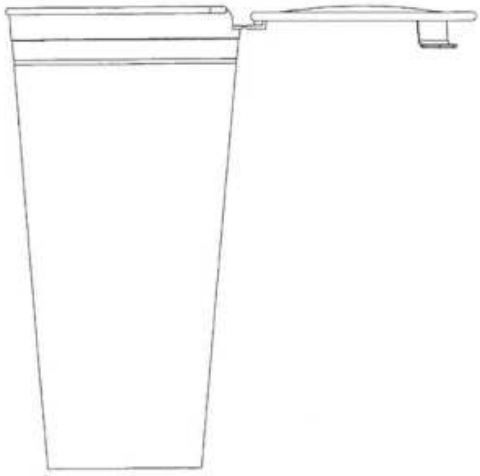
蓋を開けた状態を示す平面図



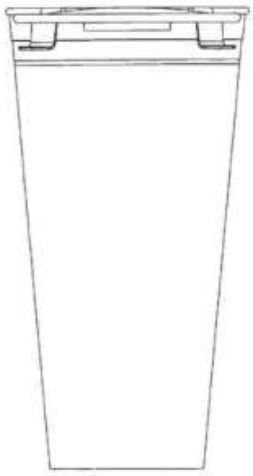
蓋を開けた状態
を示す左側面図



蓋を開けた状態を示す正面図



蓋を開けた状態
を示す右側面図



蓋を開けた状態を示す底面図