

Appeal Decision

Appeal No. 2021-5461

Appellant	ARPER S.P.A.
Patent Attorney	KURATA, Masatoshi
Patent Attorney	KOIDE, Toshimi
Patent Attorney	KIMOTO, Naomi

The case of appeal against the examiner's decision of refusal of Japanese Design Application No. 2019-500980, entitled "Coffee table" 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 international application for design registration of which date of international registration is September 13, 2019 (claiming a priority date of March 29, 2019 under the Paris Convention with the World Intellectual Property Organization). In response to a notice of reasons for refusal dated June 8, 2020, a written opinion was submitted on September 10, 2020. An examiner's decision of refusal was then issued on January 25, 2021. In response to this, a demand for appeal against the examiner's decision of refusal was made on April 27, 2021.

No. 2 Design of the present application

The article to the design of the design of the present application is "Coffee table (an example Japanese translation: "Kohhi teiburu". Hereinafter, the Japanese translation will be used.)", and the shape, patterns, or colors of the design, or any combination thereof (hereinafter, "the shape, patterns, or colors, or any combination thereof" will be referred to as the "form") is as described in the written application and the drawings attached to the written application (hereinafter, referred to as "present design ". See Appendix 1).

No. 3 Reason for refusal of the examiner's decision

The reason for refusal given in the examiner's decision is that present design is similar to a design that were described in a distributed publication or a design that were made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the present application, and thus present design falls under the design prescribed in Article 3(1)(iii) of the Design Act (a design that may not be registered because the design is similar to a prior, publicly known design).

The Cited Design is the design of the international registration No. DM/090078, the design number 35 (of which the article to the design, table) (a part of the design of the table corresponding to present design) which is described in the International Designs Bulletin (of which date of issue is April 22, 2016) issued by the World Intellectual Property Organization (WIPO) (hereinafter, referred to as "Cited Design". See Appendix 2).

No. 4 Judgment by the body

Hereinafter, the applicability of Article 3(1)(iii) of the Design Act to the design of the application will be examined and determined; that is, it will be examined and determined whether or not the design of the application is a design similar to the Cited Design.

1 Comparison

(1) Comparison of the articles to the designs

The article to present design and the article to the Cited Design (hereinafter referred to as "two designs") both relate to low-height tables and are common.

(2) Comparison of the forms of the two designs

The forms of the two designs being compared, the following commonalities and differences are recognized in the forms.

In addition, Fig. 2.2 of present design is defined as "front view", and comparisons will be made with the Cited Design in the orientations of the drawings of present design.

a. Commonalities

(a) Overall configuration

The table is a low-height table consisting of a tabletop, which is a thin board having an oblong rectangle shape in top view, and leg portions supporting the tabletop, wherein the leg portions include four approximately L-shaped leg members located below the four corners of the tabletop (hereinafter referred to as "leg members").

(b) Form of the leg portions

(b-1) The form is that the leg portions are made of thin boards assembled in an upright orientation, and the leg members extend diagonally from the center of the bottom of the tabletop toward the four corners of the tabletop and bend at the positions of the four corners of the tabletop.

(b-2) The form is that the bend portions of the leg members have rounded inner sides and are slightly narrowed downward.

(c) Form of the tabletop and the leg members at the four corners

The form is that when viewed from above at an angle, there is a small gap between the tabletop and the respective leg members below it at the four corners.

b. Differences

(a) Overall configuration

The entire table of present design has a width to height ratio of approximately 4 to 1, whereas the entire table of the Cited Design has a width to height ratio of approximately 5.5 to 1.

(b) Form of the tabletop

(b-1) Aspect ratio of the tabletop

The tabletop of present design has an aspect ratio of approximately 1 to 2, whereas the aspect ratio of the table of the Cited Design is unknown as a perspective view is only provided.

(b-2) Form of the side surfaces of the tabletop

Present design includes side surfaces of the same width wherein the side surfaces at long and short sides are both substantially perpendicular to the top surface, whereas the form of the Cited Design is that, although the side surfaces at long and short sides are both substantially perpendicular to the top surface, the bottom surface is cut off at an angle.

(c) Form of the leg portions

(c-1) Configuration of the leg portions in bottom view

Present design has a configuration made up of a single horizontal member in the center and four leg members extending at an angle of 45 degrees toward the respective corners of the tabletop via joint members at the right and left ends of the horizontal member, whereas, although it is recognized that the Cited Design has a form including four leg members wherein at least two of the leg members on the front side diagonally extend from the horizontal member, the specific configuration of the horizontal member and leg members is unknown as no drawing in bottom view is provided.

(c-2) Regarding the horizontal member

The horizontal member of present design has a length approximately 1/2 the entire

width, whereas the horizontal member (the width of the base portion where the left and right leg portions diagonally extend) of the Cited Design is approximately 4/5 the entire width.

(d) Form of the support of the tabletop and the leg portions

Present design has a configuration in which support members each having a short cylindrical shape and directly supporting the tabletop are placed on the top surfaces of the four leg members, so that gaps at regular intervals are provided between the tabletop and the leg portions, whereas the form of the support of the tabletop and the leg portions of the Cited Design is unknown; although gaps are seen between the tabletop and the leg portions at the four corners, the specific form regarding how the gaps are configured is unknown.

2 Judgment of similarity

(1) Judgment of similarity of the articles to the designs of the two designs

The articles to the designs of the two designs are identical.

(2) Judgment of similarity of the forms of the two designs

The two designs both relate to low-height tables, and the main demanders are consumers who purchase such tables for their homes, stores, etc., where they look down at the table from above at an angle in normal use, and it can be said that they pay attention to not only the form resulting from the structure of the table but also the details.

a. Evaluation of the commonalities and the differences

A Evaluation of the commonalities

The commonality (a) is merely a form conventionally adopted commonly in the field of the subject article and has a small influence on the judgment of similarity of the forms of the two designs.

The commonalities (b-1) and (b-2) form the basic configurations of the leg portions of the two designs; however, these commonalities are also found in designs such as the reference design (see Appendix 3), and thus these commonalities have merely a limited influence on the judgment of similarity of the two designs.

The commonality (c) gives a common impression to consumers in normal use, and has a certain degree of influence on the judgment of similarity of the two designs.

Reference design (Appendix 3)

The design of the “table” described in the European Union Designs Bulletin (the design registration number: 001452049-0068) issued by the European Union Intellectual

Property Office (JPO Design Division Publication Material Number HH28205793).

B Evaluation of the differences

The difference (a) in the overall configuration is merely a difference to the extent that it is far less prominent in the commonality of low-height tables, and has a small influence on the judgment of similarity of the two designs.

The differences (b-1) and (b-2) in the forms of the tabletops are both common forms in the field of the subject article, and have a small influence on the judgment of similarity of the two designs.

The difference (c-1) in the leg portions relates to the configuration of the leg portions although many parts of the leg portions are hidden under the tabletop, and thus this difference has a certain influence on the judgment of similarity of the two designs.

The difference (c-2) is a part that is visible to a certain extent even during use, and has a certain influence on the judgment of the similarity of the two designs.

The difference (d) in the form of the support of the tabletop and the leg portions is a feature that consumers pay attention to and that characterizes present design, whereas the specific form of the support of the tabletop and the leg portions of the Cited Design is unknown, and thus it should be mentioned that this difference has a significant influence on the judgment of similarity of the two designs.

b. Judgment of similarity of the two designs based on the evaluation of the commonalities and the differences

As described in the preamble of (2) above, the main consumers of the two designs who purchase the tables for their homes, stores, etc., and it can be said that they pay attention not only to their normal use, but also to the form resulting from the structure as well as the details.

Therefore, when the designs as a whole are observed comprehensively, based on the evaluation of the commonalities and differences in the forms of the two designs, it is deemed that, as described in the above (2) A, the commonality (a) has a small influence on the judgment of similarity of the two designs, and the commonalities (b-1) and (b-2) also have merely a limited influence, whereas the commonality (c) has a certain degree of influence on the judgment of similarity, but it is limited to the occasion of normal use.

In contrast, as described in the above (2) B, although the differences (a), (b-1) and (b-2) have a small influence on the judgment of similarity of the two designs, the

differences (c-1) and (c-2) have a certain influence on the judgment of similarity of the two designs, and in particular, the difference (d) has a significant influence on the judgment of similarity of the two designs.

Therefore, when the overall forms of the two designs are observed comprehensively, the forms of the two designs have commonalities that have a certain degree of influence on the judgment of similarity; however, such commonalities are limited to the occasion of normal use, and the differences have a more significant influence; thus the forms of the two designs are not similar.

(3) Summary

Thus, while the articles to the designs of the two designs are identical, the forms of the two designs are not similar. Therefore, present design and the Cited Design are not similar.

No. 5 Conclusion

As thus described, present design is not similar to the Cited Design and does not apply to a design listed in Article 3(1)(iii) of the Design Act. Therefore, the present application shall not be refused due to the reason for refusal given in the examiner's decision.

Moreover, no other reasons for refusing the present application have been found. Therefore, the appeal decision shall be made as described in the Conclusion.

August 2, 2021

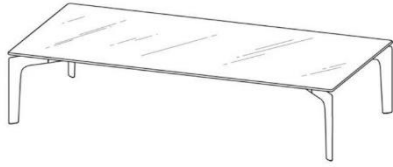
Chief administrative judge: KOBAYASHI, Hirokazu
Administrative judge: KITASHIRO, Shinichi
Administrative judge: SHODA, Takeshi

別紙第1 本願意匠（意願2019-500980）

C・P

【意匠に係る物品】Coffee table

2. 1



2. 2



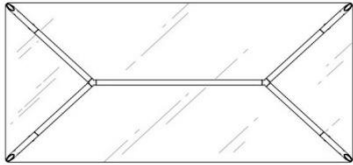
2. 3



2. 4



2. 5



別紙第1	Appendix 1
本願意匠（意匠2019-500980）	Present design (Design 2019-500980)
【意匠に係る物品】	[Article to the design]

別紙第2 引用意匠

公報発行官庁： 世界知的所有権機関（WIPO）
 文献名： 国際意匠公報
 国際登録番号： DM/090078
 意匠番号： 35
 テーブルの意匠（テーブルの意匠の内、本願意匠に相
 当する部分）
 公報発行日： 2016年 4月22日
 出願日： 2015年11月 2日
 登録日： 2015年11月 2日
 （特許庁意匠課公知資料番号第HH28504230号）



別紙第2	Appendix 2
引用意匠	Cited Design
公報発行官庁：世界知的所有権機関（WIPO）	Bulletin issuing office: World Intellectual Property Organization (WIPO)
文献名：国際意匠公報	Publication name: International Designs Bulletin
国際登録番号：DM/090078	International registration No. DM/090078
意匠番号35	Design number 35
テーブルの意匠（テーブルの意匠の内、本願意匠に相当する部分）	Design of the table (a part of the design of the table corresponding to present design)
公報発行日：2016年4月22日	Date of issue of Bulletin: April 22, 2016
出願日：2015年11月2日	Date of application: November 2, 2015
登録日：2015年11月2日	Date of registration: November 2, 2015
特許庁意匠課公知資料番号第HH28504230号	JPO Design Division Publication Material Number HH28504230

別紙第3 参考意匠

欧州連合意匠公報
2016年11月4日発行
(登録番号001452049-0068)に表されている
「テーブル」の意匠
(特許庁意匠課公知資料番号第HH28205793号)

0068. 1



0068. 2



別紙第3	Appendix 3
参考意匠	Reference design
欧州連合意匠公報	European Union Designs Bulletin
2016年11月4日発行	Issued on November 4, 2016
(登録番号001452049-0068)に表されている「テーブル」の意匠	Design of the “table” shown in (registration number 001452049-0068)
特許庁意匠課公知資料番号第HH28205793号	JPO Design Division Publication Material Number . HH28205793