

## Appeal Decision

Appeal No.2021-8857

Appellant TOYOTA HOUSING CORPORATION

Patent Attorney YAMADA, Tsuyoshi

Patent Attorney HIROTA, Miho

The case of appeal against the examiner's decision of rejection of Japanese Design Application No. 2020-17885, entitled “PREFABRICATED HOUSE” has resulted in the following appeal decision.

### Conclusion

The examiner's decision is revoked.

The design of the present application shall be registered.

### Reason

#### No. 1 History of the procedures

The present application is a design registration application filed August 26, 2020, which seeks to be granted design registration for a part of an article. In response to the Notice of Reasons for Rejection dated January 25, 2021, a written opinion was submitted February 22, 2021. However, a decision of rejection was issued April 26, 2021. Again in response to that, an appeal against the examiner's decision of rejection was requested July 2, 2021.

#### No. 2 Design of the present application

In the design of the present application (hereinafter, referred to as “present design”), the article embodying the design is an “prefabricated house”, and the shape or equivalent features (the shape, patterns or colors, or any combination) thereof is as described in the description of the application and the drawings attached to the application. In other words, “A part represented by a solid line is the part for which the design registration is to be requested. A dashed line is a line indicating only a boundary between

the part for which the design registration is to be requested as a partial design and other parts. Since the prefabricated house is a heavy object, a bottom view thereof is omitted.” (Hereinafter, in the present design, as a part of the article, the part for which the design registration is to be requested is referred to as “present part.”) (See Appended I)

### No. 3 Reasons for rejection in the examiner's decision and Cited Design

As the reasons for rejection in the examiner's decision, the present design falls under the design listed in Design Act Article 3(1)(iii) (the design cannot be registered because the design is similar to a prior, known design) for the reason that the present design is similar to the design that were contained in a distributed publication, or designs that were made publicly available through a telecommunications line in Japan or a foreign country, prior to the filing of the present design (Hereinafter, referred to as “Cited Design.”).

Cited Design (See Appended II)

Title: To Person Who Searches for Land, Holding of Subdivision Visitation Reservation Fair in 2020

Posting Place: SBC Housing Park homepage

Medium Type: [online]

Posting Date: January 26, 2016

Searching Date: January 7, 2021

Information Source: Internet

Information Address: A part corresponding to the present part of the present application of the design of the prefabricated house was posted at URL: <http://www.sbchp.jp/saku/sekisui/blog.php>

### No. 4 Judgment by the body

#### 1 Comparison between the present design and Cited Design

##### (1) Articles embodying Designs

Because the article embodying the present design is an “prefabricated house” and the article embodying Cited Design is also an “prefabricated house”, the articles related to the present design and Cited Design (hereinafter, referred to as “both designs”) coincide.

(2) Usages and functions of the present part and a part of Cited Design compared with the present part

Regarding the usages and the functions of the present part and the part of Cited Design compared with the present part, that is, a part that corresponds to the present part (hereafter, referred to as a “cited part”, and the present part and the cited part are collectively referred to as “both parts”), both parts include a roof of a two-story prefabricated house, a wall surface of a second floor directly under the roof, a balcony of the second floor, and an outer wall of a front surface obtained by integrating a wall surface of a first floor and a spandrel wall of the balcony of the second floor, therefore, the usages and the functions of both parts coincide.

(3) Positions, sizes, and scopes of both parts

Both parts include:

A: A range obtained by horizontally cutting from a leading end (eaves) of an upper surface of a shed roof to a slightly rear side, and a front surface and a bottom surface of the roof continuous with the range;

B: A wall surface of a front surface of a room of the second floor (hereinafter, referred to as “second floor wall surface”) disposed behind the eaves directly under the roof, and a floor surface, and, an inner surface and an upper surface of the spandrel wall of the balcony of the second floor touching the wall surface; and

C: An outer wall of the front surface obtained by integrating the wall surface of the first floor and an outer surface of the spandrel wall of the balcony of the second floor; therefore, the positions, sizes, and scopes of both parts coincide.

(4) Shapes or equivalent features of both parts

The shapes or equivalent features of both parts mainly have the following common points and differences.

In the appeal decision, the orientation of a drawing of Cited Design is matched with the orientation of a drawing of the present design.

A: Common Points

The common points are as follows:

(a) The entire structure includes the roof, the wall surface of the second floor, the balcony of the second floor in contact with the wall surface of the second floor, and the outer wall of the front surface obtained by integrating the first floor and the spandrel wall of the balcony of the second floor;

(b) The roof has a substantially horizontally long, rectangular plate shape in a top view, and is inclined toward a front side;

- (c) The wall surface of the second floor has a substantially horizontally long, rectangular shape having a width smaller than a horizontal width of the roof, and an area nearly half of the entire wall surface located near an end portion thereof is excluded forming a substantially rectangular shape; and
- (d) The outer wall of the front surface has a substantially horizontally long, rectangular shape having substantially the same width as that of the wall surface of the second floor, and is partially cut out in a substantially rectangular shape from a bottom to a height of about more than half to form an entrance/exit.

#### B: Differences

The differences are as follows:

- (a) Regarding horizontal widths of the roof, the wall surface of the second floor, and the outer wall of the front surface (hereinafter, the wall surface of the second floor and the outer wall of the front surface are collectively referred to as “both wall surfaces”), in the present part, the horizontal widths of both wall surfaces are narrower than the horizontal width of the roof by about 20%, whereas in the cited part, the horizontal widths of both wall surfaces are slightly narrower than the horizontal width of the roof;
- (b) In the present part, the excluded part of the wall surface of the second floor is located on a left side, whereas in the cited part, the excluded part of the wall surface of the second floor is located on a right side;
- (c) Regarding a depth of the balcony, in the present part, the depth is a length about less than half of the horizontal width, whereas in the cited part, the depth is unknown since the depth is not shown in the drawings; and
- (d) Regarding the doorway of the outer wall on the front surface, in the present part, the left side is opened to a length about less than 60% of the entire width, whereas in the cited part, the wall surface is cut out from a right end to near the center part and a support post is attached to the right end.

#### 2 Similarity judgment

An effect of the common points and the differences described above on the similarity judgment between both designs is evaluated and integrated, and similarities between both designs are examined and determined as an entire design.

##### (1) Articles embodying the designs

The articles embodying both designs are identical.

##### (2) Usages, functions, positions, sizes, and scopes of both parts

The usages, functions, positions, sizes, and scopes of both parts coincide.

(3) Evaluation of the common points and the differences in the shapes or equivalent features of both parts

Hereinafter, the shapes or equivalent features of both parts will be examined.

A: Evaluation of common points in shapes or equivalent features of both parts

In the field of this type of article, the article is an aspect that can also be seen in addition to both parts (for example, a design of Japanese Registered Design No. 1488535), in which the entire structure includes the roof, the wall surface of the second floor, the balcony of the second floor in contact with the wall surface of the second floor, and the outer wall of the front surface obtained by integrating the first floor and the spandrel wall of the balcony of the second floor, the roof has a substantially horizontally long, rectangular plate shape in a top view that is inclined toward a front side, the wall surface of the second floor has a substantially horizontally long, rectangular shape having a width smaller than the horizontal width of the roof, and the outer wall of the front surface has a substantially horizontally long, rectangular shape having substantially the same width as that of the wall surface of the second floor and is partially cut out in a substantially rectangular shape from the bottom of the outer wall to the height of about more than half to form the doorway. The article cannot be said to be an aspect that is common only to both parts, and therefore, the common points described above must be said to be common aspects when the shape, and the like of both parts are generally understood, and the effects of these common points on the similarity judgment of both parts are small.

B Evaluation of the differences in the shapes or equivalent features of both parts

Regarding (a), when the article is viewed from the front, in the present part, both ends of the roof largely protrude to left and right from both wall surfaces, appear in a large step shape, and are very conspicuous. It can be said that a visual impression given to a consumer is completely different as compared with the cited part in which the part does not protrude so much, so that the effect on the similarity judgment of both parts is large.

Regarding (b) and (c), a position of the excluded part in (b) is shifted to either the left or the right or in the center, which is generally seen in designs other than both parts, and for that reason, it can be said that the aspects of both parts are also within a range of a generally-performed modification. Regarding the depth of the balcony in (c), in illustration of only a drawing obtained by viewing the cited part from the front, the depth is unknown, but even though this point is unknown, the depth of the balcony of the cited part can be assumed to be within a common knowledge range, and for that reason, the effect on the similarity judgment of both parts is small.

Regarding (d), similar to (b) above, shifting the doorway to either the left or the right is generally seen; it can be said that the difference in the length of the horizontal width is also within the range of the generally-performed modification. However, the present part in which the left side is opened with leaving a margin and the cited part in which the wall surface is cut out from the right end to near the center part and the support post is attached on the right end can be said to be different aspects at first glance, it can be said that attention of the consumer is strongly drawn to the outer wall of the front surface since the outer wall of the front surface is the most visible portion of the first floor of the house, and for that reason, the effect on the similarity judgment of both parts is large.

C: Evaluation of the shapes or equivalent features of both parts

As described above, the influence of the common points on the similarity judgment of both parts is small, in the differences, the effect of the difference (b) and the difference (c) on the similarity judgment of both parts is small, but the effect of the difference (a) and the difference (d) on the similarity judgment of both parts is large, and for that reason, the effect of all the differences on the similarity judgment of both parts is large.

### 3 Summary

Therefore, regarding both designs, the articles embodying the designs are identical, the usages, the functions, the positions, the sizes, and the scopes of both parts coincide. However, in the shapes or equivalent features, the common points do not yet determine the similarity judgment of both parts, whereas the influence of the differences on the similarity judgment of both parts surpasses that of the common points, when both designs are seen as entire designs, both parts should have different visual impressions, and for that reason, the present design cannot be said to be similar to Cited Design.

### No. 5 Closing

As described above, because the design of the present application cannot fall under the design listed in Design Act Article 3(1)(iii) with reference to Cited Design of the examiner's decision, the present design should not be rejected for the reasons for rejection in the examiner's decision.

In addition, as a result of further body's examination, other reasons why the present application should be rejected were not found.

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

November 16, 2021

Chief administrative judge: KOBAYASHI, Hirokazu

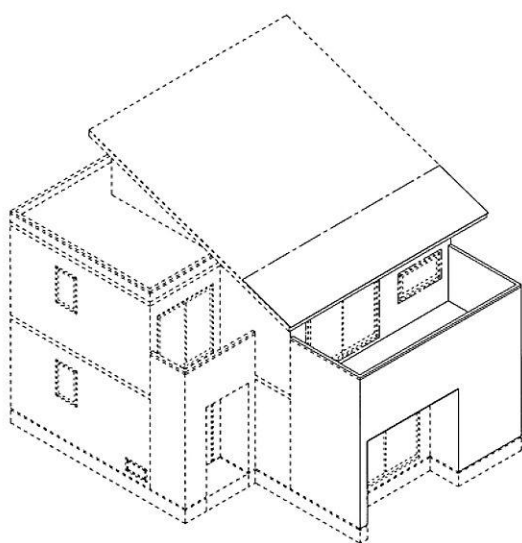
Administrative judge: NAITO, Hiroki

Administrative judge: KATO, Shinju

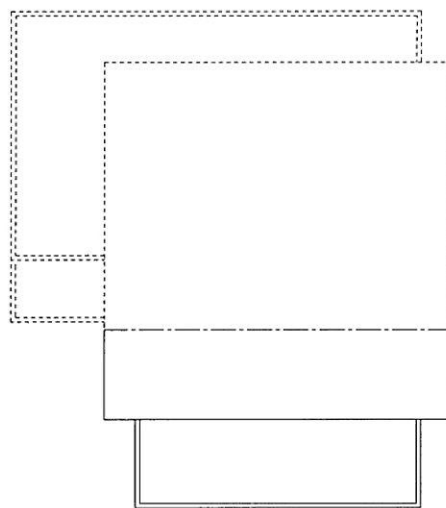
## 【意匠に係る物品】組立家屋

【意匠に係る物品の説明】実線で表した部分が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の境界のみを示す線である。重量物につき底面図は省略する。

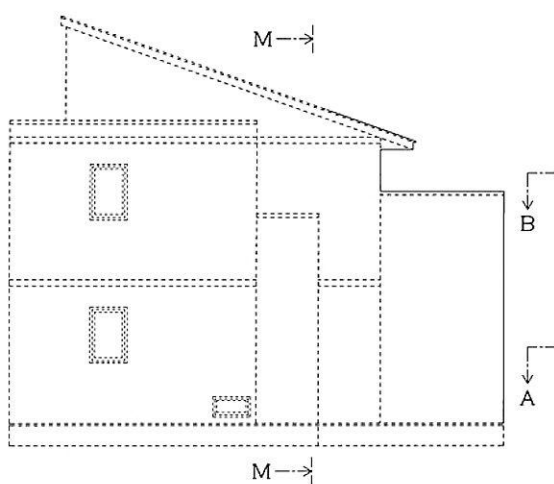
正面、左側面及び平面を表す図



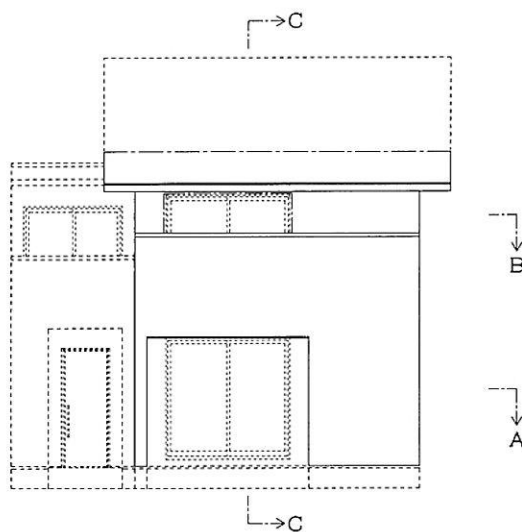
平面図



左側面図



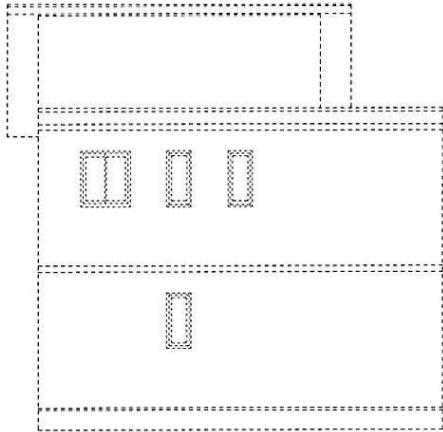
正面図



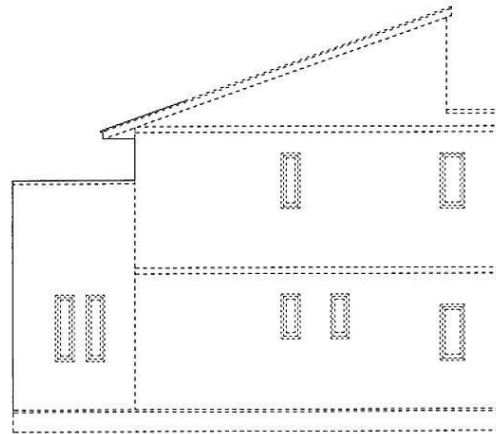


別紙第 1	Appended I
本願意匠(意匠2020-017885)	The present design (Japanese Design Application No. 2020-017885)
【意匠に係る物品】組立家屋	[Article embodying the design] Prefabricated House
【意匠に係る物品の説明】実線で表した部分が意匠登録を受けようとする部分である。一点鎖線は、部分意匠として意匠登録を受けようとする部分とその他部分の境界のみを示す線である。重量物につき底面図は省略する。	[Description of an article embodying the design] A part represented by a solid line is the part for which the design registration is to be requested. A dashed line is a line indicating only a boundary between the part for which the design registration is to be requested as a partial design and the other parts. Because the prefabricated house is a heavy object, a bottom view thereof is omitted.
正面、左側面及び平面を表す図	Drawing showing front, left side, and top surfaces
平面図	Top view
左側面図	Left view
正面図	Front view

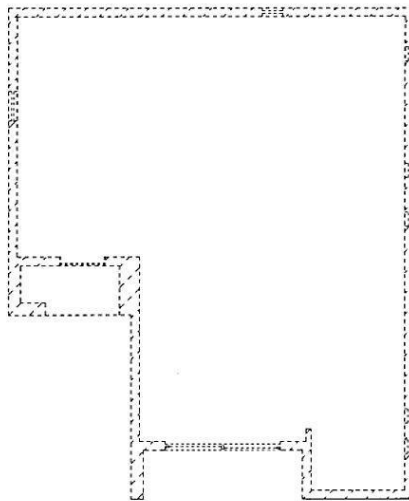
背面図



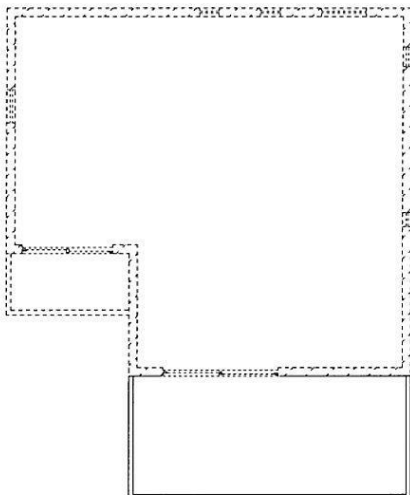
右側面図



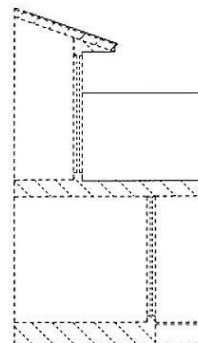
内部構造を省略したA－A線断面図



内部構造を省略した  
B－B線断面図

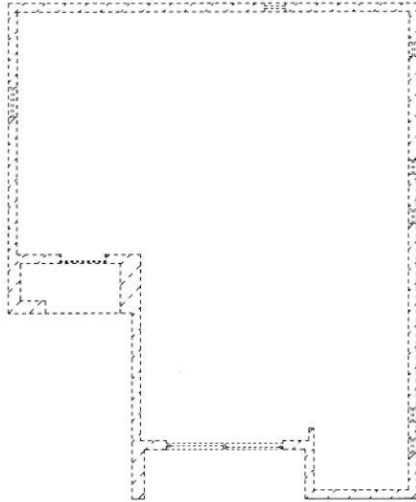


内部構造を省略した  
M－MのC－C線断面図

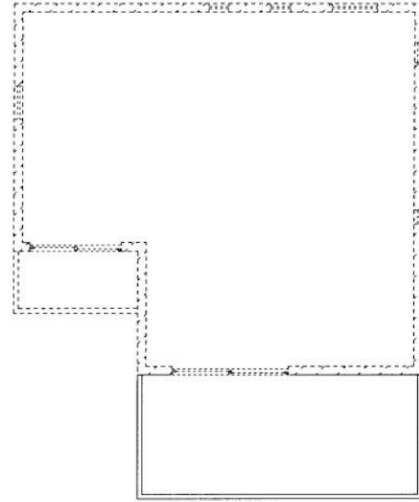


背面図	Rear view
右側面図	Right side view
内部構造を省略したA－A線断面図	Sectional view taken along line A-A without internal structure
内部構造を省略したB－B線断面図	Sectional view taken along line B-B without internal structure
内部構造を省略したM－MのC－C線断面図	Sectional view taken along line C-C of M-M without internal structure

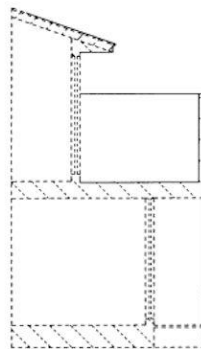
内部構造を省略した  
A－A線断面図



内部構造を省略した  
B－B線断面図



内部構造を省略したM－MのC－C線断面図



内部構造を省略したA－A線断面図	Sectional view taken along line A-A without internal structure
内部構造を省略したB－B線断面図	Sectional view taken along line B-B without internal structure
内部構造を省略したM－MのC－C線断面図	Sectional view taken along line C-C of M-M without internal structure

## 別紙第2 引用意匠

【表題】土地をお探しの方へ 2020年分譲地来場予約フェア開催  
【掲載箇所】SBCハウジングパークホームページ  
【媒体のタイプ】[online]  
【掲載年月日】2016年 1月26日  
【検索日】2021年 1月 7日  
【情報の情報源】インターネット  
【情報のアドレス】URL:<http://www.sbchp.jp/saku/sekisui/blog.php>  
に掲載された組立家屋の意匠のうち本願出願部分に対応する部分

積水ハウス | 佐久平ハウジングパーク

<http://www.sbchp.jp/saku/sekisui/blog.php>



←引用意匠

展示場へのご来場予約は下の緑色ボタンをクリック♪

住宅展示場にお越しの際は、「ご来場予約」が便利です！  
事前にご予約の上、来場いただいた方には、  
QUOカード(2000円)を差し上げます。



ご来場予約・お問い合わせ >

投稿者: 積水ハウス 日時: 2020年1月26日 14:01 | この記事へ

2019年12月20日

積水ハウス

住まいのイメージ、きっと広がります。新春ハウジングフェア

こちらのイベントは終了致しました。  
ご来場頂きありがとうございました。

1月2日(木)～1月31日(金)の期間、  
ピーエコルド佐久平展示場にて  
新春ハウジングフェアを開催致します。

2020年のスタートに合わせて  
積水ハウスでお建て頂いた住まい  
2020通りのしあわせ実例を集めました。  
ピーエコルド佐久平展示場にてご覧頂くことが出来ます。

WEB来場予約をして下さった方には、クオカード1000  
円分プレゼント！  
この機会に、ご家族皆様でぜひご来場下さい。

何かご不明な点がございましたら 下記連絡先までお問い合わせ  
くださいませ。

★お問い合わせ先★

積水ハウス株式会社 佐久店 TEL 0267-67-8730  
→展示場のホームページはこちらから←

別紙第2	Appended II
引用意匠	Cited Design
<p>【表題】土地をお探しの方へ 2020年分 譲地来場予約フェア開催</p> <p>【掲載箇所】SBCハウジングパークホームページ</p> <p>【媒体のタイプ】[online]</p> <p>【掲載年月日】2016年1月26日</p> <p>【検索日】2021年1月7日</p> <p>【情報の情報源】インターネット</p> <p>【情報のアドレス】 URL://www.sbchp.jp/saku/sekisui/bog.php に掲載された組立家屋の意匠のうち本 願出願部分に対応する部分</p>	<p>[Title] To a person who searches for a land, holding of subdivision visitation reservation fair in 2020</p> <p>[Posting Place] SBC Housing Park homepage</p> <p>[Medium Type] [online]</p> <p>[Posting Date] January 26, 2016</p> <p>[Searching Date] January 7, 2021</p> <p>[Information Source] Internet</p> <p>[Information Address] A part corresponding to the present part of the present application of the design of the prefabricated house was posted in URL: http://www.sbchp.jp/saku/sekisui/blog.php</p>
積水ハウス   佐久平ハウジングパーク	SEKISUI HOUSE   Sakudaira Housing Park
引用意匠	Cited Design
展示場へのご来場予約は下の緑色ボタンをクリック♪	Click the green button below to make a reservation to visit the exhibition hall
<p>住宅展示場にお越しの際は、「ご来場予約」が便利です！</p> <p>事前にご予約の上、来場いただいた方には、QUOカード(2000円)を差し上げます。</p> <p>ご来場予約・お問い合わせ&gt;</p>	<p>A “visit reservation” is convenient for visiting the housing exhibition hall!</p> <p>A QUO card ( ¥2000 ) will be given to those who make a reservation in advance to visit.</p> <p>Visitation reservation • inquiry &gt;</p>
投稿者: 積水ハウス 日時: 2020年1月26日 14:01   この記事へ	Contributor: Sekisui House Date: January 26, 2020, 14:01   To this article
2019年12月20日	December 20, 2019
積水ハウス	Sekisui House
住まいのイメージ、きっと広がります。新春ハウジングフェア	The image of the home will surely expand. New Year Housing Fair
こちらのイベントは終了致しました。ご来場いただきありがとうございました。	This event has ended. Thank you for visiting.

1月2日(木)～1月31日(金)の期間、 ピーエコエルド佐久平展示場にて 新春ハウジングフェアを開催致します。	The New Year Housing Fair is held at the Be ECORD Sakudaira Exhibition Hall from January 2nd (Thursday) to January 31st (Friday).
2020年のスタートに合わせて 積水ハウスでお建て頂いた住まい 2020通りのしあわせ実例を集めました。 ピーエコエルド佐久平展示場にてご覧 頂くことができます。	We have collected examples of happiness in 2020 streets of homes built by Sekisui House at the start of 2020. You can see them at the Be ECORD Sakudaira Exhibition Hall.
WEB来場予約をして下さった方には、ク オカード1000円分プレゼント！ この機会に、ご家族皆様でぜひご来場 下さい。	A present of a quo card worth ¥1000 will be given to those who have made a WEB visitation reservation! Please take this opportunity to visit with your family.
何か不明な点がございましたら、下記連 絡先までお問い合わせくださいませ。	If you have any questions, please contact us using the contact information below.
★お問い合わせ先★ 積水ハウス株式会社 佐久店 TEL 0 267-67-8730 →展示場のホームページはこちらから←	★Contact information★ SEKISUI HOUSE CORPORATION Saku store TEL 0267-67-8730 →Click here to access the homepage of the exhibition hall←
意願 2020-017885	Japanese Design Application No. 2020- 017885