

Date	March 12, 2018	Court	Intellectual Property High Court, Fourth Division
Case number	2017 (Gyo-Ke) 10188		
<p>- A case in which the court determined that the design of the application for which an article to the design is an "accessory case shaped camera" fell under Article 3, paragraph (2) of the Design Act on the grounds that a person ordinarily skilled in the art of the design would have been able to easily create the design if he had combined the primary cited design relating to a "ring case with a camera" with the secondary cited design relating to a "hidden camera."</p>			

References: Article 3, paragraph (2) of the Design Act

Number of related rights, etc.: Design Application No. 2015-24653

#### Summary of the Judgment

The plaintiff filed this application for design for which the article to the design is an "accessory case shaped camera," but received a decision of refusal. With reference to the plaintiff's request for appeal against the examiner's decision of refusal, the Patent Office made an appeal decision to the effect that the request was dismissed, since the application fell under Article 3, paragraph (2) of the Design Act. This is a suit against an appeal decision made by the JPO.

The court dismissed the plaintiff's request on the following grounds:

The difficulty in creating a design should be assessed by determining whether or not a person who had common knowledge in the field of the design (person ordinarily skilled in the art) would have been able to easily create the design based on shape, patterns or colors, or any combination thereof that were publicly known. The "accessory case shaped camera" of the design of the application has a use and function as an accessory case. It also has a use and function as a hidden camera for secretly taking pictures and recording videos. Consequently, when a hidden camera was to be set in an accessory case, an appropriate setting

place of the imaging section could be determined with reference to various hidden cameras and the positioning of imaging sections in the respective cameras. Thus a person ordinarily skilled in the art with respect to the design of the application, having common knowledge in the field of accessory cases as well as in the field of hidden cameras, would have been able to easily create the design based on cited designs 3 and 4 which respectively relate to a "hidden camera." In cited design 1 relating to a "ring case with a camera," the imaging section is positioned on the top lid so that it follow an American custom of a one-knee proposal while showing the ring with the accessory case opened. So a person ordinarily skilled in the art can be motivated to change the position of the imaging section from cited design 1. Thus a person ordinarily skilled in the art could have easily conceived of changing the position of the imaging section in cited design 1 from the top lid section to the storage section in view of cited designs 3 and 4 both relating to a "hidden camera" comprising the imaging section in the storage section. When the design of the application and cited design 1 are compared as a whole, the biggest difference between them is found in the position of the imaging section, but the novelty/originality of the concept with respect to the position of the imaging section is denied. Furthermore, the other features such as the shapes of the top surface of the top lid section and a switch are merely insignificant design variations based on a common configuration.