

Date	March 27, 2014	Court	Intellectual Property High Court, Third Division
Case number	2013 (Gyo-Ke) 10287		
<p>– A case in which the court, with respect to a design of a cell phone, held that the claimed design which gives a rounded soft impression as a whole is not similar to the cited design which gives a sharper and more flat impression as a whole in comparison to the claimed design, and found that the JPO decision, which determined these two designs to be similar, is erroneous.</p>			

Reference:

Article 3, paragraph (1), item (iii) of the Design Act

The plaintiff filed an application for design registration by specifying "cell phones" as the article to the claimed design but received an examiner's decision of refusal and thus filed a request for a trial against the examiner's decision of refusal. In response to this, the JPO rendered a trial decision to the effect that the claimed design could not be registered since it was similar to the cited design. In this case, the plaintiff instituted an action seeking the rescission of the JPO decision in question. In particular, the claimed design is related to smartphones.

The court mainly held as follows and rescinded the JPO decision in question by determining that the claimed design and cited design were not similar.

In light of the nature purpose of use and method of use of an article, when consumers observe smartphones, the part which attracts the most attention is the overall shape that constitutes the dominant part of the overall design and the front view shape including the touch panel screen and function keys, which can be seen at first glance and are considered to be most frequently used upon operation of smartphones, as well as the combination of these shapes.

The claimed design and cited design share the common features (A) through (E) found by the JPO decision, with respect to the overall shape and the front view shape. However, the overall shape of the claimed design has the following configurations with respect to the different feature (a) found in the JPO decision: the claimed design is a substantially curved plate shape giving an extremely gentle arc-like shape from the side view with the front side slightly forming a concave surface and the back side a convex surface, and with the four corners of the front side of the case having biggish round edges in the curvature radius, while the upper and lower sides both have extremely gentle arc-like curves and the front side peripheral frame slightly narrows toward the front side when seen from the bottom side and right and left side. With these configurations, the claimed design can be considered to give a rounded soft

impression as a whole.

In contrast, the cited design has the following configurations: the cited design is a plane shape with the front side having a plane surface and most of the back side except for the peripheral part also having a plane surface parallel with the front side, with the four corners of the front side of the case having smallish round edges in the curvature radius, while the upper and lower sides have straight lines and the front side peripheral frame is established slightly inside the outer circumference of the flat side in a narrow edge shape. With these configurations, the cited design can be considered to give a sharper and more flat impression as a whole in comparison to the claimed design.

Therefore, the claimed design gives a different aesthetic impression to observers by the configurations related to the abovementioned different features, and thus should not be considered, as a whole, to be lost in the impression that arises from the abovementioned common features. Accordingly, the claimed design cannot be considered to be similar to the cited design.