

Decided on	November 26, 2008	Court	Intellectual Property High Court, Second Division
Case number	2008 (Gyo-Ke) 10185		
- A case, with respect to a trial decision that a design of “a watch” was similar to a cited design, which was cancelled			

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

The plaintiff filed an application for registration of a design of “a watch” (hereinafter “the Design”). Since the application was rejected, the plaintiff requested a trial against the examiner’s refusal. The Japan Patent Office (JPO) handed down a trial decision rejecting the request for a trial. The plaintiff filed a lawsuit for cancellation of the trial decision.

The major issue is whether the Design is similar to another design of a watch shown in a domestic magazine (hereinafter “the Cited Design”).

The court cancelled the trial decision on the following grounds:

“The Design looks stereoscopic with many concaves and convexes overall, based on the following characteristics in its shape: (1) the attaching part of the belt joining section has two ribs (rib-knit); (2) The entire surface of a thick part of the peripheral edge of a glass-retained semi-circular ringed area has a pattern that is vertically slit. Each of the screws at the eight screwing parts on the top is cylindrical with a hexagonal concave inside. The outside of each screwing part is equipped with an open and U-figured hole for facilitating attachment; (3) The crown is semi-cylindrical and the surface surrounding it is slit. Each of the up/down push buttons is rectangular and is slit. The top of the upper push button and the bottom of the lower push button are equipped with screws; (4) Push button parts are designed to project from the upper and lower guard areas and are located in an area that bulges forward. The area between the bulging area and the surrounding area slopes. On the other hand, in the Cited Design, (1) the attaching part of the belt joining section is planar; (2) A thick part of the peripheral edge of a glass-retained semi-circular ringed area has no pattern. Each of the screws at the eight screwing parts on the top is hexagonal with a groove in it. They are designed to cover the entire surface as if they are embedded in the top surface of the ringed area; (3) The crown is hexagonally cylindrical and the surface surrounding it is not slit. Each of the up/down push buttons is cylindrical and is not slit. No additional screw is provided in any area other than the crown and the up/down push buttons; (4) The upper and lower guard areas are each slit in the middle. Each of the slit parts is equipped with a push button area and the guard areas are planar at the front. With the aforementioned

characteristics of shape, the Cited Design looks slimmed-down and flat overall.”

“Furthermore, the Design and the Cited Design also differ in the dial plate of the main unit of a watch, the most prominent part located at the front of a watch. In the Design, large graduations are indicated by a thick and tapering line. Between the large graduations are thin lines. The circular area inside the graduation area is checked and the base of the check is transparently shaped so that the internal mechanical section can be seen through. The Cited Design has Arabic numerals indicating large graduations. However, it has no thin lines between the large graduations. It differs from the Design in having a projecting and rectangular pattern in the overall area of the dial plate including the area behind the graduation area.”

“The above facts lead to the conclusion that the Design and the Cited Design differ significantly in their overall impression. The difference is deemed to be greater than their common points. Therefore, it cannot be concluded that the Design and the Cited Design are similar to each other.”