

Date	July 21, 2009	Court	Intellectual Property High Court, Second Division
Case number	2009 (Gyo-Ke) 10036		
– A case wherein the court found that the design for "rubber band" goods is not similar to the cited design.			

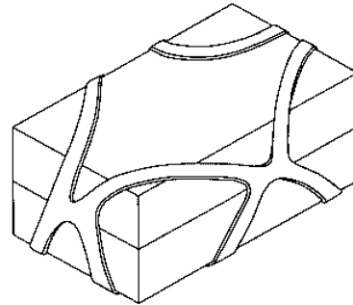
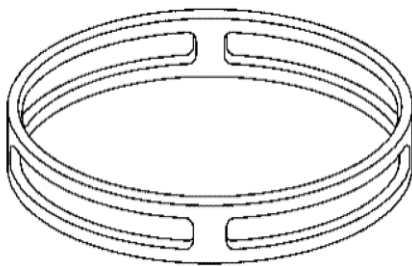
Reference:

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

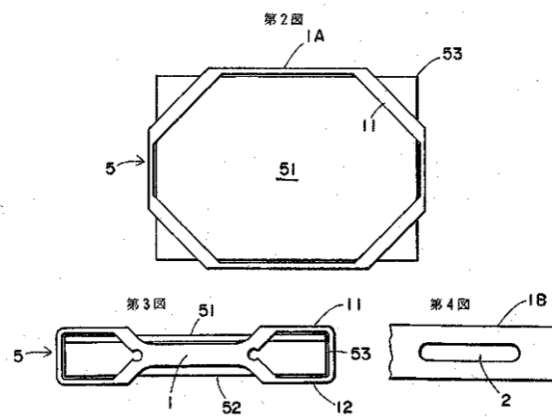
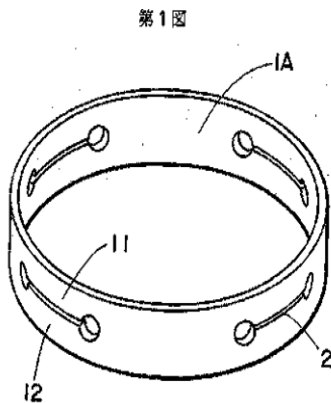
1. On April 4, 2007, the plaintiff filed an application for design registration for the design mentioned in (i) below for the goods "rubber band" (the "Filed Design") but received a decision of refusal and thus filed a request for a trial against the examiner's decision of refusal. The JPO conducted a trial in response to the abovementioned request (Trial against Examiner's Decision of Refusal No. 2008-10803) and rendered a trial decision to dismiss the request on the grounds that the Filed Design was similar to the design mentioned in (ii) below (the "Cited Design") and therefore, the plaintiff instituted an action seeking rescission of such JPO decision.

Description

(i) Filed Design "Reference Figure 1 showing the usage state" of the Filed Design



(ii) Cited Design



2. The court held as follows and rescinded the JPO decision in question.

"While the Filed Design gives an impression that the opening parts make up a considerable portion of the circumferential side surface, the Cited Design gives an impression that the opening parts constitute only part of the circumferential side surface; the two designs have a huge difference in the point to which consumers would pay attention."

"In cases where goods having a rectangular body are bundled by using the Cited Design, when the four corners of the rectangular body are inserted in the four opening parts of the Cited Design, the Cited Design would be used in a mode where one part between two opening parts forms one side. Since there are four such parts, four sides would be formed in total. These four sides together with the four sides formed by the opening parts, i.e. eight sides in total, would bundle the plain surface and bottom surface of the goods having a rectangular shape. All of these eight sides can be clearly recognized [...].

Meanwhile, in cases where goods having a rectangular body are bundled by using the Filed Design, if the relevant goods are as thin as magazines, when the four corners of the rectangular body are inserted into the four opening parts of the Filed Design, the rubber band would have an octagonal shape when seen from the plain surface or bottom surface direction, but the actual shape approximates a square and thus, only the four sides would stand out. [...].

In addition, in cases where goods having a rectangular shape are bundled by using the Filed Design, if the goods are as thick as boxes, 'Reference Figure 1 showing the usage state' contained in the drawings of the 'Filed Design' mentioned above would be realized. While the parts between the opening parts in the Cited Design would form a rectangular shape in parallel with the upper side and bottom side of the side surface of the rectangular body in the portion along the side surface of the rectangular body, the parts between the opening parts in the Filed Design would only serve as nodes of the rubber band which extends in four directions. [...].

As found above, in cases where goods having a rectangular body are to be bundled, regardless of whether such goods are as thin as magazines or as thick as boxes, there would be a difference between the Filed Design and Cited Design in terms of the use mode."

"[...] while the Filed Design gives an impression that the opening parts make up a considerable portion of the circumferential side surface, the Cited Design gives an impression that the opening parts constitute only part of the circumferential side surface; the two designs have a huge difference in the point to which the consumers

would pay attention. In addition to such difference, the two designs differ in terms of the use mode and therefore, the Filed Design and Cited Design cannot be found to be similar pursuant to Article 3, paragraph (1), item (iii) of the Design Act."