

Design Right	Date	July 3, 2019	Court	Intellectual Property High Court, First Division
	Case number	2018 (Gyo-ke) 10181		
<p>- A case in which, with regard to a partial design of an article according to the design which is "lighting device for inspection", since a position for withdrawing a power cable is closely related to a use form as the lighting device for inspection, that is a point paid the utmost attention by those engaged in a work of inspection of scratches, marks, and the like on products in a plant or the like and those who handle these article (consumers), and it is not similar to the cited design different in that point and the like.</p> <p>- A case in which, with regard to a partial design of an article according to the design which is "lighting device for inspection", ease of creation is not admitted since novelty or originality is present in the idea of the design in a point that the power cable is not configured to be withdrawn from a rear end of a fin, and a cable connection portion is not provided in the fin.</p>				

Case type: Rescission of Trial Decision to Maintain

Result: Dismissed

References: Article 3, paragraph (1), item (iii), paragraph (2) of the Design Act

Number of related rights, etc.: Invalidation Trial No. 2018-880005, Design

Registration No. 1224615

Summary of the Judgment

1 In this case, a request for invalidation trial was made for the design registration of the partial design of the article according to the design which is "lighting device for inspection" held by the defendant, and the plaintiff who received the trial decision which dismissed the request instituted rescission of the trial decision made by the JPO. The plaintiff alleged wrong judgment on similarity to the cited design and the wrong judgment on ease of creation as grounds for rescission.

2 This judgment dismissed the plaintiff's request by finding as follows in brief:

(1) Judgment on whether the registered design is similar to the other designs is made on the basis of the aesthetic impression that the designs would create through the eye of consumers. The consumers of the article according to this design are those engaged in the work of inspection of scratches, marks, and the like on products in a plant or the like and those who handle these articles.

In this design, a power cable is not provided on a rear of a rear member, while it is provided in Cited Design 2. Since a position for withdrawing the power cable is closely related to a use form as the lighting device for inspection, that is the point paid the utmost attention by those engaged in a work of inspection of

scratches, marks, and the like on products in a plant or the like and those who handle these articles (consumers). (omitted) In view of the situation that the consumer takes the aesthetic impression of the product into consideration when deciding mainly whether or not to purchase the product, a point that the entirety is not observed during the use of the article does not affect the aforementioned finding judgment. Moreover, a diameter of a support shaft body of the present design is approximately one-fifth of the diameter of the fin, while in Cited Design 2, it is approximately ten-thirteenths, and it is characterized by the shaft body being thicker than that of the present design.

These different points should be considered to overcome the common points, and since the aesthetic impression created through the eye is found to be different between the present design and Cited Design 2, the two is not similar to each other.

- (2) Article 3, paragraph (2) of the Design Act provides for the ordinary registration requirement that the design is not one easily created by a person having ordinary knowledge in a field to which the design belongs (a person ordinarily skilled in the art) on the basis of shape, patterns, colors, or any combination thereof that was publicly known in Japan or a foreign country as an abstract motif departing from the relation with the article, and when applicability of the requirement is judged, novelty or originality in the idea of the design from a viewpoint of the person ordinarily skilled in the art with the aforementioned publicly-known motif as a reference is relevant.

The present design is different from Cited Design 2 in [i] presence or absence of the cable connection portion provided on the fin; [ii] the number of fins; and [iii] thickness of the shaft body and the like, and in each of the Different Points [i] and [iii], the design has novelty or originality in the idea of the design and motivation to create the present design according to the different points is not found and thus, it is not found that creation of the present design by the person ordinarily skilled in the art on the basis of Cited Design 2 was easy.