

Date	November 30, 2011	Court	Intellectual Property High Court, Third Division
Case number	2011 (Gyo-Ke) 10159		
<p>– With regard to a design of a colored contact lens consisting of three concentric circles, the JPO erred in finding that the plaintiff's design with an aesthetic aspect that would give a more natural, harmonic and mild impression than the real human eye is similar to the cited design with an aesthetic aspect that would give a less natural and more artificial and mechanical impression than the real human eye.</p>			

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

The plaintiff filed an application for design registration designating "contact lens" as the article to which the design subject to the application is to be applied, but received a decision of an examiner to refuse this application. The plaintiff then filed a request for a trial against the examiner's decision of refusal, but the JPO rendered a decision to dismiss this request, on the grounds that the plaintiff's design cannot be registered because it is similar to the cited design. Dissatisfied with this, the plaintiff instituted this action to seek rescission of the JPO decision.

The court rescinded the JPO decision, finding that the plaintiff's design is not similar to the cited design on the following grounds.

The "inner circumference" and the "rims of the inner circumference" of the plaintiff's design have a background colored in light gray overall, and stick-shaped patterns that are colored in dark black and gray and extend in the convergent direction from the inner circumference toward the center of the lens (these stick-shaped patterns have differences in width and length, and some are slightly bent) are drawn on such background in a manner such that some of them are linked together. In light of these characteristics, the plaintiff's design can be considered as one with an aesthetic aspect that would give to people who see the lens a more natural, harmonious and mild impression than the real human eye. On the other hand, the "inner circumference" and the "rims of the inner circumference" of the cited design are made of an aggregate of small circles that are orderly arranged, the overall patterns including chevron patterns are expressed only by way of the differences in terms of the size, shading in color and arrangement of small circles, and the height, etc., of the chevron patterns are even and uniform. In light of these characteristics, the cited design can be considered as one with an aesthetic aspect that would give people who see the lens a less natural and more artificial and mechanical impression than the real human eye.

The plaintiff's design and the cited design have the following features in common:
[i] they are translucent objects with curved surfaces with an overall shape like a sphere

partially cut with a plane; [ii] they have a "central circle" that surrounds the center of the curved-surface object; and [iii] the outer circumference is colored almost totally in black. However, considering that a colored contact lens to be put onto the human eye is necessarily formed as a translucent curved-surface object whose overall shape is like a sphere partially cut with a plane, with the central circle contained therein, and that the outer circumference of a contact lens is necessarily colored almost totally in black for the purpose of changing the appearance of the iris and the pupil and accentuating them clearly, the abovementioned common features cannot be regarded as important features when comparing the plaintiff's design and the cited design.