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MAEDA & SUZUKI PATENT Co., Ltd.

HIROKI MIYAO in charge of Design and Trademark

Flash Report on Appeal Decision of Design

1. Number of Appeal: 2014-24013

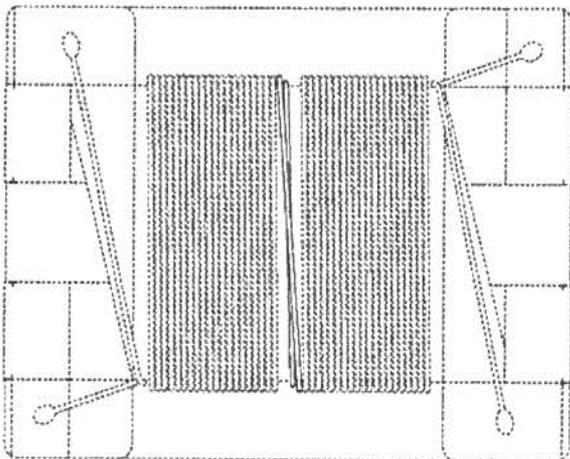
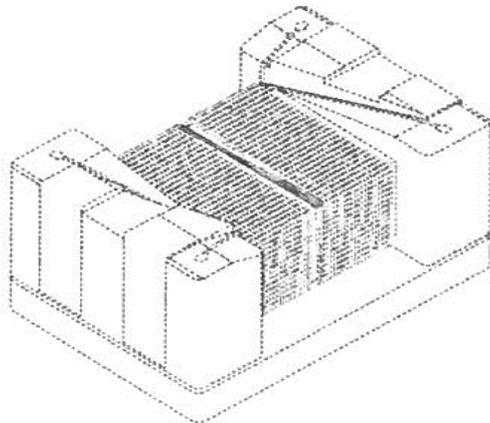
2. Summary

Regarding a partial design, an appeal decision admits our assertion that a difference in position with respect to its entire design surpasses differences in form.

3. Details

Design of the present application

: (A partial design regarding a center cross section)



Thus, we have conducted an interview with the trial Examiners. In the interview, we used an actual design article, a brochure, and the like to explain the design of the present application and showed a legal case that determination of similarity is influenced by size, scope, and position of a part (2006 (Gyo-Ke) 10317).

As a result, the trial Examiners judged as below:

- The similarity in form of crossing of wire can be seen in such a kind of article and is not critical for determination of similarity.
- Position and inclination of wire are quite easily seen and have a great impact on determination of similarity.

Then, we finally obtained the following appeal decision:

Although usage, function, size, and scope of the cited design correspond to those of the present partial design, position of the present partial design differs from that of the cited design. Further, the difference in position has a greater impact on determination of similarity than similarities do. Therefore, the present design and the cited design are different in visual impression as a whole, and both designs are not similar to each other.

4. Our Comments

The examination guideline regarding determination of similarity between a partial design and a partial design is as below:

- (i) The usage and function of the articles to the design of the partial designs are identical or similar
- (ii) The usage and function of the “parts for which the design registration is requested” are identical or similar
- (iii) The forms of the “parts for which the design registration is requested” are identical or similar
- (iv) The position, size and scope of the “parts for which the design registration is requested” in the forms of the entire articles are identical or commonplace in the art of the design

We consider that the current appeal decision, saying the present design is not similar to the cited design, was obtained by the fact that

although the cited design satisfies (i)-(iii) and size and scope of (iv) shown above, the position of (iv) is largely different from between the present design and the cited design.

Regarding determination of similarity between a partial design and a partial design, position, size and scope in a whole design generate a visually large difference, and thus are very important. In order to explain the difference, written expression can only do so much, and explaining to an Examiner while showing him/her an actual article is particularly effective.