

Connector Terminal Case
Tokyo IP High Court
Case No. H17 (gyo-ke) 10679
March 31, 2006

FACTS

This case relates to an administrative lawsuit seeking revocation of an appellate decision maintaining an Examiner's rejection of the plaintiff's design application for a connector terminal.

The grounds of the appellate decision are that the design at issue is not a design that can produce an aesthetic impression through the sense of sight, and therefore is not a design within the meaning of Article 3(1) of the Design Law.

The Examiner's rejection and the appellate decision followed the Examination manual (No.21.1.13) in limiting the meaning of "through the sense of sight" to "by the naked eye". The appellate decision found that the article to which the design is applied has a lower part with a width of 0.15 mm, and that it is so small that the entire shape of the design cannot be perceived by the naked eye.

The plaintiff argued that the appellate decision limiting the meaning of "through the sense of sight" to "by the naked eye" is wrong. The gist of the plaintiff's argument is: (1) the Design Law does not use "by the naked eye" but merely uses "through the sense of sight" in order to define "a design"; (2) to limit the subject of design protection to only an article capable of being perceived by the naked eye is contrary to the actual state of modern industrial society, in which high-precision processing or working of tiny articles has progressed and elaborate or exquisite products are sold; (3) therefore, it is improper to limit the subject of protection only to articles capable of being perceived by the naked eye in a situation where inspection of the shape and/or design of an article using a magnifier is common in the relevant business area.

ISSUE

Whether the entire shape of an article for which design registration is sought must be visible to the naked eye in order for the design to be granted design registration.

HOLDING

Designs of small articles shall also be protected under the Design Law so long as articles with the same shape can be industrially designed and manufactured. In particular, the need to protect the designs of small articles is strong in light of the state of modern society, in which processing and molding technologies for microscopic products has advanced to a high level and precision products are routinely manufactured and sold.

However, when the shape of an article cannot be perceived through the unaided sense of sight in ordinary or customary sales transactions of the articles, design protection does not extend to the article since the shape of the article cannot be a design as defined in Article 2(1). Therefore, where observation of the shape by the naked eye is common practice at the time of the sales transaction of the article, a shape that cannot be perceived by the naked eye is not a shape producing an aesthetic impression through the sense of sight, and thus the article design cannot be registered.

On the other hand, where the inspection of the shape of the article using a magnifier is common in business transactions involving the article, it is reasonable to assume that a design that cannot be perceived by the naked eye is nevertheless one that can be recognized through the sense of sight.

Therefore, the appellate decision is wrong in interpreting Article 3(1) and Article 2(1) as limiting the scope of the protection to designs capable of being perceived by the naked eye. However, whether the appellate decision would be different as a result depends on what is customary or ordinary in business transactions of the article to which the design is applied.

DECISION

In this case, the use of a magnifier is not for viewing the design but for inspecting the connector terminal for defects. Thus, since the shape of the connector terminal cannot be perceived by the naked eye, the design of the connector terminal cannot be granted registration. Therefore, the conclusion is not altered.

Accordingly, the appellate decision rejecting the application for registration is upheld.

Article 2(1) [Definitions]: *“Design” in this Law means a shape, pattern or color or any combination thereof in an article (including part of article—hereinafter the*

same except in Article 8) which produces an aesthetic impression through the sense of sight.

Article 3(1) [Registrability of designs]:

“Any person who has created a design capable of being used in industrial manufacture may obtain a design registration thereof, except-----.”

