

TIRE FOR MOTORCYCLE Case
Tokyo High Court
Case H24 (Gyo-Ke) 10042, Judgment on July 18, 2012 (H24)
Summary authored by Toshihiko Aikawa

FACTS

The plaintiff was an applicant having filed the design registration application No. 2010-15224 for a related design of the design registration No. 1404558 on June 21, 2010. The application was finally rejected at the trial against the examiner's decision of refusal before the Japan Patent Office under the Design Law, Article 3, Paragraph 1, Item 3, for being similar to the design described in U.S. D601,943S. Then, the appeal was filed at the Intellectual Property Court (Tokyo High Court).

ISSUE

The issue was whether the design of the present design registration application is similar to that of the cited reference based on (1) recognition of the chief part and (2) similarity judgment as a whole.

HOLDING

The court held that they are not similar after recognizing the chief part of the present design.

(1) Recognition of chief part

With respect to the present design, the design feature where a plurality of units, each of which is composed of a short groove, a medium groove, and a long groove inclined approximately in the same direction, respectively, are arranged on the right and left sides across and slant to the equator in a cross-stitch manner, cannot, by itself, be said to be the characteristic configuration to which dealers or consumers tend to pay attention if it is considered that a plurality of such designs had been registered in Japan and in the United States. Thus, it can be recognized that concrete shapes, an arrangement, and a positional relation of the three grooves that constitute the repetition unit should be the characteristic portion (chief part) in the present design.

(2) Similarity judgment as a whole

The present design is characterized by giving an impression of a neat arrangement in

which the three grooves are aligned with approximately the same distance interval as a whole. The cited design is characterized by giving an impression of a cluttered arrangement in which the three grooves are not in a coherent manner as a whole, as far as the cited design itself is observed, although the three grooves can be observed to constitute one unit if compared to the present design. The three grooves of the present design have edges thereof straightened and widths thereof narrowed gradually toward the ends thereof such that it can be said that the three grooves are configured with thin straight lines, each of which has one pointed end, not lively, and very sharp so as to give to the observer an aesthetic impression of streaming from the side wall to the equator. On the other hand, it can be said that the three grooves of the cited design as a whole give the observer an impression of a screwy condition as the grooves with the same widths are curved smoothly, which may be figuratively expressed by an impression of arranging cylindrical shaped and round-ended bacteria or cells in a cluttered manner, in addition to a condition of basically-no-change in the widths of the grooves, thereby providing an aesthetic sense as such.

From the above, the present design should be recognized to give a different sense of beauty from that of the cited design to dealers or consumers as a whole even though the common part is considered such that the present design is not similar to the cited design.

Therefore, it is held that the trial decision at the Japan Patent Office in which the Design Law, Article 3, Paragraph 1, Item 3 was applied against the present design was wrong so as to be reversed.

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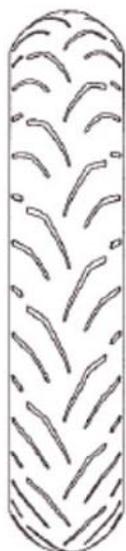
Original document (Japanese):

http://www.ip.courts.go.jp/app/files/hanrei_jp/453/082453_hanrei.pdf

English Translation:

N/A

Rear view of the present design registration application



Front view (Fig. 2) of the cited reference (US D601,943S)

