Pulley Case
(Relation between a part indicated by a solid line and the other parts in determining similarity of partial design)
IP High Court
H17(Gyoke) No.10317(January 31,2007)

ISSUE

When determining a position, size, and scope of a part for which design registration is sought, is another part indicated by a broken line considered?

FACTS

Plaintiff, X, filed a design application (No. 2004-7546) on March 15, 2004. In the design application, the article of the design is “Pulley.” Subsequently, X received a Decision of Rejection on March 8, 2005 and filed an appeal against the Decision on April 25, 2005.

In response, the Japan Patent Office held that the partial design application may not be registered due to the lack of novelty pursuant to (item (iii) of Design Act Article 3(1)) on May 24, 2005.

Subsequently, X appealed to the IP High Court requesting rescission of the Office’s decision.

HOLDING

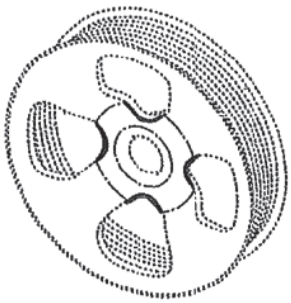
A partial design is a part of an article, and the part for which registration is sought is not determined only by that part. The shape itself indicated by a broken line does not constitute a design. However, the shape specifies use and function of the part for which registration is sought and actually specifies its position thereof.

As to a partial design, a part indicated by a broken line may describe a common shape of the article and thus have no meaning, or it may describe a specific shape of the article to obtain a design registration for that specific shape.

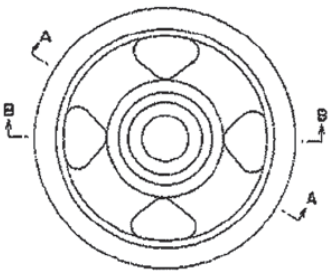
Accordingly, when determining a position, size, and scope of a part for which registration is sought, it is necessary to consider the application comprehensively, including the drawings attached to the application and characteristics of the part.

In the present case, considering the shape of the part indicated by broken lines, the pulley has a concave portion in the disk and the part indicated by solid lines is located at the bottom of the concave part of the disk. On the other hand, in the cited publication of the design application reference, the pulley has no concave portion in the disk. The corresponding part of the cited publication, which corresponds to the part indicated by solid lines in the present design application, is approximately located at the central part of the disk. Accordingly, the position of the part indicated by the solid lines in the present application is different from the position of the corresponding part in the cited application.

In view of above, it is held that the Office's decision is erroneous insofar as it holds that the position of the part indicated by solid lines in the present application is the same as the position of the corresponding part in the cited publication.



The design of the present application



The design of the cited publication