Design Right	Date	December 21, 2023	Court	Intellectual Property High Court, Fourth Division
	Case number	2023 (Gyo-Ke) 10066		
- A case in which, concerning a registered design whose article to the design is "Tile", the Court rescinded the JPO Decision by finding that the JPO Decision, which dismissed a demand for a trial for invalidation of the registered design by holding that the registered design is not similar to a prior, publicly known design, has a cause for rescission by erroneous determination of similarity.				

Case type: Rescission of Trial Decision to Maintain

Result: Granted

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

Related rights, etc.: Design Registration No. 1697530; Design Registration No. 1663938

Decision of JPO: Invalidation Trial No. 2022-880001

Summary of the Judgment

1 The present case is a suit against the appeal decision made by the JPO which dismissed a demand for a trial for invalidation of the design pertaining to Design Registration No. 1697530, whose article to the design is "Tile" (Registered Design). The Plaintiff asserted that the Registered Design is similar to the Cited Design (Design Registration No. 1663938), as indicated in a design gazette that was published prior to the filing date of the application for the Registered Design (Article 3, paragraph (1), item (iii) of the Design Act), and demanded a trial for invalidation. In the JPO Decision, the JPO determined that it cannot be said that the Registered Design is similar to the Cited Design, so that the demand has no grounds. In response, the Plaintiff filed the suit of the present case on the grounds of erroneous determination of similarity, which constitutes a cause for rescission.

2 In the judgment of the present case, the Court rescinded the JPO Decision, for the reasons outlined below.

(1) The basic compositions of the Registered Design and the Cited Design are such that both have well-known tile shapes called "Honbuki Ittaigawara", which is created by the integrated molding of plain tiles (concave tiles) and round tiles (convex tiles) that are used in a traditional roofing method. Many of the specific compositions of the Registered Design adhere to the composition of the conventional Honbuki Ittaigawara.

(2) As a specific composition that is commonly found in the Registered Design and the Cited Design, there is a vertically-long pattern of a U-shape, whose outline is

turned around 270 degrees so that the opening faces downward, placed on the right and left sides as well as the top of the convex tile (U-Shaped Pattern).

In Okinawa, the roofing method of using plaster to cement the joint parts of tiles is traditionally used, and the appearance created by the contrast of the red color of the tiles and the white color of the plaster is valued highly and is known by the name of "Okinawa Red Tile", etc.

The idea of placing white patterns on the convex tile part of the Honbuki Ittaigawara and giving the appearance resembling Okinawa Red Tiles, and the design that has the pattern of a U-shape with the opening facing upward are indicated in publicly known literature. However, there is no indication of a design whose opening faces downward, as in the case of the U-Shaped Pattern, in publicly known literature, etc. It is acknowledged that the pattern of a U-shape with the opening facing upward, and the pattern of a U-shape with the opening facing downward, have different impressions when the roofing with the tiles is completed.

(3) From the viewpoint of aesthetics, on which consumers place emphasis, the main consumers of tiles are clients of the buildings that have tile roofs, so that the aesthetics sought by such consumers relate to the post-construction appearance. As such, it is assumed that consumers such as builders and sellers ultimately place the greatest emphasis on the post-construction appearance. On the other hand, the effect, which is brought about by the composition that cannot be observed once the roofing is done, on the determination of similarity between designs, remains relatively small.

(4) In regard to the appearance after completion of the roofing with Honbuki Ittaigawara, the way the convex tiles are lined up along the slopes of the roof and extend in a methodical manner gives a gorgeous and stately impression, and it can be said that the shape and pattern pertaining to such convex tiles being lined up strongly attracts the attention of observers.

Next, the U-Shaped Pattern, which is given to the convex tiles, creates the appearance that has a touch of Okinawa Red Tiles once the roofing is completed, so that the appearance strongly appeals to the aesthetics of observers, and this is a novel creative part of the Cited Design which cannot be found in any publicly known design.

Accordingly, in the Registered Design and the Cited Design, the shape that attracts the attention of observers most strongly (the important part) is the U-Shaped Pattern, which is commonly found in the two designs, and it should be said that this commonality is what most strongly affects the determination of similarity.

(5) On the other hand, the points of difference in the compositions of the Registered Design and the Cited Design are minor differences in said pattern, and

they constitute [i] the part that cannot be observed from the post-construction state of roofing with tiles, [ii] the difference within the scope of a known shape that is adopted in conventional Honbuki Ittaigawara, or [iii] the commonality pertaining to the U-Shaped Pattern, which is a novel creative part that could not be found in a conventional design.

(6) As described above, it should be said that the important parts of the Registered Design and the Cited Design are the composition parts pertaining to the convex tiles being lined up, which attracts the attention of observers in the Honbuki Ittaigawara, as well as the U-Shaped Pattern, which is newly created and cannot be found in conventional designs. This commonality has an extremely strong effect on the determination of similarity between the two designs. On the other hand, the points of difference of the two marks include points that have a certain level of effect on the determination of similarity, yet such effect must be determined as being relatively small, and when evaluated on the whole, it should be said that the Registered Design is similar to the Cited Design.

The JPO Decision, which determined otherwise, has the illegality of erroneously determining similarity as stipulated in Article 3, paragraph (1), item (iii) of the Design Act.

Judgment rendered on December 21, 2023
2023 (Gyo-Ke) 10066 Case of seeking rescission of the JPO decision
Date of conclusion of oral argument: November 14, 2023

Judgment

Plaintiff (requester of the trial for invalidation): Kobayashi Roof-Tile Industry, Co., Ltd.

Defendant (respondent of the trial for invalidation): Marushika Ceramics Co., Ltd.

Main text

1. The decision rendered by the Japan Patent Office (JPO) on the case of Invalidation Trial No. 2022-880001 on June 6, 2023 shall be rescinded.
2. The court costs shall be borne by the Defendant.

Facts and reasons

[Abbreviations]

The following abbreviations are used in this judgment.

(Abbreviation) (Meaning)

- Registered Design: the design pertaining to Design Registration No. 1697530, whose article to the design is "Tile" (the holder of the design right is the Defendant); the subject matter of the trial for invalidation of the present case requested by the Plaintiff
- Cited Design: the design pertaining to Design Registration No. 1663938, whose article to the design is "Tile" (the holders of the design right are the Plaintiff and two other companies), as indicated in a design gazette prior to the filing date of the application for the Registered Design
- U-Shaped Pattern: the U-shaped pattern on the convex tile (the part colored in white in the Registered Design), which was found in the JPO decision in question to be Common Feature 4 between the Registered Design and the Cited Design
- Rectangular Pattern: the approximately rectangular pattern surrounded by the U-Shaped Pattern (the part in the ground color, brown, in the Registered Design; it is expressed as the "non-outline part" in the JPO Decision)

No. 1 Claims

Same as in the main text.

No. 2 Outline of the case

1. Background of the proceedings at the JPO (undisputed facts)

(1) On September 1, 2020, the Defendant filed an application for design registration, whose article to the design is "Tile," with regard to the Registered Design (Design Application No. 2020-18477), and the registration of establishment of a design right therefor was made on September 30, 2021 (Design Registration No. 1697530).
(2) On January 5, 2022, the Plaintiff requested the trial for invalidation of the present case (Invalidation Trial No. 2022-880001) with regard to the Registered Design, asserting that a design registration may not be made for the Registered Design, pursuant to the provisions of Article 3, paragraph (1), item (iii) of the Design Act, because it is similar to the Cited Design indicated in the design gazette published on July 20, 2020, which is prior to the filing date of the application for the Registered Design.
(3) The JPO rendered a decision (the JPO Decision) that "the request for the trial is groundless" on June 6, 2023, and a certified copy thereof was served on the Plaintiff on June 15, 2023.
(4) On June 23, 2023, the Plaintiff filed the suit of the present case, seeking rescission of the JPO Decision.
2. The Registered Design and the Cited Design
(1) The drawings relating to the Registered Design are as shown in Attachment "Drawings of the Registered Design."

Meanwhile, the drawings in the <Registered Design> section of Attachment, "Comparison between the Registered Design and the Cited Design," are the drawings corresponding to the respective drawings of the Cited Design with the titles of some of the drawings changed to match those of the Cited Design and the designs being rotated as needed (hereinafter, the changed titles of the drawings are used, in principle).
(2) The drawings and reference drawings relating to the Cited Design are the respective drawings in the <Cited Design> section of Attachment, "Comparison between the Registered Design and the Cited Design," and those shown in Attachment, "Other drawings of the Cited Design."
3. Summary of the grounds for the JPO Decision
(1) The articles to the design of the Registered Design and the Cited Design are both tiles, and it can be said that consumers of tiles are builders, etc. that conduct roof work by using tiles and clients of roof work. When conducting roof work, builders, etc. also pay attention to installation of the tiles and the method of joining them with the non-installed parts, so they will focus on the shape or equivalent features of the rear surface of the tile, and as they combine multiple tiles in succession vertically and

horizontally, they will also focus on the shape or equivalent features of the top surface, bottom surface, left side surface, and right side surface of the tile, and observe the tile from all directions. Therefore, when determining the similarity between the two designs, not only the shape or equivalent features (the shape, patterns, or colors, or any combination of them) as viewed from the front, but also the shape or equivalent features of the respective parts of the tile as viewed from all directions should be evaluated from the perspective of the abovementioned consumers.

(2) The shape or equivalent features of the Registered Design, the shape or equivalent features of the Cited Design, the common features and differences between them, and their evaluations are as shown in Attachment, "Summary of the grounds for the JPO Decision," and Attachment, "Common features and differences in the shapes or equivalent features found in the JPO Decision."

(3) Although Common Feature 4 (the fact that the U-Shaped Pattern with the opening facing downward is formed on the right and left sides as well as on the top of the convex tile, and the fact that the inner lines of the U-shaped outline of the pattern are formed approximately in parallel with the outer lines of the convex tile) has a strong effect on the determination of the similarity between the two designs, other common features all have a small effect. Thus, it can be said that the common features overall have a small effect on the determination of the similarity between the two designs.

On the other hand, as Difference 2 relating to the view from the left side, Difference 3 relating to the view from the right side, and Difference 4 relating to the view from the bottom have a strong effect on the determination of the similarity between the two designs, and as Difference 1 relating to the view from the rear and Difference 5 relating to the shape of the convex tile and the U-Shaped Pattern are also found to have a certain level of effect, even if Differences 6 to 8 have a small effect, it can be said that the differences overall have a strong effect on the determination of the similarity between the two designs.

(4) Therefore, because the differences between the Registered Design and the Cited Design have a strong effect on the determination of the similarity, and they give the impression that the Registered Design and the Cited Design are different designs by overturning the aesthetic impression given to consumers by the common features of the two designs, the Registered Design cannot be regarded to be similar to the Cited Design.

4. Grounds for rescission of the JPO Decision

An error in the determination of the similarity between the Registered Design and the Cited Design

No. 4 Summary of the court decision

1. Before making a determination on the grounds for rescission asserted by the Plaintiff, an overview will be given on related publicly known designs which existed prior to the Registered Design and the Cited Design, and the positioning of the two designs in relation to those publicly known designs will be clarified.

According to evidence (Exhibits Ko 7-3 to 7-10, 8, 9, 12-1 to 12-3, 13, 32, and 33) and the entire import of oral arguments, the following facts are found.

(1) Development of the Honbuki Ittaigawara

Tile roofing methods include a normally used Hikkake Sanbuki (pantile roofing) method and a traditional Honbuki (formal roofing) method, which combines plain tiles and round tiles. The tiles installed by the Honbuki method have mainly been used for traditional architecture, such as temple and shrine buildings, as high-grade tile roofing, because the way the semi-cylindrical round tiles are lined up along the slopes of the roof and extend in a methodical manner from the front to the back is eye-catching, and gives a gorgeous and stately impression. However, this method had drawbacks, such as requiring a larger number of days and higher costs for installation and making the roof heavier. Thus, in order to resolve these drawbacks, tiles of a type called "Honbuki Ittaigawara," which are created by the integrated molding of a plain tile (concave tile) and a round tile (convex tile), were developed. This type of tiles came into widespread use due to their advantages including the following: although the appearance after completion of the roofing is no different from that of the Honbuki method, a shorter construction period, lighter weight, and reduced cost can be achieved as compared to the Honbuki method, because of the smaller amount of materials required and easier installation; and as a result of the integrated molding, the tiles are hard to shift, and can be used also for steeply sloped roofs.

(2) Asukano Kawara

A. As a representative example of the Honbuki Ittaigawara, there is a registered design (Design Registration No. 549771; the application filed on August 22, 1978; the design registered on December 22, 1980; Exhibit Ko 7-10) for which the design right is held by Kawaratora Kogyo Kabushiki Kaisha. The tile of this registered design was manufactured and sold under the product name "Asukano Kawara," and was widely known (the design is found to have become well-known by the filing date of the application for the Registered Design). Meanwhile, the Asukano Kawara has a type in which a level difference that crosses the tile from left to right is provided near the center of the concave tile part to make the part appear to consist of two layers, an

upper layer and a lower layer, (layered) and a type without such level difference (non-layered) (Exhibits Ko 8, 12-1, and 12-2).

B. As mentioned below, it can be said that the Registered Design mostly adheres to the design of the layered Asukano Kawara in terms of its compositions other than the U-Shaped Pattern.

Specifically, the two designs have the following features in common: [i] integration of the section from the concave part of a concave tile to a semi-cylindrical convex tile formed continuously on an ascending gradient (Basic Composition *A*. of the Registered Design); [ii] formation of a reduced-diameter level difference part on the upper side of the convex tile (Basic Composition *B*. of the Registered Design); [iii] a level difference that crosses the tile from left to right near the center of the concave tile and its position (Basic Compositions *C*. and *D*. of the Registered Design); [iv] two narrow grooves at the reduced-diameter level difference part and the slant at the right side end of that part (Specific Composition *d*. of the Registered Design); [v] multiple convex parts in the shape of horizontal strips near the upper end of the concave tile (Specific Composition *e*. of the Registered Design); [vi] diagonal formation of the lower left end of the concave tile (Specific Composition *f*. of the Registered Design); and [vii] the ratio of the total height to the total width as viewed from the front being approximately 1:1.1 (Specific Composition *k*. of the Registered Design).

Whether there are differences in Specific Composition *g*. relating to the view from the rear, Specific Composition *h*. relating to the view from the left side, Specific Composition *i*. relating to the view from the right side, and Specific Composition *j*. relating to the view from the bottom is unclear. However, at least from what can be identified from a catalog, etc. of the Asukano Kawara (Exhibits Ko 8, 12-1 and 12-2) (in other words, within the extent recognizable by many consumers), there does not seem to be any significant difference.

(3) Variations of the Honbuki Ittaigawara

Besides the compositions of the Asukano Kawara, there are diverse variations to the detailed compositions of the Honbuki Ittaigawara as shown below. These designs are also found to have been publicly known prior to the filing date of the application for the Registered Design.

A. The upper right part (the right side end of the reduced-diameter level difference part) and the lower left part (the lower left end of the concave tile) of the Asukano Kawara are formed as if they were cut out diagonally, similar to Specific Compositions *d*. and *f*. of the Registered Design, but there are also variations in which

the upper right part and the lower left part are both formed almost in a right angle, without having a diagonal cut-out (product names "Manyo" and "Yoko"; Exhibit Ko 7-9).

B. Besides designs that have two narrow horizontal grooves formed in the reduced-diameter level difference part as in the case of the Registered Design (the Asukano Kawara and Exhibits Ko 8 and 12-2), there are variations that have one narrow horizontal groove (Exhibit Ko 7-10) and those that have a flat surface without any horizontal groove as in the case of the Cited Design (Exhibits Ko 7-1 and 7-8).

C. Formation of convex parts that extend from left to right near the upper end of the concave tile is a composition widely adopted for performing a role, called "Mizukaeshi," to prevent the backflow of rainwater. Their specific shapes have wide variations, including multiple convex parts in the shape of horizontal strips (Exhibits Ko 7-9, 7-10, 9, and 12-1) which are similar to those in the Registered Design (Specific Composition *e*.), one convex part in the shape of a wavy line (Exhibit Ko 12-3) which is similar to that in the Cited Design, and two convex parts in the shape of wavy lines (Exhibit Ko 7-8).

D. While the shape of the convex tile of the Asukano Kawara is cylindrical with the width widening upward in a V shape (Exhibit Ko 12-2), there are also variations that are cylindrical with a uniform width (Exhibits Ko 7-1, 7-7 to 7-10, and 12-1) and those that are cylindrical with the width widening downward (Exhibit Ko 13).

E. When looking at the Honbuki Ittaigawara from the bottom, its shape is an approximately S shape turned around 270 degrees, and there are also variations to this shape, with differences in its width-to-height ratio, or, the curvature of the joint part between the concave tile and the convex tile (that is, the degree of flatness) (Exhibits Ko 7-5, 7-9, and 12-1).

(4) Pseudo plaster pattern resembling Okinawa Red Tiles

A. In Okinawa, the Honbuki method of using plaster to cement the joint parts of tiles is traditionally used, and the appearance created by the contrast of the red color of the tiles and the white color of the plaster is valued highly for its aesthetics in harmony with the tropical climate, and is known by the name of "Okinawa Red Tile" or "Ryukyu Red Tile."

As a means to reflect such characteristics of Okinawa Red Tiles in the Honbuki Ittaigawara, an idea, or design, to apply white patterns to the Honbuki Ittaigawara and realize an appearance similar to Okinawa Red Tiles without actually using plaster became widely known. Publicly known literature that existed prior to the filing date of the application for the Registered Design includes the following.

(A) The gazette for Unexamined Utility Model Application Publication No. 1992-27013 (Exhibit Ko 9) published on March 4, 1992 contains statements including the following: "in the case of a tile connecting a plain tile and a round tile on which a white material is applied in the form of a plaster bonding to at least a part of its peripheral edge surface ... by merely laying and fixing the tiles consecutively by overlapping the parts to be overlapped, the whole tile will be surrounded by the white material in the form of being bonded with plaster when the roofing is completed" (page 5 of the gazette); and "as the entire roof exhibits the form of being bonded with plaster, it can also have an effect on appearance to give an accent to the building by adding an Okinawa folk house taste to it." (pages 9 to 10). In addition, it indicates a drawing showing a tile on which a white material is used on the left and right ends of the convex tile and on the lower end of the convex tile and the concave tile (Figure 2).
(B) In addition, the gazette for Unexamined Patent Application Publication No. 1999-193600 (Exhibit Ko 13-1) published on July 21, 1999 states, regarding a tile that has integrated a plain tile and a round tile, that "... if the white color of plaster is expressed, the atmosphere will be similar to that of Ryukyu tiles" ([0046]), and "to that end, it is preferable to make at least the surface (the upper surface) of the lower end and upper end (i.e., the cut surfaces) of the abovementioned S-shaped tile 8 white" ([0047]), but it contains no drawings of a tile with a part of it made white.
B. The two pieces of publicly known literature mentioned above indicate the idea of placing white patterns on the convex tile part, etc. of the Honbuki Ittaigawara and giving the appearance resembling Okinawa Red Tiles, and the design that has the pattern of a U-shape with the opening facing upward (Figure 2 in Exhibit Ko 9). However, they do not indicate a design whose opening faces downward, as in the case of the U-Shaped Pattern, which is commonly found in the Registered Design and the Cited Design.
C. Incidentally, according to the decision of the Tokyo District Court in the 2020 (Yo) 22075 case (Exhibit Ko 3) and the decision of the Tokyo High Court in the 2021 (Ra) 10002 case (Exhibit Ko 4), the pamphlet whose data was sent by the Plaintiff to an architectural design office on February 16, 2017 (meanwhile, the filing date of the Cited Design is June 16, 2017) is found to have contained photographs of the Honbuki Ittaigawara manufactured by the Plaintiff on which a pseudo plaster pattern similar to the U-Shaped Pattern is placed. However, there is no evidence to support that the U-Shaped Pattern was a publicly known tile design prior to that date, and there is also no evidence to support that the U-Shaped Pattern was used in tiles after that date, except in the tiles manufactured by the Plaintiff or the Defendant.

The Defendant argues that they prototyped and made a presentation of a tile on which the U-Shaped Pattern was applied in around 1998, prior to the filing date of the application for the Cited Design, but the related evidence (Exhibits Ko 36 to 38) is insufficient to find that fact.

2. Regarding the grounds for rescission

(1) Since the respective basic compositions and specific compositions of the Registered Design and the Cited Design are found prima facie to be as found in the JPO Decision (the relevant sections of Attachment, "Summary of the grounds for the JPO Decision"), they are used as a premise in making examinations below (however, some parts that find differences by comparing the drawings of the Registered Design and the corresponding drawings of the Cited Design are, although not erroneous as far as the comparison between the drawings is concerned, inaccurate or difficult to understand in terms of recognition of the three-dimensional shape based on differences in angles and how they are viewed; thus this aspect is pointed out in the relevant parts in the later-mentioned examinations).

(2) The Plaintiff asserts that the configuration that attracts the attention of consumers most strongly in the Registered Design and the Cited Design is the U-Shaped Pattern relating to Common Feature 4, and that Differences 1 to 8 cannot be regarded as substantial differences or they merely have small effects on the determination of the similarity. On such basis, the Plaintiff argues that the determination in the JPO Decision, which differs from this, is erroneous. Thus, this point is examined below.

(3) Regarding whether the U-Shaped Pattern constitutes an important part

A. First, both the Registered Design and the Cited Design clearly adhere to the well-known Honbuki Ittaigawara in their basic parts. In addition, it is found that the appearance after completion of the roofing with the Honbuki Ittaigawara is similar to that of the traditional Honbuki method and the way the semi-cylindrical round tiles (convex tiles) are lined up along the slopes of the roof and extend in a methodical manner from the front to the back is eye-catching, and gives a gorgeous and stately impression. Therefore, it can be said that the shape and pattern pertaining to such convex tiles being lined up constitute the part that strongly attracts the attention of observers.

B. While the Registered Design is characterized by not only A. above, but also by the fact that the U-Shaped Pattern is expressed on the brown ground color as mentioned in Specific Compositions *a*. to *c*. and l. above, it is clear that this is intended to be the pseudo plaster pattern resembling Okinawa Red Tiles found in 1. (4) A. above. Specifically, when the tiles relating to the Registered Design are installed as roof tiles,

the semi-cylindrical convex tiles being lined up are clearly framed by a white color that evokes the image of plaster, and in the middle of the lined-up tiles, the Rectangular Patterns of the ground color (brown) surrounded by white are regularly expressed. It can be said that such appearance created by the form and contrast of the brown and white patterns is extremely impressive as a design that creates a tropical atmosphere.

The U-Shaped Pattern of the Registered Design is construed to strongly appeal to the aesthetics of observers.

C. The Cited Design, although its colors are not expressed, has the U-Shaped Pattern in common with the Registered Design, and given that the pseudo plaster pattern resembling Okinawa Red Tiles was widely known as a prior design (1. (4) A. above), it is clear that the combination of the brown ground color and the white U-Shaped Pattern was assumed as the primary embodiment of the Cited Design. It follows that what is stated in B. above regarding the Registered Design is construed to also apply to the Cited Design.

D. In addition to the points above, the fact that the Registered Design mostly adheres to the design of the well-known layered Asukano Kawara in terms of its compositions other than the U-Shaped Pattern (1. (2) above), whereas the U-Shaped Pattern relating to Common Feature 4, which the Registered Design and the Cited Design have in common, is a novel creative part of the Cited Design which cannot be found in any publicly known design, also serves as a critical point which has a significant meaning in the finding of the important part.

In other words, the pseudo plaster pattern, which applies white patterns to the Honbuki Ittaigawara and realizes an appearance similar to Okinawa Red Tiles without actually using plaster, was, in itself, widely known prior to the filing dates of the applications for the Registered Design and the Cited Design, but no publicly known literature, etc. is found to disclose a design of the U-Shaped Pattern with the opening downward (1. (4) B. and C. above).

To supplement this point, Figure 2 of the gazette of Exhibit Ko 9 (1. (4) A. (A) above) discloses a design which, unlike the U-Shaped Pattern (with the opening facing downward), has the pattern of a U-shape with the opening facing upward, and that difference is considered to create the following significant difference in the appearance after completion of the roofing.

Specifically, the Honbuki Ittaigawara is designed so that, when lining up the convex tiles vertically, they become flushed with each other by laying the upper-layer convex tile over the reduced-diameter level difference part provided in the upper part

of the lower-layer convex tile. In the case of the pseudo plaster pattern resembling Okinawa Red Tiles in particular, if the joint part between the upper and lower convex tiles becomes the boundary between the ground color (brown) and the white patterns of the tiles, the joint part naturally becomes a conspicuous part, and processing of that part will require meticulous care.

From such viewpoint, if a U-shaped pattern with the opening facing upward is adopted as in the case of the publicly known design in Figure 2 of the gazette of Exhibit Ko 9, the lower end surface of the convex tile becomes white (see Exhibits Ko 46-2 to 47-3), but if a U-shaped pattern with the opening facing downward is adopted as in the case of the U-Shaped Pattern, the lower end surface of the convex tile becomes the ground color (see the perspective view as viewed from the front and the bottom view of the Registered Design). As the joint part is less conspicuous in the latter, the latter is considered to be suitable for a design for creating an impression of naturally continuing tiles, whereas the former is regarded to simply express the three-dimensional appearance of the overlapped tiles (see the photograph in the middle section of page 1 in Exhibit Ko 45 for an example of such installation). Such difference is not subject to a question of which one is superior to the other, but it clearly serves as a factor that affects the impression after completion of the roofing.

E. Summing up the points mentioned above, in the Registered Design and the Cited Design, the configuration that attracts the attention of observers most strongly (the important part) is the U-Shaped Pattern with the opening facing downward, which is commonly found in the two designs, and it should be said that this commonality is what most strongly affects the determination of the similarity.

The JPO indicated that this common feature is found to have a certain level of effect on the determination of the similarity between the two designs, but determined that the effect on the determination of the similarity is small when evaluating the common features overall. However, it must be said that this determination was indicated without conducting sufficient examinations on the following: identification of the part that attracts the attention of the observer in the Honbuki Ittaigawara and a tile bearing a pseudo plaster pattern premised on it; evaluation of the U-Shaped Pattern and other compositions in relation to prior well-known and publicly known designs; and the difference between publicly known U-shaped patterns with the opening facing upward and the U-shaped pattern with the opening facing downward relating to Common Feature 4 in this case.

(4) Regarding evaluation of the differences

Since the JPO found Differences 1 to 8 between the compositions of the

Registered Design and those of the Cited Design as described in 2. in Attachment, "Common features and differences in the shapes or equivalent features found in the JPO Decision," whether these differences have an effect on the determination of the similarity between the two designs will be examined.

A. Regarding compositions that cannot be observed from the post-construction state of roofing with tiles (related to Differences 1, 2, 6, and 7)

Difference 1 (the shape of the rear surface), Difference 2 (the wall of the left end part of the concave tile), Difference 6 (the presence/absence of grooves at the reduced-diameter level difference part and the angle of the right side end part of the convex tile), Difference 7 ([i] the shape of the convex part near the upper end of the concave tile; and [ii] the angle of the lower left end) relate to compositions that cannot be observed from the post-construction state of roofing with tiles. Therefore, the positioning of these differences in the tile, which is the article to the design relating to the Registered Design, and the extent of their effects on the determination of the similarity will be examined.

Tiles are fundamentally building materials for covering roofs, etc., and it is unrealistic to assume such consumers as collectors of tiles themselves who do not intend to install the tiles. The main consumers of tiles are clients that place orders for and become owners, etc. of buildings that have tile roofs, and it goes without saying that the aesthetics sought by such consumers relate to the post-construction appearance. Although builders that construct the tile roofs and tile sellers, etc. are also consumers, such consumers are also considered to ultimately place the greatest emphasis on the post-construction appearance which gives satisfaction to the clients. Thus, it should be said that the effect, which is brought about by the compositions that cannot be observed from the post-construction state of roofing with tiles, on the determination of the similarity between designs, remains relatively small.

The Defendant argues that builders that are consumers of tiles pay attention to shapes that lead to important functions of the tiles and make selections by looking at the overall shapes, also with regard to the parts that cannot be seen in the state after completion of the roofing. However, the similarity of designs should fundamentally be determined based on the "aesthetic impression that the designs would create through the eye of their consumers," and although functions and figurative designs are compatible with each other, the Defendant’s argument, which focuses solely on functions, cannot be accepted as it is.

Accordingly, it should be said that the effect brought about by Differences 1, 2, 6, and 7, which cannot be observed from the post-construction state of roofing with tiles,

on the determination of the similarity remains relatively small. Meanwhile, Differences 6 and 7 are merely differences within the scope of variations of publicly known shapes that are adopted in the Honbuki Ittaigawara (1. (3) A. to C. above), so the effect brought about by these differences on the determination of the similarity is construed to be limited also in this regard.

B. Regarding the width-to-height ratio of the bottom surface shape (relating to Difference 4)

The JPO [Decision] found that, when the bottom views of the Registered Design and the Cited Design are compared, the width-to-height ratio of the approximately S shape is about 1:5 in the Registered Design and about 1:3 in the Cited Design. This finding is not erroneous in itself, and as is also indicated in the JPO Decision, this can be understood to mean that the abovementioned approximately S shape of the Registered Design is flatter than that of the Cited Design.

However, when installing the Honbuki Ittaigawara, the eaves end of the convex tile will be covered by a circular decorative tile often called "Nokitomoe" (Exhibits Ko 12-2 and 19), and the abovementioned approximately S shape becomes no longer visible externally. Even so, there may be a possibility that the difference mentioned above can be indirectly recognized, for example, by a difference in the extent of the rise of the convex tile, but when the perspective views (a reference perspective view in the case of the Cited Design) that allow easy recognition of a three-dimensional shape are compared, no significant difference is identified in the extent of the rise and other aspects of the convex tile between the Registered Design and the Cited Design. There is no other evidence showing that the difference in the width-to-height ratio of the bottom surface shape of the abovementioned extent causes a substantial difference in the aesthetics of the appearance after completion of the roofing with tiles.

In addition to the above, when also considering that the difference in the width-to-height ratio (the degree of flatness) of the abovementioned approximately S shape is construed to fall within the scope of variations of publicly known shapes (1. (3) E. above), the abovementioned differences are not regarded to have much effect on the determination of the similarity.

C. Regarding the shape of the convex tile and the detailed configurations, etc. of the U-Shaped Pattern (relating to Differences 3 and 5)

(A) In the JPO Decision, the JPO found the differences for the respective corresponding drawings of the Registered Design and the Cited Design, so features that would be the same if recognized/identified as a three-dimensional shape were expressed separately for each directional view, which made it hard to understand.

Therefore, the differences relating to the shape of the convex tile and the detailed configurations, etc. of the U-Shaped Pattern, which are included in Differences 3 and 5, are sorted out and reorganized as described in [i] to [iii] below (meanwhile, although factors other than [i] to [iii] below are also mentioned as Differences 3 and 5 in a part of the JPO Decision, they are merely differences in how the designs are viewed due to differences in angles and drawing methods in the respective drawings of the Registered Design and the Cited Design, and cannot be regarded as substantial differences).

[i] The convex tile of the Registered Design is cylindrical with the width widening upward in a V shape, whereas the convex tile of the Cited Design is cylindrical with a uniform width at least when viewed from directly above.

[ii] In the Registered Design, the width between the right and left sides of the U-Shaped Pattern is slightly wider and the width of the Rectangular Pattern is slightly narrower compared to those of the Cited Design.

[iii] The U-Shaped Pattern part of the Registered Design is flushed with the Rectangular Pattern, whereas the U-Shaped Pattern of the Cited Design is slightly raised to form a level difference.

(B) As abovementioned Differences [i] to [iii] are all compositions of the Registered Design and the Cited Design that relate to the shape and pattern pertaining to the convex tiles being lined up which constitute the part that strongly attracts the attention of observers ((3) above), it cannot be denied that those differences have a certain level of effect on the determination of the similarity between the two designs.

However, Difference [i] is merely a difference within the scope of variations of publicly known shapes that are adopted in the Honbuki Ittaigawara (1. (3) D. above), and Differences [ii] and [iii] are only minor differences in the U-Shaped Pattern that exist while having the common features relating to that pattern, which is a novel creative part that could not be found in a conventional design. As a matter of course, if it can be evaluated that the Registered Design has, while adhering to a prior design in which a novel configuration was created, as a blueprint, additionally incorporated new aesthetics that would attract the attention of consumers even more strongly, it may be possible for the impression relating to the new aesthetics to overturn the impression relating to the common features, and also have a relatively strong effect on the determination of the similarity. However, Differences [ii] and [iii] are not found in any way to create such new aesthetics that would overturn the strong appeal of the U-Shaped Pattern, which is a common feature of the two designs.

Accordingly, abovementioned Differences [i] to [iii] have a certain level of effect

on the determination of the similarity, but compared to Common Feature 4 relating to the U-Shaped Pattern, their effect on the determination of the similarity of the designs should be construed to be relatively small.

(C) Against the above, the Defendant argues that, due to Difference 5, when roofing is conducted with the tile of the Registered Design, the outline of the U-Shaped Pattern is aligned vertically and horizontally and gives a modern and sharp impression, unlike the Cited Design.

However, as the inner left and right lines of the U-Shaped Pattern are approximately in parallel in both the Registered Design and the Cited Design, as found by the JPO as Common Feature 4, there should be no difference between the two in a configuration in which the Rectangular Patterns surrounded by the U-Shaped Patterns are expressed as a single continuous line. The photograph of Exhibit Ko 17-1 indicated by the Defendant merely gives an impression different from "the outline of the U-Shaped Pattern is aligned vertically and horizontally and gives a modern and sharp impression" as asserted by the Defendant because the photograph was not taken from a vertical angle suitable for visually recognizing the Rectangular Patterns aligned in a single line, but from a diagonal angle close to horizontal.

The Defendant's argument mentioned above is unacceptable.

D. Regarding whether colors are expressed (relating to Difference 8)

Although the colors of the Cited Design are not expressed, given that the pseudo plaster pattern resembling Okinawa Red Tiles is well-known, that difference cannot be regarded to have a substantial effect on the determination of the similarity, as mentioned in (3) C, above. Meanwhile, the JPO also determined this point to the same effect, and the parties also do not dispute over this point.

(5) Summary

As described above, it should be said that the important parts of the Registered Design and the Cited Design are the composition parts pertaining to the convex tiles being lined up, which attracts the attention of observers in the Honbuki Ittaigawara, as well as the U-Shaped Pattern, which is newly created and cannot be found in conventional designs. This commonality has an extremely strong effect on the determination of the similarity between the two designs. On the other hand, the differences between the two designs include points that have a certain level of effect on the determination of the similarity, yet such effect must be determined as being relatively small, and when evaluated on the whole, it should be said that the Registered Design is similar to the Cited Design. The JPO Decision, which determined otherwise, has the illegality of erroneously determining the similarity as

stipulated in Article 3, paragraph (1), item (iii) of the Design Act.

3. Conclusion

Accordingly, as the grounds for rescission argued by the Plaintiff are well-grounded, the JPO Decision shall be rescinded and the judgment is rendered as indicated in the main text.

Intellectual Property High Court, Fourth Division
Presiding judge: MIYASAKA Masatoshi
Judge: MOTOYOSHI Hiroyuki
Judge: RAI Shinichi

Attachment: Drawings of the Registered Design

[Perspective view as viewed from the front]

[Perspective view as viewed from the back]

[Front view]

[Top view]

[Right side view]

[Rear view]

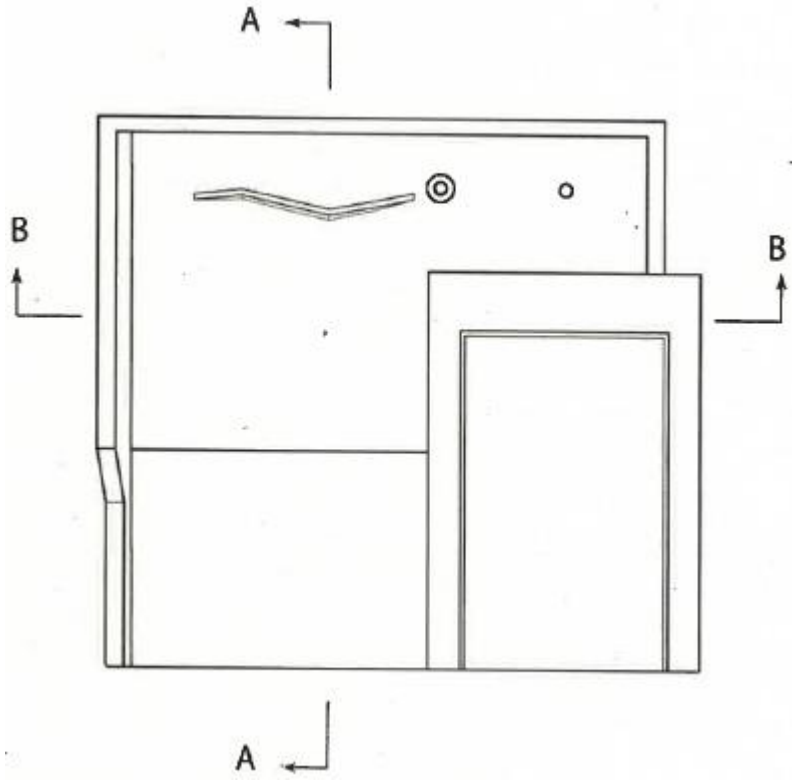
[Left side view]

[Bottom view]

Attachment: Comparison between the Registered Design and the Cited Design

<Registered Design>
Front view ← [Top view]

<Cited Design>
Front view

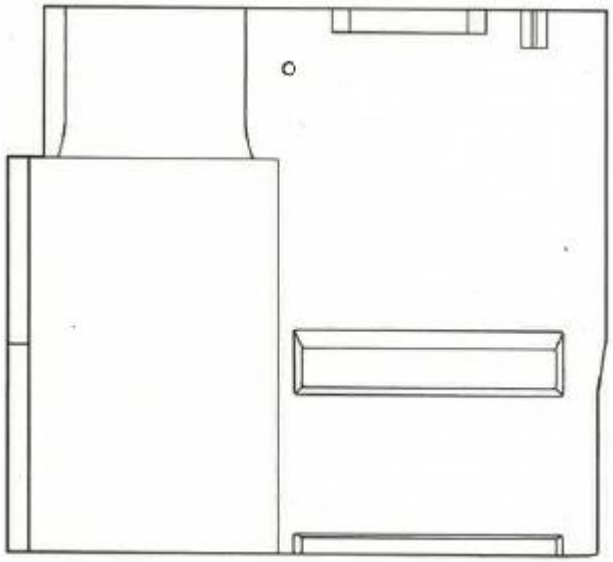


<Registered Design>

Rear view ← [Bottom view]

<Cited Design>

Rear view

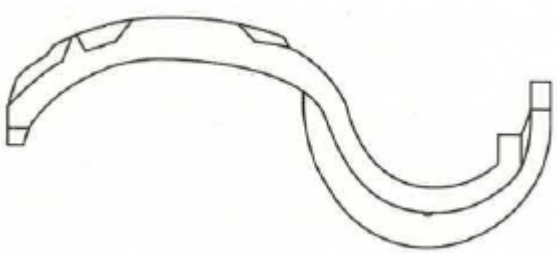


<Registered Design>

Top view ← [Rear view]

<Cited Design>

Top view

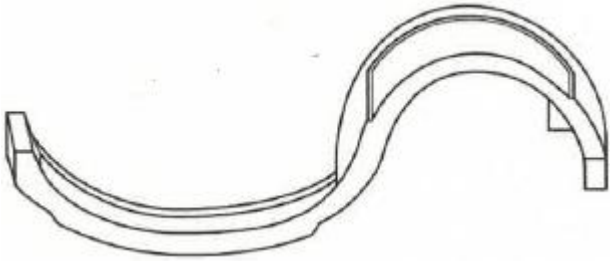


<Registered Design>

Bottom view ← [Front view]

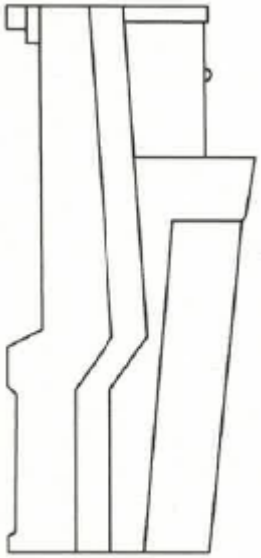
<Cited Design>

Bottom view

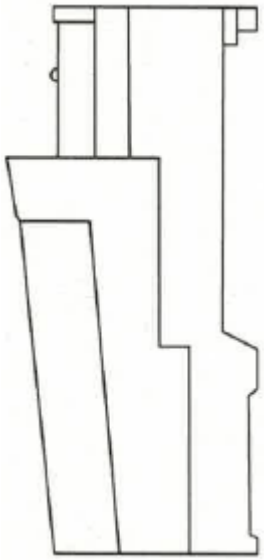


<Registered Design>
Left side view

<Cited Design>
Left side view



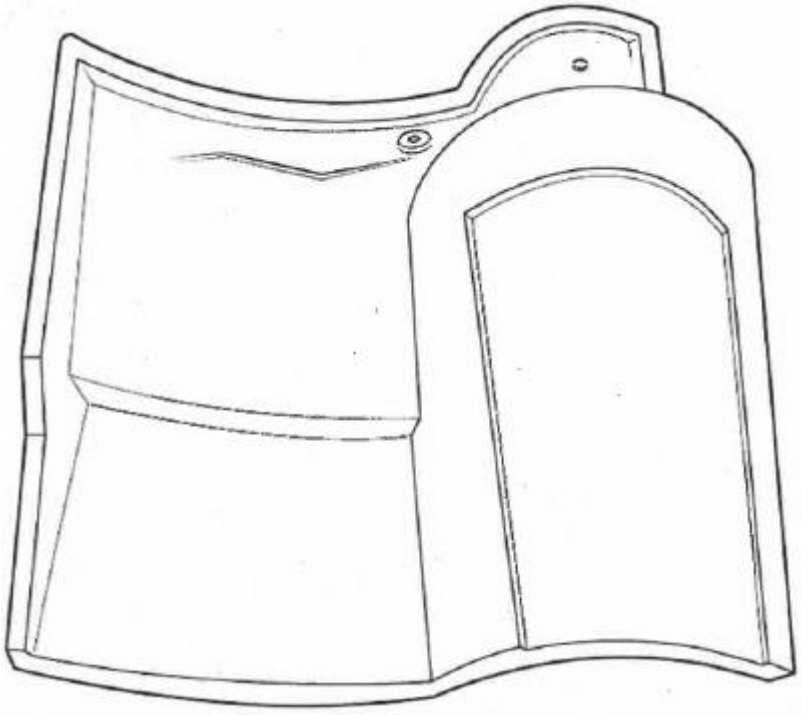
<Registered Design>
Right side view



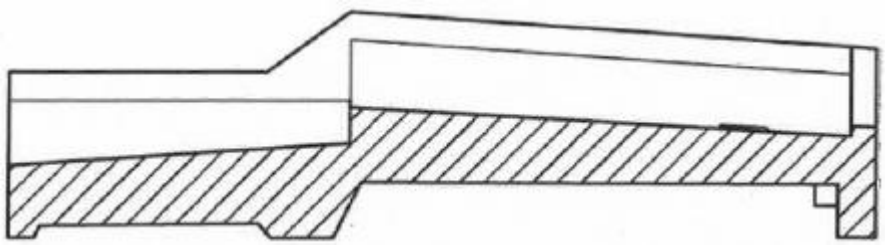
<Cited Design>
Right side view

Attachment: Other drawings of the Cited Design

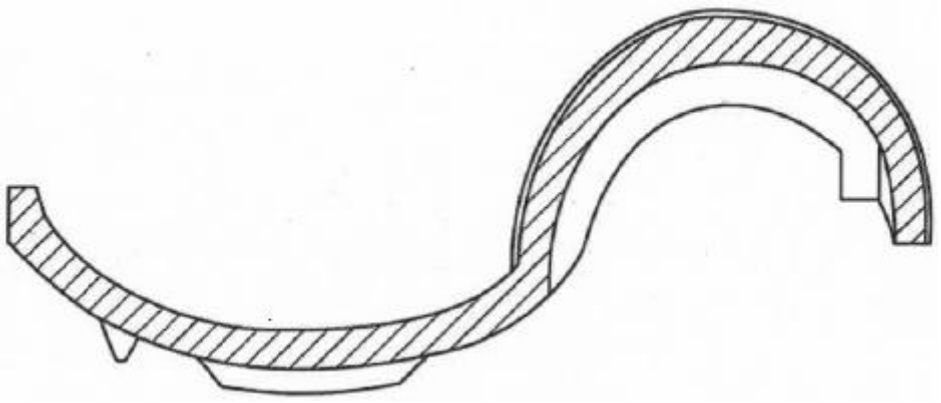
[Reference perspective view as viewed from the front]



[Cross section A-A]



[Cross section B-B]



Attachment: Summary of the grounds for the JPO Decision

	Shape or equivalent features of the Registered Design (No. 1697530) * The **parts in bold** are the differences.	Shape or equivalent features of the Cited Design (No. 1663938) * The **parts in bold** are the differences.	Common features (parts not in bold)	Evaluation of the common features	Differences (**parts in bold**)	Evaluation of the differences
Basic compositions						
A	When viewed from the front, the tile has a shape wherein a wall is provided at the left end part and the section from the concave part of a concave tile continuing toward the right to a semi-cylindrical convex tile formed continuously on an ascending gradient toward the other side is integrated, and in the bottom view, the tile is an approximately S shape turned around 270 degrees.	Same as the Registered Design	Common Feature 1	As the features are shapes or equivalent features that were publicly known in the field of articles of tiles prior to the filing date of the application for the Registered Design (for example, Design Registration No. 1192335 (Exhibit Ko 7-8)), it is difficult to say that consumers will pay particular attention to them.	-	-
B	At the upper corner part of the convex tile, a level difference with a reduced diameter (a reduced-diameter level difference part) is formed so as to make it possible to perform tile roofing by laying another tile immediately over the relevant tile and overlay the tiles to be flush with each other.		Common Feature 2		-	-
C	Near the center of the concave tile, a level difference that crosses the tile from left to right is provided.		Common Feature 3		-	-
D	The level difference mentioned in *C.* is formed at a position that divides the length from the upper edge of the tile to the lower edge at a ratio of 6:4.				-	-

	Specific compositions					
a	A vertically-long pattern of a U-shape, whose outline is turned around 270 degrees so that the opening faces downward (U-Shaped Pattern) is formed on the right and left sides as well as on the top of the convex tile.	Same as the Registered Design	Common Feature 4 Other than the width of the lines on the left, right, and upper parts	As the compositions have common visual characteristics, they are found to have <u>a certain level of effect</u> on the determination of the similarity between the two designs.	-	-
b	In the U-Shaped Pattern, the inner lines of its outline are formed approximately in parallel with the outer lines of the convex tile; and the width of the lines on the left, right, and upper parts is [i] **about one-fourth** of the lateral width of the convex tile.	In the U-Shaped Pattern, the inner lines of its outline are formed approximately in parallel with the outer lines of the convex tile; and the width of the lines on the left, right, and upper parts is [i] **about one-sixth** of the lateral width of the convex tile.			Difference 5 [i] The width of the lines on the left, right, and upper parts	With regard to the difference that the U-Shaped Pattern part is flushed with the other parts of the convex tile surface in the Registered Design, whereas in the Cited Design, that part is uniformly slightly raised from other parts of the convex tile surface to form a level difference ([ii]), although the rise (thickness) observed in the Cited Design is slight, the level difference has a uniform width, and is formed on the surface of the convex tile, which is a conspicuous position, and it gives a certain level of visual impression on consumers. The fact that the width of the lines of the Registered Design is about one-fourth of the lateral width of the convex tile ([i]), together with the characteristic that the width between the left and right ends of the convex tile gradually widens as going upward in a V shape ([iii]), is regarded to create a unique visual impression
c	The U-Shaped Pattern part is [ii] **flush with other parts of the convex tile surface** and [iii] **the width between the left and right ends of the convex tile gradually widens as going upward in a V shape**.	The U-Shaped Pattern part is [ii] **slightly raised to form a level difference from other parts of the convex tile surface, the level difference is tapered, and the width of the level difference (the thickness of the raised part) is uniform**.	-	-	Difference 5 [ii] and [iii]	

						as compared to the Cited Design for which the width of the lines is about one-sixth of the lateral width. Therefore, the differences are found to have a certain level of effect on the determination of the similarity between the two designs.
d	**Two narrow horizontal grooves are formed on the surface** of the reduced-diameter level difference part of the convex tile positioned at the upper right end. Also, the right side end of that part **slants to the left**.	**The surface** of the reduced-diameter level difference part of the convex tile positioned at the upper right end **is formed flat**. Also, the right side end of that part is **formed approximately in parallel with the right side end of the convex tile**.	-	-	Difference 6	A difference in the upper right end of the front surface, which is a limited position, cannot be regarded as a conspicuous difference. In addition, as the horizontal grooves seen in the Registered Design are narrow and inconspicuous, it is difficult to say that consumers will pay particular attention to them.
e	**Multiple** convex parts in the shape of horizontal strips are formed near the upper end of the concave tile. The degree of protrusion of the convex parts is very slight.	**One** convex part in the shape of a wavy line is formed near the upper end of the concave tile. According to the cross section A-A, the degree of protrusion of the convex part is very slight.	-	-	Difference 7 [i]	The degree of protrusion of these convex parts is very slight and is not conspicuous.
f	**The lower left part** of the concave tile is formed **diagonally**, and on the wall at the left end part of the concave tile, a sloping level difference is formed at the position which internally divides the length from the upper edge to the lower edge of the tile at a ratio of about 2:1.	**The lower left part** of the concave tile is formed **in a right angle**, and on the wall at the left end part of the concave tile, a sloping level difference is formed at the position which internally divides the length from the upper edge to the lower edge of the tile at a ratio of about 2:1.	Common Feature 5 [i] Other than the shape of the lower left end of the concave tile	Due to the same reason as that for Common Features 1 to 3, it is difficult to say that consumers will pay particular attention to this common feature.	Difference 7[ii] The shape of the lower left end of the concave tile	The difference is in the lower left end of the front surface, which is a limited position, so it is not a conspicuous difference.
g	On the rear surface, **a sloping level difference is formed at the position which internally divides**	On the rear surface, **three convex parts are formed transversely at the upper side**	-	-	Difference 1	The shape of the rear surface of the Cited Design should be regarded as a

	the length from the upper edge to the lower edge of the concave tile at a ratio of about 2:1.	**end, the lower side end, and the lower center, and to the right of the convex part on the upper end side, a vertically-long convex part is formed. According to cross section A-A, the depth of the concavity between the convex parts at the upper side end and the lower center is about four times the depth of the concavity between the convex parts at the lower center and the lower side end. The parts above and below the convex part at the lower center, the part above the convex part at the lower side end, and the parts to the right and left of the vertically-long convex part are all expressed in a tapered manner**.				shape characteristic which consumers who also focus on the shape or equivalent features on the rear surface notice at a glance, and when compared with the Registered Design in which only a sloping level difference is formed in the rear surface, it is found to have a certain level of effect on the determination of the similarity between the two designs.
h	When viewed from the left side, the wall at the left end part of the concave tile is expressed in a diagonal crank shape toward **the right end of the tile** as if to **cover over the convex tile**.	When viewed from the left side, the wall at the left end part of the concave tile is expressed in a diagonal crank shape **at almost the center of the tile**.	Common Feature 5 [ii] When viewed from the left side, the wall at the left end part of the concave tile is expressed in a diagonal crank shape.	Same as above	Difference 2 Parts other than Common Feature 5 [ii]	These are differences which consumers who observe the tile from all directions will notice at a glance, and they have a strong effect on the determination of the similarity between the two designs.
i	When viewed from the right side, a crank-shaped level difference is formed at almost an intermediate position on the outer line of the convex tile, and **hardly any part of the rear surface of the concave tile appears to the right of that outer line.** The ratio of the non-outline part of the convex tile to the outline part of the	When viewed from the right side, a crank-shaped level difference is formed at almost an intermediate position on the outer line of the convex tile, and **the rear surface of the concave tile appears to the right of that outer line. The width of that rear surface occupies about one-third of**	Common Feature 6 When viewed from the right side, a crank-shaped level difference is formed at almost an intermediate position on the		Difference 3 Parts other than Common Feature 6	

	convex tile to the rear surface of the concave tile, expressed at the lower end of the right side surface, is **about 2:3:1**.	**the total width of the right side surface**, and the ratio of the non-outline part of the convex tile to the outline part of the convex tile to the rear surface of the concave tile, expressed at the lower end of the right side surface, is **about 1:1:1**.	outer line of the convex tile.			
j	When viewed from the bottom, the width-to-height ratio of the approximately S shape, in which the concave tile continues to the convex tile, of the lower end surface (the belt-like surface) is **about 1:5**, and the intermediate part between the concave tile and the convex tile (the intermediate part of the approximately S shape) is formed in **a bent shape**.	When viewed from the bottom, the width-to-height ratio of the approximately S shape, in which the concave tile continues to the convex tile, of the lower end surface (the belt-like surface) is **about 1:3**, and the intermediate part between the concave tile and the convex tile (the intermediate part of the approximately S shape) is formed in **a smooth arc shape**.	-	-	Difference 4 The approximately S shape of the Registered Design is flatter than that of the Cited Design, and is expressed in such a manner that it is bent in the intermediate part.	As it should be said that this difference provides different aesthetics for consumers who also pay attention to the shape of the bottom surface, it has a strong effect on the determination of the similarity between the two designs.
k	The ratio of the total height to the total width as viewed from the front is approximately 1:1.1.	Same as the Registered Design	Common Feature 7	Same as above	-	-
l	**The U-Shaped Pattern part is expressed in white, and other parts are expressed in brown.**	**Colors are not expressed.**	-	-	Difference 8	It is usual for a tile to be brown, and applying white to a part of the tile is also commonplace as can be seen in Okinawa tiles (using plaster).

Attachment: Common features and differences in the shapes or equivalent features found in the JPO Decision

1. Common features of the shape or equivalent features

(Common Feature 1) In the view from the front, the tile has a shape wherein a wall is provided at the left end part and the section from the concave part of a concave tile continuing toward the right to a semi-cylindrical convex tile formed continuously on an ascending gradient toward the other side is integrated, and in the bottom view, the tile is an approximately S shape turned around 270 degrees.

(Common Feature 2) At the upper corner part of the convex tile, a level difference with a reduced diameter (a reduced-diameter level difference part) is formed so as to make it possible to perform tile roofing by laying another tile immediately over the relevant tile and overlay the tiles to be flush with each other.

(Common Feature 3) Near the center of the concave tile, a level difference that crosses the tile from left to right is provided, and that level difference is formed at a position that divides the length from the upper edge to the lower edge of the tile at a ratio of 6:4.

(Common Feature 4) A vertically-long pattern of a U-shape, whose outline is turned around 270 degrees so that the opening faces downward (U-Shaped Pattern) is formed on the right and left sides as well as on the top of the convex tile, and the inner lines of the U-shaped outline of the pattern are formed approximately in parallel with the outer lines of the convex tile.

(Common Feature 5) On the wall at the left end part of the concave tile, a sloping level difference is formed at the position which internally divides the length from the upper edge to the lower edge of the tile at a ratio of about 2:1., and when viewed from the left side, the wall at the left end part of the concave tile is expressed in a diagonal crank shape.

(Common Feature 6) When viewed from the right side, a crank-shaped level difference is formed at almost an intermediate position on the outer line of the convex tile.

(Common Feature 7) The ratio of the total height to the total width as viewed from the front is approximately 1:1.1.

2. Differences in the shape or equivalent features

(Difference 1) On the rear surface of the Registered Design, a sloping level difference is formed at the position which internally divides the length from the upper edge to the lower edge of the concave tile at a ratio of about 2:1. In contrast, on the rear

surface of the Cited Design, three convex parts are formed transversely at the upper side end, the lower side end, and the lower center, and to the right of the convex part on the upper end side, a vertically-long convex part is formed. According to cross section A-A, the depth of the concavity between the convex parts at the upper side end and the lower center is about four times the depth of the concavity between the convex parts at the lower center and the lower side end. The parts above and below the convex part at the lower center, the part above the convex part at the lower side end, and the parts to the right and left of the vertically-long convex part are all expressed in a tapered manner.

(Difference 2) When viewed from the left side, the wall at the left end part of the concave tile of the Registered Design is expressed in a diagonal crank shape toward the right end of the tile as if to cover over the convex tile. In contrast, the wall at the left end part of the concave tile of the Cited Design is expressed at almost the center of the tile.

(Difference 3) When viewed from the right side, hardly any part of the rear surface of the concave tile appears to the right of the outer line of the convex tile of the Registered Design, and the ratio of the non-outline part of the convex tile to the outline part of the convex tile to the rear surface of the concave tile, expressed at the lower end of the right side surface, is about 2:3:1. In contrast, in the Cited Design, the rear surface of the concave tile appears to the right of the outer line of the convex tile, the width of that rear surface occupies about one-third of the total width of the right side surface, and the ratio of the non-outline part of the convex tile to the outline part of the convex tile to the rear surface of the concave tile, expressed at the lower end of the right side surface, is about 1:1:1.

(Difference 4) The designs differ by whether the width-to-height ratio of the approximately S shape of the lower end surface as viewed from the bottom is about 1:5 (Registered Design) or about 1:3 (Cited Design), and by whether the intermediate part of the approximately S shape is a bent shape (Registered Design) or a smooth arc shape (Cited Design). In other words, the approximately S shape of the Registered Design is flatter than that of the Cited Design, and is expressed in such a manner that it is bent in the intermediate part.

(Difference 5) [i] In the U-Shaped Pattern formed on the convex tile, the width of the lines on the left, right, and upper parts is about one-fourth of the lateral width of the convex tile in the Registered Design, but about one-sixth of the lateral width of the convex tile in the Cited Design. [ii] In addition, in the Registered Design, the U-Shaped Pattern part is flush with other parts of the convex tile surface, whereas in the

Cited Design, the U-Shaped Pattern part is slightly raised to form a level difference from other parts of the convex tile surface, the level difference is tapered, and the width of the level difference (the thickness of the raised part) is uniform.

[iii] Moreover, the width between the left and right ends of the convex tile of the Registered Design gradually widens as going upward in a V shape.

(Difference 6) In the Registered Design, two narrow horizontal grooves are formed on the surface of the reduced-diameter level difference part of the convex tile positioned at the upper right end, and the right side end of that part slants to the left. In contrast, in the Cited Design, the surface of the reduced-diameter level difference part is formed flat, and the right side end of that part is formed approximately in parallel with the right side end of the convex tile.

(Difference 7) The designs differ by [i] whether multiple convex parts in the shape of horizontal strips are formed (Registered Design) or one convex part in the shape of a wavy line is formed (Cited Design) near the upper end of the concave tile, and also by [ii] whether the lower left part of the concave tile is formed diagonally (Registered Design) or that part of the concave tile is formed in a right angle (Cited Design).

(Difference 8) In the Registered Design, the U-Shaped Pattern part is expressed in white, and other parts are expressed in brown, whereas colors are not expressed in the Cited Design.