

Judgments of the Supreme Court, the Second Petty Bench

Date of the Judgment: 1980.1.18

Case Number: 1977(Gyo-Tsu)No.28

Main Text of the Judgment:

Jokoku appeal shall be dismissed.

Appellant shall bear the costs of the Jokoku appeal.

Reasons:

Concerning the grounds of the jokoku appeal by the jokoku appellant attorneys NAGAHATA Yuzo and YOSHIHARA Syozo:

It is not interpreted as preservation right, ruled in the Civil Law Article 252 provision, for one of the co-owners of a utility model right to bring about a lawsuit to revoke the trial decision when the co-owners have petitioned for a trial together against the refusal examination concerning the filing of the utility model regarding co-owning rights and received the decision that such a petition cannot be considered.

In such a case of revocation, the question of whether to revoke the trial decision should be decided as a whole by all of the co-owners to the rights. The claim is an absolute joint lawsuit that requires all of the co-owners to bring a suit together.

Basing upon the same argument, the original decision is correct that the case should be dismissed because the appellant, who is just one of the co-owners of the utility model, brought a suit to revoke the trial decision. Thus, there is no illegality in the first instance. The plaintiff's argument cannot be considered.

In accordance with Article 7 of the Administrative Litigation Law, Articles 301, 95, and 89 of Civil Procedure Law, we unanimously decide as the main text of the judgment.

Presiding Judge, Justice KURIMOTO Kazuo

Justice OTSUKA Kiichiro

Justice KINOSHITA Tadayoshi

Justice TSUKAMOTO Shigeyori

Justice SHIONO Yasuyoshi

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