

Judgments of the Supreme Court, the Third Petty Bench

Date of the Judgment: 1981.6.30

Case Number: 1979(O)No.336

Main Text of the Judgment:

Jokoku appeal shall be dismissed.

Appellant shall cover the costs of the Jokoku appeal

Reasons:

Concerning the First ground of jokoku appeal represented by: MURABAYASHI Ryuichi, IMANAKA Toshiaki, YOSHIMURA Hiroshi, KAKU Genzo, FUKAI Kiyoshi, KOIZUMI Tetsuji, IHARA Noriaki:

According to the record, there is no proof of there being unlawfulness in the proceedings of the first instance court here argued upon. In the argument, there is insufficiency of reasoning in presupposing that the facts are against the law. Thus, this line of argument cannot be accepted.

Concerning the Second ground made by the previous attorneys :

According to the record of the background leading to the present litigation, there is no proof that there is any error either in the decision of the first instance court or on the proceedings. Thus, such line of argument cannot be accepted.

Concerning the Third ground made by the previous attorneys and the First ground of jokoku appeal by representatives: HARA Masuji, SAKAI Masayuki, and SATO Tsuneo:

Whether or not the appellant' s Nageshi (a horizontal piece of timber in the frame of Japanese-style of house) is covered by the technical scope of utility models, the original instance court decided as follows:

(1) In the section for the scope of the utility model in the specification of the item in question, "Nageshi, the particularity of which is that plywood 3 and 3' are glued to the face and the back of core material 2 respectively, the back which plywood 3' is glued is mounted by backing material 4, at the same time, the face where plywood 3 is glued, upper side of core material 2, and the bottom of foundation material 2 and backing material 4 are glued with quality material 5, is so described. (2) In the section for detailed description the item in question of the same specification, the Nageshi conventionally used is "made by glued laminated timber consisting of thin sheets of wood glued together, and three sides (front, top, bottom) of which is covered by a sheet of quality wood" so that it tends to be bent and thus fractured easily depending on the temperature and humidity. On the other hand, Nageshi, the

item in question, is “made by gluing plywood to the face and the back of the core material, the back side of plywood is mounted by backing material, and the face side of plywood is covered by a sheet of quality wood while it covers upper and bottom sides as well” so that it will not get bent or fractured even if the temperature or humidity changes; also it will remain esthetic without disfigurement. After the determination of the above-mentioned facts, since the pith of the item in question is that gluing plywood to the face and back of the core material, which results in preventing the item from bending or cracking depending on the temperature and humidity, the core of Nageshi, the item in question, differs from the plywood itself, it provides the resistance against the temperature and humidity, or rather it should be construed that the core of the item in question is a different material that does not have such resistance. The jokoku appellee’ s Nageshi, use a type of plywood which itself provides the resistance to the heat and humidity as a core material. Moreover, Nageshi, the item in question, is made by gluing plywood to both sides of the core material whereas the jokoku appellee’ s Nageshi is made of ready-made plywood; therefore, it is apparent from the original judgment that it was determined that both parties differed in the creation of technical ideas.

According to the above-mentioned facts ascertained by the original instance court, “the specification at issue only states that there was no resistance to the temperature or humidity in the traditional Nageshi made of glued laminated timber but there is resistance to the temperature and humidity in the Nageshi at issue, which is described in the specification of this utility model registration.” However, there is no description regarding “core material 2” of the item in question in the specification; therefore, it is difficult to limit that the core of Nageshi, the item in question, which differs from plywood that provides the resistance to the temperature and humidity is made of a different material which does not provide such resistance. Furthermore, the invention is defined by the Law on Utility Models in the form of the item, its structure, or its combination (see Article 1 and 3 of the Law of Utility Models), but not its method of production. The technical scope of the invention should be determined in the form of the item, and, therefore, it is not possible to take its method of production into consideration when deciding whether or not the jokoku appellee’ s Nageshi falls within the technical scope of the item in question.

Thus, based on the interpretation as concluded by the original instance court rested on the above-mentioned facts ascertained by the same court, it has to be said that it is unable to conclude that jokoku appellee’ s Nageshi falls within the technical scope of the item in question

However, according to the above-mentioned facts as ascertained by the original instance court, it is obvious that, in the item in question, plywood itself is deemed to be one element of its structure. By comparing the item in question to the jokoku appellee' s Nageshi, the body of the item in question is composed using plywood only for the face, back, and for the core material while the jokoku appellee' s Nageshi is composed only of plywood, and it does not have the structure of the item in question where "gluing the plywood 3 and 3´ to face and back of the core material respectively." The creation of technical ideas in the structure of the jokoku appellee' s Nageshi is different from that of the item in question, it does not fall within the scope of the item in question, and, therefore, the ruling of the original instance court, which is in line with the above, is justifiable. There is no illegality in the original judgment that was claimed by the argument and, therefore, said line of argument cannot be accepted.

Concerning the Second ground of jokoku appeal by representatives: HARA Masuji, SAKAI Masayuki and SATO Tsuneo:

In light of the original judgment, it is apparent the evidence in the line of argument was not accepted. It is not necessary to explain why the evidence was accepted or rejected. Accordingly, even though the original instance court did not explain why they rejected the evidence in the judgment, it does not constitute an illegality. The judgment of the original instance court is not unlawful as argued. In the end, the line of argument cannot be accepted.

Thus, in accordance with Articles 401, 95, and 89 of the Code of Administrative Procedure, the justices unanimously ruled as the main text of judgment.

Presiding Judge, Justice ITO, Masami
Justice TAMAKI, Syoichi
Justice YOKOI, Daizo
Justice TERADA, Jiro

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