

Decided on	August 28, 2008	Court	Intellectual Property High Court, Third Division
Case number	2008 (Gyo-Ke) 10069		
- A case in which, in respect to the ease in creation (Article 3, paragraph (2) of the Design Act), a trial decision denying a request for a trial against an examiner's decision of refusal for registration of a design allowing goods that have such design to be named "polishing pad" was cancelled			

Reference: Article 3, paragraph (2) and Article 59 of the Design Act

The plaintiff filed an application to register a design allowing goods that have such design to be named "polishing pad." Since the application was rejected, the plaintiff requested a trial against an examiner's decision. After hearing the trial decision denying the request in relation to the ease in creation (Article 3, paragraph (2) of the Design Act), the plaintiff filed a lawsuit for cancellation of the trial decision.

The court cancelled the trial decision on the grounds that the trial decision contained flaws in its evaluation of the combination of the design for which the application was filed (hereinafter "the Design"), and in its evaluation of the application with respect to the ease in creation.

The court expressed its judgment of a flaw in the trial decision on the combination of the Design as follows:

"The trial decision focused on the grooves in the polishing pad and based its evaluation of the Design on the combination, arrangement and pattern of the grooves. Admittedly the shape of the grooves on the polishing surface can be considered one of the elements that help the Design look beautiful. In the Design, however, many grooves cross one another in a regular manner on the entire polishing surface on the front. The grooves separate the entire polishing surface into parts, each of which has a unique shape. Separated by the grooves, the polishing parts are shaped in close connection with the combination and arrangement of the grooves. The combination and arrangement of the grooves are not the only elements that make the Design look beautiful to the eyes of those who see it. Rather, the characteristics of the Design that give a strong impression should be attributed to the shape of its polishing surfaces when viewed from the front. Based on the above, the trial decision is flawed in not approving the shape of the polishing surfaces that are grooved into parts."

Concerning the ease in creation, the court explained its judgment as follows:

“The allegation that any item or pattern with exactly the same shape as that of the Design existed in the past is ungrounded. The Design aesthetically differs from previous designs. The paving block (B7) is considered to have more similarities with the Design than other previously existent designs in the shape of polishing surfaces. As mentioned in (2) e (b), it cannot be acknowledged that the form of the aforementioned paving block has been widely known to persons who are ordinarily skilled in the art and are concerned with the polishing pad in which the Design is to be incorporated. Also, with consideration to facts about existing designs, the relationship between the field in which similar designs exist and another field to which the Design belongs as well as the combination, arrangement and pattern of the grooves of the Design, the shape of the polishing surfaces and other elements and the aesthetic consisting of all of these and expressed by the Design overall, it can be concluded that creativity is affirmable in the Design to the extent that its registration should be accepted.”