

Decided on	December 25, 2008	Court	Intellectual Property High Court, Third Division
Case number	2008 (Gyo-Ke) 10251		
- A case, with respect to a trial decision that rejected a request for a trial against an examiner's decision to refuse an application for registration of a design for "beer pitchers" (partial design) due to similarity with the cited design, which was cancelled			

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

The plaintiff filed an application for registration of a design for an item named "beer pitcher" (partial design; the design the plaintiff seeks to have registered is hereinafter referred to as "the Design"). Since the application was rejected, the plaintiff requested a trial against an examiner's decision of refusal. The trial decision rejected the request on the grounds that the Design looked like the corresponding part of another design whose registration was numbered 1187522 (hereinafter "the Cited Design"). The plaintiff then filed a lawsuit for cancellation of the trial decision.

As explained below, the court cancelled the trial decision on the grounds that its determination of similarity between the Design and the Cited Design was flawed.

"Both the bent area and the spout of the Design are basically shaped with a straight line. The Design is vertically long overall. The spout is large and deep, looking like overlapping V figures when seen from the front. Collectively considering these characteristics, the shape of the Design gives an orderly but sharp impression.

On the other hand, the bent area and the spout of the Cited Design are basically shaped with a curve except the lateral view of the spout. Overall, the Cited Design is vertically shorter than its horizontal length. Its spout is small and shallow, looking like a circular arc when viewed from the front. In a planer view, the spout of the Cited Design varies in its radius of curvature from the front to the tip and has many curves. Collectively considering these characteristics, the Cited Design gives an irregular and complicated but soft and warm impression overall."

"Both the Design and the Cited Design concern beer pitchers. Structurally, both concern an inner container that, in combination with an outer container, comprises a double structure. They are similar in their basic structure of having the spout and a bent area. Aesthetically, however, they look different in the shape of the spout and the bent area. Therefore, it cannot be concluded that the Design is similar to the Cited Design."