

Date	May 25, 2015	Court	Intellectual Property High Court
Case number	2014 (Ne) 10130		
– A case in which the court found that building design drawings for a condominium are copyrightable.			

Reference: Article 10, paragraph (1), item (vi) of the Copyright Act

Number of related rights, etc.:

Summary of the Judgment

The appellees including Appellee 1 planned to construct a replacement building for Condominium P and the appellant, which is a building design company involved in the replacement project with non-litigant company Ko, prepared multiple design drawings and presented them to the appellees including Appellee 1.

Since non-litigant company Ko withdrew from the aforementioned replacement project, the appellant introduced non-litigant company Otsu to the appellees including Appellee 1, prepared the drawings titled "Project to Construct a Replacement Building for P" ("appellant's drawings") upon non-litigant company Otsu's request, and presented them to the appellees including Appellee 1 via non-litigant company Otsu as non-litigant company Otsu's proposal.

The appellees including Appellee 1 were dissatisfied with the project plan proposed by non-litigant company Otsu and decided to order Appellee 2 to construct a replacement building for P. Upon Appellee 2's request, Appellee 3 had its representative, i.e. Appellee 4, prepare design drawings for a construction project named "Construction of a New Building, Q" ("appellees' drawings")

The appellant alleged that Appellee 4 and others prepared the appellees' drawings based on the appellant's drawings and thereby infringed the appellant's copyrights (the right of reproduction and adaptation right) for the appellant's drawings. Based on these allegations, the appellant claimed against the appellees payment of damages.

In the judgment in prior instance, the court dismissed the appellant's claims by denying the appellant's drawings to be copyrightable. Thus, the appellant, who was dissatisfied with such judgment, filed an appeal.

In this judgment, the court generally determined as follows and found that the appellant's drawings are copyrightable. However, the court also held that the appellees' drawings cannot be found to have infringed the appellant's reproduction right and adaptation right for the appellant's drawings and thereby dismissed the appeal.

(1) The Copyright Act defines a copyrightable work as "a production in which thoughts or sentiments are creatively expressed and which falls within the literary,

academic, artistic or musical domain" (Article 2, paragraph (1), item (i) of the Copyright Act). It can be interpreted that, if a work, etc. expresses thoughts or sentiments in a creative manner, the work should be protected under said Act as a copyrightable work, while thoughts, sentiments, or ideas, etc. that are not expressions per se or any production that does not contain creative expressions would not be regarded as a work and would not be protected under said Act.

In order for a work, etc. to be regarded as a creative expression, the work is not necessarily required to express the creator's originality in a strict sense but is required to express a certain level of distinctiveness of the creator. Any expression that is ordinary and commonplace can be regarded neither as an expression of the distinctiveness of the creator nor as a creative expression.

It can be interpreted that the appellant's drawings are design drawings for the building and should therefore be interpreted to be "works of academic nature" included in "maps and other diagrammatic works of academic nature, such as plans, charts, and models" as listed in Article 10, paragraph (1) of the Copyright Act (Article 10, paragraph (1), item (vi) of the Copyright Act). Design drawings for a building are prepared by use of the specialized knowledge of an architect based on the design concepts determined by taking into consideration, in a comprehensive manner, the client's request, the site location, and other environmental conditions, legal restrictions, etc. Such drawings should be considered to be creative if the manner of expression adopted in the process of preparing the drawings or specific expressions presented therein exhibit the originality of the creator. Needless to say, drawings should not be considered to contain creative expressions if the manner of expression adopted in the process of preparing the drawings or specific expressions presented therein are practical, functional, or commonplace, or if there are almost no other options to choose from.

(2) While options were limited with regard to the reasonable locations to plant new stakes in consideration of the locations of existing stakes as well as the aforementioned requests of the residents concerning the overall shape of the building, its dimensions, the layout of the building on the site, and the locations of the home units inside the building, it can be said that the architect can still use his/her originality to a limited extent in the specific features of the design including the specific shape of each room, corridor, etc. and a combination thereof. Thus, the appellant's drawings as a whole, in which the appellant specifically expressed his/her originality as a first-class registered architect by using his/her special knowledge and techniques, can be considered to exhibit the distinctiveness of the creator. Therefore, the appellant's drawings can be

considered to be creative. However, as explained above, the options available to the architect in this case were limited. The architect had to express his/her distinctiveness under these circumstances. As a result, his/her creativity can be found in specific expressions presented in the drawings only to an extremely limited extent. Even if the drawings are considered to be copyrightable, the copyright can be exercised only in such cases as where the exact copies of the drawings are produced.

(3) A comparison between the appellant's drawings and the appellees' drawings reveals that the two drawings are similar in terms of the structure of each floor as a whole and the overall location of each room inside the building. However, there are many differences in terms of the specific shape of each room, corridor, etc. and a combination thereof. In consideration of the fact that the specific shape of each room and corridor and a combination thereof in the appellant's drawings are not so different from the shape and combination commonly observed in ordinary condominiums, the appellees' drawings cannot be considered to be identical with the appellant's drawings in substance. Therefore, even if there are common features in their basic design conditions between the appellant's drawings and the appellees' drawings, the two drawings must be considered to be different in terms of the specific expressions presented therein. Thus, the appellees' drawings cannot be considered to infringe the appellant's reproduction right and adaptation right for the appellant's drawings.

Judgment rendered on May 25, 2015

2014 (Ne) 10130 Appeal Case of Demanding Payment of Damages (Court of prior instance: Tokyo District Court 2013 (Wa) 2728)

Date of conclusion of oral argument: February 25, 2015

Judgment

Parties concerned: As stated in the Attached List of the Parties Concerned

Main text

1. This appeal shall be dismissed.
2. The appellant shall bear the appeal costs.

Facts and reasons

No. 1 Claims

1. The judgment in prior instance shall be dismissed.
2. The appellees shall jointly and severally pay the appellant 32,850,000 yen and the amount accrued thereon at the rate of 5% per annum for the period from October 6, 2010, to the date of completion of the payment.

No. 2 Outline of the case

1. Parties concerned (undisputed)

- (1) The appellant is a stock company engaged mostly in architecture design.
 - (2) Appellee Yugen Kaisha Matsushita ("Appellee Company Matsushita"), Appellee Y₂, Appellee Y₃, Appellee Y₄, Appellee Y₅, Appellee Y₆, Appellee Y₇, Appellee Y₈, Appellee Y₉, Appellee Y₁₀, and Appellee Y₁₁ (Appellee Company Matsushita, Appellee Y₂, Appellee Y₃, Appellee Y₄, Appellee Y₅, Appellee Y₆, Appellee Y₇, Appellee Y₈, Appellee Y₉, Appellee Y₁₀, and Appellee Y₁₁ are hereinafter collectively referred to as "Appellee Y₂, etc.") were the former owners of residential land in (omitted), Shibuya-ku, Tokyo (the "Land") and were also the owners of the condominium called "P," which used to exist on the Land.
 - (3) Appellee Nisshin Fudōsan Kabushiki Kaisha ("Appellee Nisshin") is a stock company engaged in the planning, development, sale of buildings, condominiums, etc.
 - (4) Appellee Kabushiki Kaisha Asuka Sekkei ("Appellee Asuka Sekkei") is a stock company engaged in architecture design, etc. Appellee Y₁ is the representative of said stock company.
2. This is the case where the appellant alleged that Appellee Y₁ prepared, jointly with Appellee Y₂, etc., and Appellee Nisshin, design drawings (the "appellees' drawings")

for a replacement building (the "Building") for P based on the design drawings prepared by the appellant (the "appellant's drawings") and that the appellees infringed the appellant's copyright for the appellant's drawings (the reproduction right and adaptation right). Against (1) Appellee Y₁, as an entity that actually committed the act of tort, copyright infringement, based on Article 709 of the Civil Code, (2) Appellee Asuka Sekkei for the act of tort by Appellee Y₁, i.e., copyright infringement, based on Article 350 of the Companies Act, and (3) Appellee Y₂, etc. and Appellee Nisshin, as joint tortfeasors involved in the copyright infringement committed by Appellee Y₁, based on Article 719 of the Civil Code, the appellant demanded that they shall jointly and severally pay the appellant 32,850,000 yen, which is equivalent to the design fee that has a proximate causal relationship with the aforementioned act of joint tort, and the amount accrued thereon at the rate of 5% per annum as specified in the Civil Code for the period from October 6, 2010 (the day when Appellee Nisshin received a construction approval certificate) to the date of completion of the payment.

The court of prior instance determined that the features alleged by the appellant as creative expressions in the appellant's drawings cannot be considered to be special techniques used to create the appellant's drawings and that, even if the appellant's drawings are carefully examined, they cannot be considered to exhibit any other special drawing techniques that can be regarded as creative expressions. Furthermore, the court of prior instance found that, despite the appellant's allegation that there are common features between the appellant's drawings and the appellees' drawings, those features can be considered to merely share the idea and also found that the appellant's drawings cannot be found to exhibit creativeness in terms of the drawing techniques or in terms of the expressions themselves presented in the drawings. Therefore, the court of prior instance concluded that the appellant's drawings cannot be considered to be copyrightable and dismissed all of the appellant's claims. Dissatisfied with the judgment in prior instance, the appellant filed this appeal.

3. Facts on which the decision is premised (points for which no evidence is presented are undisputed between the parties)

(1) Background of the construction of a replacement building for P

A. In around April 2006, P existed on the Land. P was a five-story condominium housing a total of 16 home units, which was constructed in around May 1974.

B. In around April 2006, Appellee Y₂, etc. planned construction of a replacement building for P. They agreed to carry out this plan as an equivalent exchange project (a project in which a landowner and a developer [business partner] contribute the land and the fund respectively and obtain exclusive areas in the newly constructed building in

accordance with the contribution ratio). Many companies hoped to participate in this project as business partners and submitted a plan for construction of a replacement building. Appellee Y₂, etc. examined those plans and decided to carry out the project with TOKYU COMMUNITY CORP. ("Tokyu Community"). However, in around July 2008, Tokyu Community decided to withdraw from the project due to financial difficulties. Appellee Y₂, etc. newly started selecting business partners and, in around June 2009, chose Yūroku Tochi Kabushiki Kaisha ("Yūroku Tochi") as one of the candidates. (Exhibit Otsu 4)

(2) Preparation of drawings by the appellant and presentation of the drawings to Appellee Y₂, etc.

A. From the beginning of the project to construct a replacement building for P, the appellant was involved in the project together with Tokyu Community and prepared multiple design drawings from around August 2006 and presented them to Appellee Y₂, etc. (Exhibits Ko 2, 4, 11, Otsu 3) However, since Tokyu Community withdrew from the project, the appellant itself introduced, to Appellee Y₂, etc., Yūroku Tochi as a candidate company as described above and decided to cooperate with Yūroku Tochi thereafter. Upon the request of Yūroku Tochi, the representative of the appellant ("C") prepared the drawings titled "Project to Construct a Replacement Building for P" dated June 9, 2009 (Exhibit Ko 6, the "appellant's drawings") and presented them to Appellee Y₂, etc. via Yūroku Tochi as Yūroku Tochi's proposal on the same date.

B. The appellant's drawings are basic design drawings consisting of the front cover, an area calculation table titled "2009/6/8 Area Calculation Table," as well as five drawings titled "First and second floor plan," "Third and fourth floor plan," "Fifth and sixth floor plan," "Seventh to ninth floor plan," and "sectional plan." (Exhibit Ko 6)

(3) Background, etc. against which the appellees prepared design drawings and the new condominium was constructed

A. However, in around June 2009, Appellee Y₂, etc. were dissatisfied with the project plan proposed by Yūroku Tochi and decided not to order Yūroku Tochi to construct a replacement building for P. (Exhibit Otsu 7, the entire import of the oral argument) In around November 2009, a different person introduced Appellee Nisshin to Appellee Y₂, etc. In 2010, Appellee Y₂, etc. decided to order Appellee Nisshin to construct a replacement building for P.

B. In around April 2010, Appellee Asuka Sekkei was requested by Appellee Nisshin to prepare design drawings to construct a new condominium as a replacement building for P. Based on discussions with Appellee Y₂, etc., Appellee Y₁, who is the representative of Appellee Asuka Sekkei, subsequently prepared design drawings for a construction

project named "Construction of a New Building, B." (Exhibit Otsu 8, the appellees' drawings)

The appellees' drawings were execution drawings (actual measurement drawings) consisting of at least 15 drawings including floor plans titled "First floor plan" to "Seventh floor plan" and "Eighth and ninth floor plan," "R floor plan," "South-west elevation plan," "North-west elevation plan," "North-east elevation plan," "South-east elevation plan," "A-A sectional plan," and "B-B sectional plan."

C. As the building owner, Appellee Nisshin filed an application for approval of the construction of the aforementioned new condominium and obtained construction approval on October 6, 2010. The appellees' drawings were attached to said application. In November 2010, Appellee Nisshin acquired the share of the Land of Appellee Y₂, etc. by means of exchange and started construction of the aforementioned new condominium. The building (the "Building") was completed on November 25, 2011.

The Building is a nine-story condominium constructed based on the appellees' drawings. The exclusively owned part of the building consists of thirty home units including the stores on the first floor.

D. Appellee Nisshin named the Building "B." In December 2011, Appellee Nisshin assigned a certain portion of the condominium part of the Building to Appellee Y₂, etc. by means of exchange and sold the rest to the public. (Exhibit Otsu 8)

(omitted)

No. 3 Court decision

This court also found that the appellees' drawings cannot be considered to be a reproduction or an adaptation that infringes the copyright for the appellant's drawings and that the appellant's claims are groundless for the following reasons.

1. The facts found by the court are the same as those stated in No. 4, 1 (1) (from line 16 of page 28 to line 14 of page 31 of the judgment in prior instance). Thus, these statements shall be quoted.

2. An examination shall be conducted based on the aforementioned facts.

(1) The Copyright Act defines a copyrightable work as "a production in which thoughts or sentiments are creatively expressed and which falls within the literary, academic, artistic or musical domain" (Article 2, paragraph (1), item (i) of the Copyright Act). It can be interpreted that, if a work, etc. expresses thoughts or sentiments in a creative manner, the work should be protected under said Act as a copyrightable work, while thoughts, sentiments, or ideas, etc. that are not expressions per se or any production that

does not contain creative expressions would not be regarded as a work and would not be protected under said Act.

In order for a work, etc. to be regarded as a creative expression, the work is not necessarily required to express the creator's originality in a strict sense. However, the work is required to express a certain level of distinctiveness of the creator. Any expression that is ordinary and commonplace can be regarded neither as an expression of the distinctiveness of the creator nor as a creative expression.

It can be interpreted that the appellant's drawings are design drawings for the building and should therefore be interpreted to be "works of academic nature" included in "maps and other diagrammatic works of academic nature, such as plans, charts, and models" as listed in Article 10, paragraph (1) of the Copyright Act (Article 10, paragraph (1), item (vi) of the Copyright Act). Design drawings for a building are prepared by use of the specialized knowledge of an architect based on the design concepts determined by taking into consideration, in a comprehensive manner, the client's request, the site location, and other environmental conditions, legal restrictions, etc. Such drawings should be considered to be creative if the manner of expression adopted in the process of preparing the drawings or specific expressions presented therein exhibit the originality of the creator. Needless to say, drawings should not be considered to contain creative expressions if the manner of expression adopted in the process of preparing the drawings or specific expressions presented therein are practical, functional, or commonplace, or if there are almost no other options to choose from.

(2) If this case is examined from the perspective of the manner of expression adopted in the process of preparing the drawings, it can be found that, generally speaking, building design drawings express the specific structure of a building by using the standard drafting method so that a builder, etc. in charge of the construction of the building can construct the building in accordance with the instructions of the architect. The expressions presented in such drawings usually follow common rules understandable to any construction worker who has basic knowledge of construction. It has to be said that the manner of expression that can be adopted in the process of preparing the drawings must be chosen from an extremely limited list of options. The appellant's drawings cannot be considered to exhibit originality in choosing the manner of expression because the manner of expression itself is nothing but the creation of two-dimensional drawings in accordance with the commonly-used basic design drawing techniques. Therefore, the appellant's drawings cannot be considered to be creative in this respect.

Next, if the specific expressions presented in the appellant's drawings are examined, it can be found that the condominium expressed in the appellant's drawings is an

ordinary condominium housing stores and homes. This condominium was scheduled to be constructed as a replacement building of a former condominium in an equivalent exchange project. Usually, such condominium must comply with various regulations concerning the site area, the shape, the scheduled number of stories and number of home units, the location relative to the roads, neighbors, etc., the building-to-land ratio, the floor-area ratio, height, shadows, etc. and must make the most of the land within such restrictions because it is the purpose of the equivalent exchange project. The size, layout, etc. of the living space must be determined in consideration of the size and layout of the living area in the former condominium as well as the residents' requests, the sunshine condition, etc. after the construction of a new building. Thus, it can be said that the architect was given only a limited amount of freedom to show his/her originality in the expressions presented in the drawings such as the shape and layout of the building, the structure including the positions of the columns and facilities, dimensions, etc.

In particular, in this case, according to the facts found above (No. 4, 1 (1) B of the judgement in prior instance), the appellant's drawings can be found to have been prepared based on the following design conditions agreed through discussions with Appellee Y₂, etc. by around June 2009: [i] the Building must be a nine-story building, [ii] the locations of the home units for Appellee Y₂, etc. and the floor on which each of those units is located must be basically unchanged from the conditions in P, [iii] the elevators and stairs must be constructed in the north area and the elevators should not be next to any of the home units (drawings ("Haseko's drawings") created by a competitor, Haseko, in February 2010 after the appellant prepared the appellant's drawings, were also created based on the aforementioned conditions [Exhibit Otsu 13]). Before replacement, P was an L-shaped building that is long in the southwest direction and short in the northeast direction. Except for the first and fifth floors, three home units were laid out on the southwest side and one home unit on the northeast side with an internal corridor in between. The first floor houses some clinics and restaurants. (Exhibit Otsu 1) Based on the condition specified in [ii] above, the layout and the floor on which each of those units is located in the Building must be basically the same as in the previous building. Moreover, the size of each home unit must be determined based on the request of each resident. (Exhibit Ko 8, the entire import of the oral argument) In view of these facts, options were limited with regard to the overall shape of the building presented in the appellant's drawings, its dimensions, the layout of the building on the site, and the locations of the home units inside the building. Furthermore, while the position of each stake affects the shape of a building, since a total of 17 stakes were

planted for P, it is reasonable to plant stakes for a replacement condominium in locations that are different from the locations of the existing stakes. The appellant's drawings were prepared based on this premise. (The entire import of the oral argument) From the perspectives of finance and living environment, it would be desirable to minimize the number of stakes to be newly planted as long as the safety of the building can be guaranteed. Thus, it should be said that options were limited with regard to the locations to plant new stakes in consideration of the locations of the existing stakes as well as the aforementioned requests of the residents concerning the overall shape of the building, its dimensions, the layout of the building on the site, and the locations of the home units inside the building.

While options were limited with regard to the reasonable locations to plant new stakes in consideration of the locations of existing stakes as well as the aforementioned requests of the residents concerning the overall shape of the building, its dimensions, the layout of the building on the site, and the locations of the home units inside the building, it can be said that the architect can still use his/her originality to a limited extent in the specific features of the design including the specific shape of each room, corridor, etc. and a combination thereof. Thus, the appellant's drawings as a whole, in which the appellant specifically expressed his/her originality as a first-class registered architect by using his/her special knowledge and techniques can be considered to exhibit the distinctiveness of the creator. Therefore, the appellant's drawings can be considered to be creative. However, as explained above, the options available to the architect in this case were limited. The architect had to express his/her distinctiveness under these circumstances. As a result, his/her creativity can be found in specific expressions presented in the drawings only to an extremely limited extent. Even if the drawings are considered to be copyrightable, the copyright can be exercised only in such cases as where the exact copies of the drawings are produced.

Thus, for this reason, the next section will make a comparison between the appellant's drawings and the appellees' drawings in terms of specific expressions presented therein.

(3) A comparison between the appellant's drawings and the appellees' drawings in terms of the home units, corridor, etc. on each floor reveals that the two drawings are similar and different in the following respects. (Exhibit Otsu 14)

A. First floor plan: The two plans are similar in terms of the locations of clinics and stores, but different in terms of specific dimensions and also different in terms of the locations of other facilities, i.e., the management office, the garbage depository, mail boxes, as well as the shapes of the sub-entrance and the front entrance. Thus, the

appellees' plan is different from the appellant's plan in terms of the specific layout of the first floor as a whole.

B. Second floor plan: The appellees' plan is similar to the appellant's plan in terms of the 190 cm-width hanging balconies built on the southwest side and the northeast side and also in terms of having home units on both sides of the internal corridor. However, the two plans are different in that the number of home units located on the southwest side in the appellees' plan is smaller (three home units in the appellant's plans, while two home units in the appellees' plan). Since the home units on the southwest side partially touch the home units on the northeast side in the appellees' plan, the two plans are different in terms of specific dimensions, floor space, and shape of each home unit and also in terms of the existence or nonexistence of a roof balcony and the shape of the internal corridor.

C. Third floor plan: The appellees' plan is similar to the appellant's plan in terms of the 190 cm-width hanging balconies built on the southwest side and the northeast side and also in terms of having three home units laid out on the southwest side and one home unit on the northeast side with an internal corridor inbetween. However, the two plans are different in terms of the location of the boundary walls of the three home units on the southwest side. Also, due to the facts that two home units on the southwest side in the appellees' plan have a shape that blocks the internal corridor and expands outward and that a part of the home unit on the northeast side expands toward the balcony, the two plans are different in terms of the specific dimensions, floor space, and shape of each home unit and corridor.

D. Fourth floor plan: The two plans are similar in terms of the 190 cm-width hanging balconies built on the southwest side and the northeast side and also in terms of having three home units laid out on the southwest side and one home unit on the northeast side with an internal corridor in between. The two plans are different in terms of the boundary walls of the three home units on the southwest side. Since the two home units on the southwest side and the home unit on the northeast side in the appellees' plan expand toward the internal corridor respectively, the two plans are different in terms of the specific dimensions, floor space, and shape of each home unit and corridor.

E. Fifth floor plan: The two plans are similar in terms of the 190 cm-width hanging balconies built on the southwest side and the northeast side and the home units laid out around an internal corridor. However, while there are a total of four home units in the appellant's plan, there are only three home units in the appellees' plan, one of which is a large home unit facing both the southwest side and the northeast side. Another home unit on the southwest side also has a shape that expands toward the internal corridor and has a balcony that is different in shape. In short, the two plans are different in terms of

the specific dimensions, floor space and shape of each home unit and corridor.

F. Sixth floor plan: The two plans are similar in terms of the 190 cm-width hanging balconies built on the southwest side and the northeast side and also in terms of the home units laid out on both sides of an internal corridor. However, while there are three home units on the southwest side in the appellant's plan, there is only one home unit in the appellees' plan, which has a shape that blocks the internal corridor and expands outward. The specific shapes of the balconies on the southwest side and the northeast side are also different because the home unit part expands outward. In short, the two plans are different in terms of the specific dimensions, floor space and shape of each home unit and corridor.

G. Seventh floor plan: The two plans are similar in terms of having three home units laid out on the southwest side and one home unit on the northeast side with an internal corridor in between. However, the two plans are different in terms of the location of the boundary walls of the three home units on the southwest side. Two home units on the southwest side and one home unit on the northeast side in the appellees' plan expand toward the internal corridor. The balcony on the southwest side is not hanging in the first place. Its length is too short to entirely cover the side of each home unit. In short, the two plans are different in terms of the specific dimensions, floor space and shape of each home unit and corridor.

H. Eighth and ninth floor plan: The two plans are similar in terms of having three home units laid out on the southwest side and one home unit on the northeast side with an internal corridor in between and also in terms of two home units on the southwest side that block the internal corridor and expand outward and also the inner balcony of each home unit on the southwest side. However, the two plans are different in terms of the locations of the boundary walls of the three home units on the southwest side and also in terms of the shape of the balcony on the northeast side. In short, the two plans are different in terms of the specific dimensions, floor space and shape of each home unit and corridor.

(4) As described above, a comparison between the appellant's drawings and the appellees' drawings reveals that the two drawings are similar in terms of the structure of each floor as a whole due to the overall shape of the building and the overall location of each room inside the building because it is basically the same as the location of each room in P. However, there are many differences in terms of the specific shape of each room, corridor, etc. and a combination thereof. In consideration of the fact that the specific shape of each room and corridor and a combination thereof in the appellant's drawings are not so different from the shape and combination commonly observed in

ordinary condominiums, the appellees' drawings cannot be considered to be identical with the appellant's drawings in substance. Therefore, even if there are common features in their basic design conditions between the appellant's drawings and the appellees' drawings, the two drawings must be considered to be different in terms of the specific expressions presented therein. Thus, the appellees' drawings cannot be considered to infringe the appellant's reproduction right and adaptation right for the appellant's drawings.

3. Allegation of the appellant

(1) In response to the aforementioned findings, the appellant alleged as described in No. 2, 4, (1), A to F above with regard to the specific creative expressions presented in the appellant's drawings.

However, as found above, with regard to the plan to construct the Building as a nine-story building, it was a precondition given as of the time of the preparation of the appellant's drawings. Thus, even if this is expressed in the appellant's drawings, it could not be considered to be a creative expression. Even if the appellant was the first person to propose the plan to construct the Building as a nine-story building to Appellee Y₂, etc. based on the understanding that a nine-story building is the most appropriate as a replacement building in consideration of various conditions, what was proposed was just an idea and cannot be protected under the Copyright Act. Thus, it is clear that the subsequent act of Appellee Y₂, etc. of requesting Appellee Asuka Sekkei to construct a nine-story building and the act of preparing the appellees' drawings based on this request do not constitute copyright infringement.

Regarding the locations of pillars, the number of pillars, and the distances between pillars described in B above, a precondition given when the appellant's drawings were prepared was to [i] plant new stakes in locations that are different from the locations of the existing stakes. The expression of this feature in the appellant's drawings cannot be considered to be creative. Even if the appellant was the first person to make such proposal when the appellant started participating in the project of constructing a replacement building for P, what was proposed was an idea and was not something copyrightable. Therefore, the act of Appellee Y₂, etc. of requesting Appellee Asuka Sekkei to find new locations for stakes in order to avoid the existing stakes from an economic perspective and the act of preparing the appellees' drawings based on this request do not constitute copyright infringement. Regarding the number of pillars and the locations of pillars as stated in [ii] and [iii] above, it is true that this precondition that the locations of the existing pillars must be avoided would not be the only factor that determines the number and locations of pillars. However, in comparison with

Haseko's drawings (Exhibit Otsu 13) prepared in February 2010 and submitted as a competing proposal, Haseko's drawings are almost identical with the appellant's drawings in terms of the distances between pillars in the direction of Y. Also, Haseko's drawings are identical with the appellees' drawings in terms of the distance between X1 and X 2. (Exhibit Ko 13; Miyata Drawings [Exhibit Ko 7] were prepared in February 2009 prior to the preparation of the appellant's drawings. It is unclear whether Miyata Drawings were prepared based on the results of discussions with Appellee Y₂, etc. Miyata Drawings can be considered to have been prepared based on a different precondition to begin with in view of the facts that the building does not have three home units on the southwest side because it does not have an L-shape and that Miyata Drawings were not prepared based on the request of Appellee Y₂, etc. that the location of each home unit should be the same as the location in P.) In consideration of these facts, it should be said that options were limited with regard to the reasonable number and locations of pillars and pillar positioning arrangement. In view of the fact that the appellees' drawings are not exactly identical with the appellant's drawings in terms of the location of each pillar, the aforementioned similarity cannot be considered to provide sufficient grounds to conclude that the appellees' drawings are reproductions or adaptations of the appellant's drawings. Regarding the specific location of each pillar ranging from X2Y1 to X2Y4 in the appellant's drawings included in the attached drawings stated in [iv] above, even if this feature can be considered to be distinctive and creative, the appellees' drawings cannot be considered to have such feature that the line extending from the left side of X2Y2 Pillar touches the right side of X2Y4 Pillar or that said extending line goes through the center of X2Y3 Pillar (Exhibit Ko 9; as shown in the attached appellees' drawings) and therefore cannot be considered to infringe the copyright regarding the point stated in [iv] above.

As described above, regarding the locations of home units as stated in C above and the locations of elevators and stairs as stated in E above, as of June 2009 when the appellant's drawings were prepared, those locations were designated as a design condition for the appellant's drawings imposed as a result of discussions with Appellee Y₂, etc. (Haseko's drawings prepared in February 2010 are also identical with the appellant's drawings in terms of the locations of home units, elevators, and stairs. [Exhibit Otsu 13]) Thus, the expression of such feature in the appellant's drawings cannot be considered to be creative. Even if these locations were originally proposed by the appellant, what was proposed was just an idea and is uncopyrightable. Since the appellees' drawings were prepared based on the same request, even if the appellees' drawings are identical with the appellant's drawings in these respects, it would not

constitute infringement of the copyright for the appellant's drawings.

Regarding the balconies stated in D above, the decision as to whether to adopt the hanging style should be considered to be an idea. Such balcony style cannot be considered to be special. The width of a balcony could be regarded as an element that makes up its creativeness as one of the features of the specific shape expressed in a drawing. However, the overall shape of each of the balconies itself should be considered to be a common shape consisting of straight lines. Since there are the aforementioned differences between the appellant's drawings and the appellees' drawings, the identicalness solely in terms of width does not provide sufficient grounds to prove copyright infringement.

The elevators and stairs stated in E are as stated above as far as [i] and [ii] are concerned. While the framework of the outside stairs, which is alleged to be an external design as stated in [iii] above, is exposed to the outside, the appellant admitted that it is not rare that such external design is shown on the side or back of a building (Exhibit Ko 33) and alleged that the location of such design, i.e., the front part of the building, is distinctive. However, according to the evidence (Exhibits Otsu 17-1 to 17-8), it can be found that it is common to expose the framework of the outside stairs from the external surface of the front side of a building, and thus such feature cannot be considered to be creative.

Regarding the layout of the first floor stated in F above, the features specified in [i] to [iii] should be considered to be ideas. In consideration of the fact that the appellees' drawings are different from the appellant's drawings in terms of the specific shapes and a combination thereof expressed in the first floor plan prepared based on those ideas, the appellees' drawings cannot be considered to infringe the copyright for the appellant's drawings.

(2) In addition to the points mentioned above, the appellant alleged that the appellant's drawings should be considered to be copyrightable because the appellant's drawings are a part of the drawings prepared in the process of basic design and do not merely show an overall design as a whole but show an almost finalized form of drawings because they were prepared after technical examination that is sufficient to prepare execution drawings based thereon. The appellant alleged that, since the appellant used its specialized knowledge and skills to prepare the drawings, these drawings should be considered to be copyrightable.

Regarding this point, as alleged by the appellant, the appellant's drawings were actually prepared based on the appellant's specialized knowledge by using the appellant's skills as a first-class registered architect after determining design-related

matters by taking into consideration the appellant's proposals, the requests submitted by Appellee Y₂, etc., and the results of discussions. As explained above, the appellant's drawings can be found to be copyrightable. However, the design-related matters determined as a result of the aforementioned process can be considered to have been imposed as design conditions in this case. Since those matters should be regarded as ideas, the identicalness between the appellant's drawings and the appellees' drawings in terms of those matters would not provide sufficient grounds for the establishment of copyright infringement. Thus, the aforementioned allegations of the appellant would not affect the aforementioned court determination.

No. 4. As explained above, the appellant's claims should be considered to be groundless. Thus, the judgment in prior instance that dismissed those claims should be regarded as reasonable. This appeal shall be dismissed due to the lack of grounds. The judgment shall be rendered in the form of the main text.

Intellectual Property High Court, First Division

Presiding judge: SHITARA Ryuichi

Judge: OYORI Asayo

Judge HIRATA Akifumi cannot sign and seal this document due to a relocation.

Presiding judge: SHITARA Ryuichi

(Attachment)

List of the Parties

Appellant: Kabushiki Kaisha Akane Sekkei

Appellee: Kabushiki Kaisha Asuka Sekkei

Appellee: Y₁

Appellee: Nisshin Fudōsan Kabushiki Kaisha

Appellee: Yugen Kaisha Matsushita

Appellee: Y₂

Appellee: Y₃

Appellee: Y₄

Appellee: Y₅

Appellee: Y₆

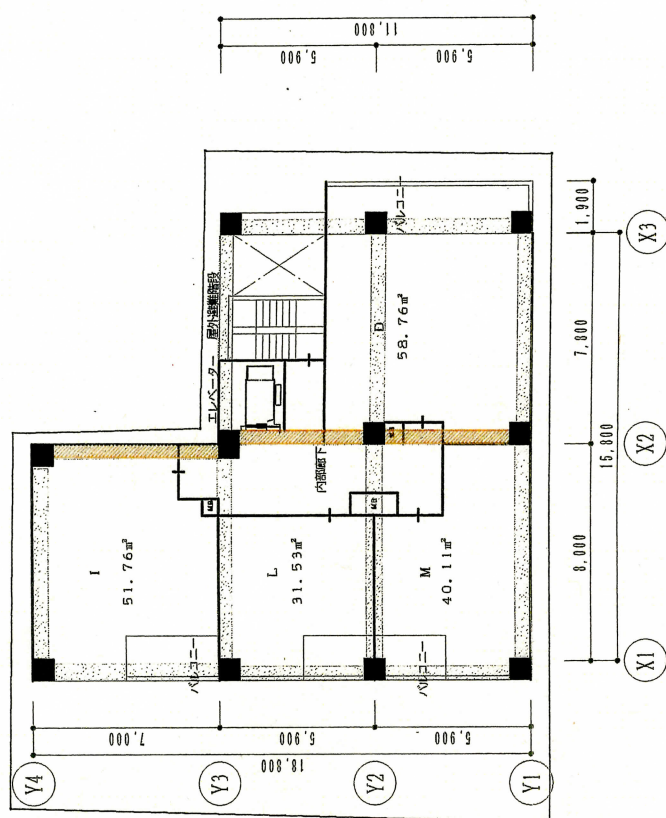
Appellee: Y₇

Appellee: Y₈

Appellee: Y₉

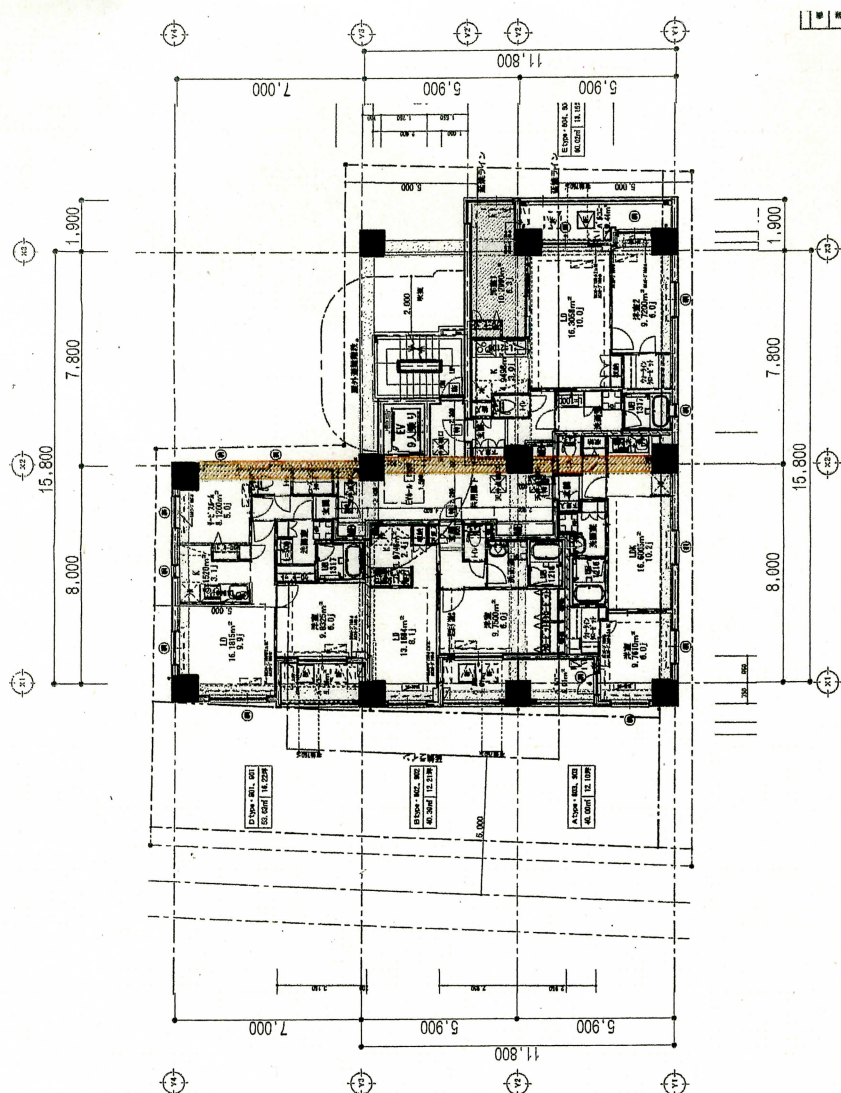
Appellee: Y₁₀

Appellee: Y₁₁



8、9階平面図

8、9 齒平圓	1/200
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8、9階平面図

[illegible]

Appellant's drawings

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Appellees' drawings

8、9階平面図
Eighth and ninth floor plan

1/200

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