

Judgments of Osaka District Court, 21th Civil Division

Date of the Judgment: 2005.11.24

Case Number: 2004(Wa)No.8657

Title (Case):

A case wherein the plaintiff claimed damages for the defendant's infringement on the design right to the "infusion solution bag," whereas the court judged that the defendant has a non-exclusive license based on prior use

Summary of the Judgment:

This is a lawsuit where the plaintiff, who owned a design right to the "infusion solution bag," argued that the design of the infusion solution bag produced and sold by the defendants is infringingly similar to the plaintiff's registered design, and that the defendant's production and sale of the product constitutes an infringement on the plaintiff's design, and claimed damages for the infringement against the defendant.

The defendants' counterargument can be summarized as follows: (1) the defendants have a non-exclusive license based on prior use (Article 29 of the Design Act); and (2) the defendants have a non-exclusive license based on prior application (Article 29-2 of the Design Act).

The court dismissed the plaintiff's claim by admitting the credibility of the evidence that proved that the defendants had started making preparations for the production of its products before the plaintiff's filing of an application for registration of the design, and by concluding that the defendants had a non-exclusive license based on prior use.

There was another lawsuit between the same parties as the above having the same design right as its subject. In that case, the same plaintiff demanded an injunction against the production and sale of the same defendant's products. On July 28, 2005, the Osaka District Court handed down the same judgment as that for this case.

(The copyright for this English material was assigned to the Supreme Court of Japan by Institute of Intellectual Property.)