

Date	February 26, 2018	Court	Intellectual Property High Court, Fourth Division
Case number	2017 (Gyo-Ke)10181		
<p>- A case in which the court determined that a design for which a "tool for correcting how to hold chopsticks" was designated as an article to the design was considered to have novelty and originality of concept as the design and could not be said to be easily created from cited designs, and therefore the design did not fall under Article 3, paragraph (2) of the Design Act, in view the following features: the design, to be used appropriately on or off the chopsticks for the purpose of correcting how to hold chopsticks, was composed of two parts, i.e., a pair of constituent parts A and B, and the paired structure, consisting of: the constituent part A which provided a linear impression, and the constituent part B which had a different angle and exhibited an inclined impression, such that it offered an integrated sense of beauty with a feeling of uniformity.</p>			

References: Article 3, paragraph (2) of the Design Act

Number of related rights, etc.: Case of Invalidation Trial No. 2016-880025 (the trial), Design registration No. 1406731 (the registered design)

### Summary of the Judgment

This is a suit for rescission of a trial decision made by the JPO in an invalidation trial, in which trial a request for a trial was made for invalidation of the defendant's design for which a "tool for correcting how to hold chopsticks" was designated as an article to the design and the request was dismissed. The plaintiff asserted that the grounds for recession were errors in the determination of easy creatability.

As shown in the following outline of the ruling, the judgment upheld the trial decision by the JPO.

The difference (d) between the present design and the cited designs is not just the difference relating to the configuration of only the constituent part B but the difference relating to the configuration composed of two parts; i.e., constituent parts A and B, which are characterized as follows: in the constituent part A, the direction of the center-line of the hole of a ring section is orthogonal to the direction of the center-line of the hole of an attachment section, resulting in no

inclination therebetween; on the other hand, in the constituent part B, the direction of the center-line of the hole of a ring section is similar to the center-line of the hole of an attachment section so that the constituent part B has a different orientation from that of the constituent part A, and there is slight inclination between the two sections in the horizontal and vertical directions. It is not considered that such a configuration is a well-known design and it cannot be said that such a configuration could have been easily created by a person ordinarily skilled in the art. The configuration relating to difference (a) is not a well-known design, either, and it is not considered that the configuration relating to difference (a) could have been easily created by a person ordinarily skilled in the art.

The design in the configuration of the article comprising the pair of two parts, the constituent articles A and B, each consisting of the attachment section and the ring section appropriately usable on and off the chopsticks cannot be said to be obtained merely by combining cited designs 1a and 1b in a common method in the field of articles to which the design belongs. It cannot be said that the design could have been easily created by a person ordinarily skilled in the art.

The design, to be used appropriately on and off the chopsticks for the purpose of correcting how to hold the chopsticks, is composed of the pair of two parts, the constituent parts A and B, each consisting of the approximately square tubular attachment section and the ring section embedded and integrated into the attachment section. In the constituent part A, the direction of the center-line of the hole of the ring section is orthogonal to the direction of the center-line of the hole of the attachment section, resulting in no inclination therebetween. On the other hand, in the constituent part B, the direction of the center-line of the hole of the ring section is approximately the same as the center-line of the hole of the attachment section and there is slight inclination between the two sections both in the horizontal and vertical directions. It is considered that the entire configuration of the design forms an integrated sense of beauty with a feeling of uniformity. It should be said that the configuration of the design which forms an integrated sense of beauty with a feeling of uniformity has novelty and originality

of concept. Therefore, it cannot be said that the design could have been easily created.