

Date	February 19, 2008	Court	Tokyo District Court, 46th Civil Division
Case number	2007 (Wa) 1972		
– A case in which the court denied infringement of a design right for a bucket tip shroud.			

In this case, the plaintiff, who holds a design right for a bucket tip shroud (the "Design"), alleged against the defendant that the bucket tip shroud manufactured and sold by the defendant (the "defendant's product") infringes the plaintiff's design right and sought an injunction against the sale of the defendant's product and disposal thereof and also demanded the payment of damages. The defendant disputed the similarity between the design of the defendant's product (the "defendant's design") and the Design and alleged that there is a reason for invalidation of the Design on the grounds that the Design violates Article 3, paragraph (2) of the Design Act that was in effect prior to the revision by Act No. 51 of 1998.

In this judgment, regarding judgment criteria, the court found that, in order to make a similarity judgment on a design, it is necessary to take into consideration the nature, purpose and the manner of use of the article embodying the design, as well as the existence or non-existence of a newly created part that has not existed in a well-known design, and to identify the parts of the article embodying the design that attract consumers' attention as essential features of the design, and to determine whether or not the two designs share the same structural details in terms of the essential features.

In order to determine the essential features of the Design, the court held as follows. First, the court found that the entire Design shall be considered to be the essential features because construction companies and other consumers purchase a bucket tip shroud after examining it as a whole from various angles. Furthermore, the court found that, since the basic structural details shared between the Design and the defendant's design had all been publicly known prior to the filing of the design application in question, said basic structural details may not be considered to be the structural characteristics of the Design and that the essential features of the Design should be regarded as the specific structural details of the grooved part, both tooth plate parts, the front side of the tooth plate parts, and the backside of the tooth plate parts.

In this judgment, the court dismissed the plaintiff's claim by holding that the defendant's design may not be considered to be similar to the Design on the grounds that a comparison between the Design and the defendant's design has revealed a clear difference between the two designs in terms of the aforementioned essential features.