

Design Right	Date	January 31, 2017	Court	Tokyo District Court, 46th Civil Division
	Case number	2016 (Wa) 13870		
- A case in which, concerning the design of a wheeled platform, the court dismissed a claim for an injunction against the manufacture and the like of the Defendant's Product and a claim for compensation, by holding that it cannot be acknowledged that the Defendant's Design is similar to the Plaintiff's Design.				

### Summary of the Judgment

In the present case, the Plaintiff, who holds a design right in which the article to the design is a "wheeled platform", sought an injunction against the manufacture and the like of the Defendant's Product, pursuant to Article 37, paragraphs (1) and (2) of the Design Act, and for payment of compensation, pursuant to Article 709 of the Civil Code and Article 39, paragraph (2) of the Design Act, by asserting that the manufacture and the like by the Defendant of the Defendant's Product infringe on the above design right.

The points at issue in the present case are [i] whether or not the Plaintiff's Design and the Defendant's Design are similar, [ii] whether or not there is indirect infringement, and [iii] the amount of damages for the Plaintiff.

In the judgment of the present case, it was determined, concerning the above [i], that the Plaintiff's Design and the Defendant's Design are not similar because the Plaintiff's Design concerns a wheeled platform which is equipped with four supports positioned in four corners (hereinafter referred to as "Push Bars"), and the Defendant's Design concerns a wheeled platform having no parts corresponding to Push Bars, so that the two designs clearly have different shapes when seen from the front or from the side or the like. On that premise, the court also considered whether there is similarity when the Push Bars are removed, and determined as follows. It can be interpreted that consumers such as construction companies intending to purchase a wheeled platform and the employees intending to use the wheeled platform will observe not only the loading surface of the main unit of a wheeled platform but also the manner in which wheels are placed as well as the configuration of the bottom surface. Accordingly, it is acknowledged that in the two designs, not only features such as the shape of the top board of the loading surface but also features such as the shape of the wheel attachment board, the manner in which wheels are attached upon observation of the bottom surface, and the framework of the wheeled platform would attract the attention of those who come into contact with the wheeled platform. The court therefore held that the two designs are not similar, in view of these points,

regardless of the presence or lack of Push Bars, because each of the two designs, when seen in its entirety, creates an aesthetic impression that is different from the aesthetic impression created by the other design even in light of the commonalities shared by the two designs.

Also, in regards to the Plaintiff's claim concerning the above [ii] to the effect that "even if the Defendant's Design is not similar to the Plaintiff's Design because of the presence or lack of Push Bars, it is impossible to consider using the wheeled platform in a manner without the Push Bars, so that the manufacture and the like of the Defendant's Product constitutes indirect infringement", the court determined that the two designs are not similar even when excluding the Push Bars, and that, as shown by evidence, wheeled platforms like the Defendant's Product can be used in a manner other than the manner in which Push Bars are positioned in the four corners, so that there is no indirect infringement.