

Judgments of Intellectual Property High Court, Second Division

Date of the Judgment: 2006.12.11

Case Number: 2006 (Gyo-Ke) No. 10337

Title (Case):

A case wherein, while the JPO made a trial decision to invalidate the registered design in dispute based on the grounds that it was similar to a design presented in a cited publication (the demandant's corporate brochure) submitted by the demandant (the defendant), the court revoked that trial decision by holding that there was insufficient evidence to prove that the cited publication had been distributed before the filing of the application for the registered design in dispute.

Reference: Article 3, para.1, item 3, Article 48, para.1, item 1 of the Design Act

Summary of the Judgment:

The background of this case was as follows. The defendant (the demandant) filed a request with the JPO for a trial to invalidate the plaintiff's registered design in dispute, which the defendant claimed was similar to a design presented in the defendant's brochure that it had distributed prior to the plaintiff's filing an application for the registered design. The JPO accepted the defendant's claim and made a trial decision to invalidate the disputed design registration. Dissatisfied, the plaintiff made a claim for revocation of the trial decision.

In consideration of the events and circumstances that have led to this lawsuit, the court revoked the trial decision by holding that, since the defendant's brochure was a mere color-printed document, the defendant could have made the brochure with a disguised preparation date at any time after the application filing date, and therefore that the preparation date printed on the document was insufficient to prove that it was actually prepared on that date. Other items of evidence were also found insufficient to prove that the brochures were distributed before the plaintiff's filing of an application for the registered design.

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