

Judgments of Intellectual Property High Court, Third Division

Date of the Judgment: 2006.9.26

Case Number: 2006 (Ne) No. 10037, 2006 (Ne) No. 10050

**Title (Case):**

A case wherein, regarding the judgment handed by the court of first instance stating that, while the defendant published, without the copyright holder's consent, books containing four imitative paintings of Ukiyoe made in the Edo period, since the defendant's act shall be considered to constitute copyright infringement on two of the four paintings, the plaintiff's claim for injunction and damages was partially acceptable, the court of appeal upheld the aforementioned judgment in that it had found copyright infringement while partially changing the aforementioned judgment by holding that the amount of damage determined by the court of first instance was incorrect

Reference: Article 1126 and Article 114, para.3 of the Copyright Act

**Summary of the Judgment:**

This is the judgment handed down by the court of appeal for a case where the plaintiff demanded damages for infringement of copyright (the right of reproduction) and injunction against the publication of books.

The deceased father X of the plaintiff was a famous expert of Edo culture. X authored books including "Edo Shoubai Zue (Picture book of Edo merchants)" and "Edo Shokunin Zushu (Picture book of Edo craftsmen)." His works included paintings that X created by copying Ukiyoe paintings made in the Edo era. A publishing company, i.e., the defendant, published books containing four of those paintings without X's consent. X instituted a lawsuit against the defendant and claimed damages and injunction against the publication. Before the court of first instance handed down a judgment, X passed away. The plaintiff inherited X's right to said lawsuit and succeeded to the status as the plaintiff in this trial.

The court of first instance (Tokyo District Court Judgment, March 23, 2006, 2005 (Wa) No. 10790) found that two of the aforementioned four paintings were not mere copies of Ukiyoe paintings but X's derivative works containing X's creative expressions and accepted a part of the plaintiff's claim for injunction and damages for the defendant's infringement of the copyright (the right of reproduction). However, the court did not consider the remaining two paintings as derivative works containing X's creative expressions, but as mere copies of Ukiyoe paintings. The court did not find that the defendant infringed the copyright (the right of reproduction). The fee for the use of X's painting was 22,222 yen per painting for those who obtained X's consent in advance and 66,666 yen per painting, three times the aforementioned regular fee as a penalty in principle, for those who reproduced a painting without X's prior consent. As the plaintiff received a regular fee, the court calculated the damage as 44,444 yen per painting under Article 114, para.3 of the Copyright Act.

Dissatisfied that the court of first instance did not find the defendant's infringement of the copyright on the remaining two paintings, the plaintiff filed an appeal with the Intellectual Property High Court. In the meantime, the defendant filed an incidental appeal, dissatisfied with the judgment of the court of first instance that found copyright infringement of two paintings and

calculated the damage as 44,444 yen per painting.

The Intellectual Property High Court upheld the finding of the court of first instance that the defendant committed infringement on two of the four paintings created by X. However, regarding the amount of damage, the court pointed out that the amount of damage shall be 22,222 yen per painting and partially changed the judgment handed down by the court of first instance, dismissing the plaintiff's claim concerning the rest of the amount of damage calculated by the court of first instance by holding as follows:

“Article 114, para.3 of the Copyright Act specifies that the copyright holder may assert against a person who has, intentionally or negligently, infringed upon said holder's copyright, a claim for compensation for damage in an amount corresponding to the amount of money which the holder should have received through the exercise of its copyright as the amount of damage sustained by said holder. Under this provision, the amount of compensation for the damage caused by the copyright infringement of X's paintings should be calculated as 22,222 yen per painting, which is the regular usage fee. The fact that there were cases where X, while he was alive, demanded three times the regular fee from an infringer of his copyright as an out-of-court settlement would not entitle the plaintiff to demand, under said provision, a larger amount of money than the usage fee as compensation for the damage caused by the infringement.”

This lawsuit would be useful for law practitioners as an example case where the court determined whether the plaintiff's copyright on imitative paintings had been infringed and calculated the amount of damage under Article 114, para.3 of the Copyright Act.

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Judgment rendered on September 26, 2006

2006 (Ne) 10037, 10050, Appeal for seeking an injunction against infringement of a copyright and an incidental appeal thereof (Prior instance: Tokyo District Court 2005 (Wa) 10790)

Date of conclusion of oral argument: July 18, 2006

#### Judgment

Appellant, appellee of the incidental appeal: X (the "appellant")

Appellee, appellant of the incidental appeal: KASHIWASHOBO Publishing Co., Ltd. (the "appellee")

#### Main text

1. This appeal shall be dismissed.
2. Based on the incidental appeal, out of the judgment in prior instance that pertains to the appellant's claim for payment of damages, the part concerning the appellee's claims that were dismissed by the court of prior instance shall be modified as follows:
  - (1) The appellee shall pay to the appellant 244,444 yen and delay damages accrued thereon at a rate of 5% per annum from June 7, 2005 until the date of full payment.
  - (2) The appellant's other claims shall be dismissed.
3. In the incidental appeal, the appellee's other claims shall be dismissed.
4. The court costs (excluding the cost of appeal filed by the appellant) for the first and second instances shall be divided into ten parts, one of which shall be borne by the appellee, with the remaining parts borne by the appellant. The cost of appeal filed by the appellant shall be borne by the appellant.

#### Facts and reasons

No. 1 Judicial decision sought by the parties

##### 1. Appellant

(1) The judgment in prior instance shall be modified as follows:

- [i] The appellee shall not reprint the book presented in the "Book List" attached to the end of the judgment in prior instance or sell or distribute any copies of the book;
- [ii] The appellee shall destroy all copies of the book presented in the "Book List";
- [iii] The appellee shall pay to the appellant 12,311,108 yen and delay damages accrued thereon at a rate of 5% per annum from June 7, 2005 until the date of full payment.

(2) This incidental appeal shall be dismissed.

(3) The court costs for the first and second instances shall be borne by the appellee.

## 2. Appellee

[i] This appeal shall be dismissed.

[ii] Out of the judgment in prior instance, the part concerning the appellee's claims that were dismissed by the court of prior instance shall be revoked:

[iii] All of the appellant's claims shall be dismissed.

[iv] The court costs for the first and second instances shall be borne by the appellant.

## No. 2 Background

1. The paintings presented in 1 to 4 of the "Plaintiff's Painting List" attached to the end of the judgment in prior instance were created by the appellant's deceased father, Y (Deceased Y) (those paintings shall be referred to as "Plaintiff's Painting 1," "Plaintiff's Painting 2," etc. respectively, and shall be collectively referred to as "plaintiff's paintings"). In this court case, the appellant alleged that, without Deceased Y's consent, the appellee reproduced the plaintiff's paintings and presented them in the book published by the appellee as presented in the "Book List" attached to the end of the judgment in prior instance (the "defendant's book") and that, in the case of Plaintiff's Painting 1, the appellee used only a part of the painting without indicating Deceased Y's name and that the appellee took an unfaithful attitude toward Deceased Y in the subsequent negotiations and caused emotional distress to Deceased Y. On these grounds, the appellant sought an injunction against the appellee's act of publishing the defendant's book and selling copies thereof based on the copyrights (the rights of reproduction) for the plaintiff's paintings and demanded payment of 12,311,108 yen in total as damages for infringement of the copyrights (the rights of reproduction) for the plaintiff's paintings and infringement of the moral rights of author (the right to maintain integrity and the right to determine the indication of the author's name) for Plaintiff's Painting 1. (The breakdown of the total is as follows: 266,664 yen (66,666 yen for each of the plaintiff's paintings, which is three times the regular royalty of 22,222 yen) for infringement of the copyrights for the plaintiff's paintings (Article 114, paragraph (3) or (4) of the Copyright Act); 10 million yen as solatium for the copyright infringement; 44,444 yen for infringement of the moral rights of author for Plaintiff's Painting 1 (22,222 yen, which is the same as the regular royalty, for infringement of the right to maintain integrity and infringement of the right to determine the indication of the author's name, respectively); and 2 million yen for the attorney's fee.)

Deceased Y created the plaintiff's paintings by copying Ukiyoe works, all of which

were produced in the Edo era as presented in 1 to 4 of the "List of the Originals" attached to the end of the judgment in prior instance (these Originals shall be referred to as "Original 1," "Original 2," etc. respectively, and they shall be collectively referred to as the "Originals").

Since Deceased Y, who filed this lawsuit, passed away while the lawsuit was still pending, his eldest son inherited, by succession, the copyrights for the plaintiff's paintings and the right to seek damages and succeeded to the status of appellant in this lawsuit.

2. The court of prior instance found that Plaintiff's Paintings 2 and 3 are not mere imitations of Originals 2 and 3 and may be regarded as derivative works to which Deceased Y added creative expressions. However, Plaintiff's Paintings 1 and 4 may be considered to fall within the scope of imitations of Originals 1 and 4 and may not be considered to be derivative works to which Deceased Y added any creative expressions, and must be regarded as mere reproductions of Originals 1 and 4. Regarding the appellant's claims, the court of prior instance accepted the claims to a certain extent, i.e., an injunction against the sale, etc. of copies of the defendant's book that contains Plaintiff's Paintings 2 and 3, destruction of the part of the defendant's book that contains Plaintiff's Paintings 2 and 3, payment of 288,888 yen as damages for infringement of the copyrights (the rights of reproduction) for Plaintiff's Paintings 2 and 3 (44,444 yen for Plaintiff's Paintings 2 and 3 each and 200,000 yen for the attorney's fee) and delay damages accrued thereon at a rate of 5% per annum from June 7, 2005, which was after the act of infringement (the date following the date of the service of a statement of claim), until the date of full payment. The court of prior instance dismissed the rest of the appellant's claims.

Dissatisfied with the judgment in prior instance, the appellant filed an appeal, seeking revocation of the judgment in prior instance with respect to the appellant's claims that were dismissed by the court of prior instance and seeking the court's acceptance of all of the appellant's claims. The appellee filed an incidental appeal, seeking revocation of the judgment of prior instance with respect to the appellee's claims that were dismissed by the court of prior instance and seeking the court's acceptance of all of the appellee's claims.

(omitted)

### No. 3 Court Decision

The court found that there are grounds for the appellant's claims to a certain extent,

i.e., an injunction against reprinting, sale, or distribution of the defendant's book containing reproductions of Plaintiff's Paintings 2 and 3, destruction of the part of page 258 of the defendant's book, which contains Plaintiff's Paintings 2 and 3, and payment of 244,444 yen and delay damages accrued thereon at a rate of 5% per annum from June 7, 2005 until the date of full payment. The court found that there are no grounds for the rest of the appellant's claims on the following grounds, which are the same as and therefore cited from the section "No. 4 Court Decision" of the judgment in prior instance except for the following additions and corrections made to said section.

1. Line 14 of page 38 to line 4 of page 39 of the judgment in prior instance shall be modified as follows.

"(1) Claim for damages for copyright infringement

Around April 25, 2001, the appellee published, by negligence, the defendant's book containing Plaintiff's Paintings 2 and 3 without Deceased Y's consent.

According to the evidence (Exhibit Ko No. 34) and the entire import of oral argument, Deceased Y used to permit any person who had paid a royalty of 22,222 yen per painting per one-time use to reproduce and use an imitative painting similar to the plaintiff's paintings, such as the paintings, etc. contained in 'Edo Shokunin

Zushu' (Picture book of Edo craftsmen). In view of this fact, the amount of damage caused by the appellee's act of infringing the copyrights (the rights of reproduction) by publishing Plaintiff's Paintings 2 and 3 in the defendant's book should be considered to be 44,444 yen (22,222 yen x 2=44,444 yen) (Article 114, paragraph (3) of the Copyright Act). There seem to be no circumstances that provide grounds for calculating the amount of damage to be more than 44,444 yen (paragraph (4) of said Article).

Regarding this point, in view of the facts that Deceased Y used to demand a penalty against an intentional act of unauthorized reproduction and that the penalty was three times as much as the regular royalty (22,222 yen per painting), the appellant alleged that the amount of damage (Article 114, paragraph (3) or (4) of the Copyright Act) caused by the appellee's infringement of the copyrights (the rights of reproduction) for the plaintiff's paintings shall be considered to be 66,666 yen per painting, which is three times the regular royalty. According to the evidence (Exhibits Ko No. 35 and No. 36), there was a case in the past where Deceased Y demanded payment of 66,666 yen per painting against an unauthorized user. It should be noted, however, that Article 114, paragraph (3) of the Copyright Act specifies that the copyright holder may assert a claim for compensation for damages corresponding to the amount of money that would have been received by the holder through the exercise of its copyright. Based on this provision, it should be considered that the damages that the appellant is entitled to claim

for infringement of the copyrights for Plaintiff's Paintings 2 and 3 is 22,222 yen per painting, which is equivalent to the royalty. Even though there was a case in the past where Deceased Y demanded payment of damages equivalent to three times the regular royalty as an out-of-court settlement, it may not be interpreted that the appellant is entitled to demand payment of damages larger than the regular royalty under said provision. Furthermore, there is no evidence to prove that Deceased Y had suffered an amount of damage that is larger than said royalty as a result of the appellee's infringement of the appellant's copyrights. Therefore, as described above, the amount of damage caused by the appellee's infringement of the appellant's copyrights (the rights of reproduction) for Plaintiff's Paintings 2 and 3 shall not exceed 44,444 yen (22,222 yen per painting). Thus, the appellant's claim is unacceptable."

2. Court's determinations concerning the claims of the appellant and the appellee in this instance

(1) Appellant's allegation

(A) Issue 1 (Primary claim of the appellant concerning the copyrightability of the plaintiff's paintings)

The appellant alleged that an imitative work should be regarded as copyrightable under the Copyright Act on the grounds that the creator of the imitative work expresses his/her creativity in each phase of the creation of the imitative work (the act of recognition and the act of imitation) and therefore that the imitative work should be regarded to be creative unless it is an exact copy. The appellant also alleged that, when examining the copyrightability of each of the plaintiff's paintings, whether it is a reproduction of the original or not should not be determined before determining its copyrightability.

However, as explained in detail in the judgment in prior instance (line 20 of page 25 to line 21 of page 28) as cited above, an imitative work is generally regarded to have reproduced the creative expressions of the original based thereon and should therefore be regarded as an uncopyrightable reproduction of the original unless the creator of the imitative work has added new creative expressions that do not exist in the original. In this case, since there is a consensus between the parties concerned that the plaintiff's paintings were created by imitating the originals, the copyrightability of the plaintiff's paintings shall be determined based on whether the creative expressions may be observed in the plaintiff's paintings in comparison with the originals. In sum, the appellant alleged that the creativity of the creator of an imitative work is expressed in each phase of the creation of the imitative work (the act of recognition and the act of imitation) and therefore that, "no matter how similar the imitative work is to the

original," his/her creativity may be recognized. In other words, the appellant alleged that, even if an imitative work is identical with the original in terms of expressions, the imitative work should be regarded not as a reproduction of the original, but as a copyrightable work. Such interpretation is uncommon and disregards the legal definition that a work is a production in which thoughts or sentiments are "expressed in a creative way" (Article 2, paragraph (1), item (i) of the Copyright Act). Thus, the appellant's allegation as to the necessity to determine copyrightability before making any other determination is unacceptable.

(B) Issue 2 (the appellant's secondary claim concerning the copyrightability of the plaintiff's paintings)

The appellant alleged that, since the motif of a painting is inseparable from the method and means of expression, in other words, they are two sides of the same coin, the difference in motif naturally produces differences in the method and means of expression. The appellant also alleged as follows: [i] A comparison between Original 1 and Plaintiff's Painting 1 shows that Original 1 has the same characteristics as an illustration of a yellow-backed novel (entertainment picture books in the Edo era), needing to secure space for the text of the story and dialogue. The motif of Original 1 is the presentation of a dramatic scene of the story, i.e., "a servant boy running away, his master chasing after him, and the general manager trying to stop the master." On the other hand, Plaintiff's Painting 1 was created based on a motif depicting a typical liquor shop in the Edo era in line with the original purpose of depicting the customs and lifestyle of the Edo era, i.e., the motif clearly shows what kinds of people are conducting business by using certain kinds of tools in certain ways typical of a scene at a liquor store in the Edo era. Due to such differences in motifs, there should be a difference between Original 1 and Plaintiff's Painting 1 in terms of the style of depiction as described in the attached "Appellant's Comparison Table 1." According to this table, Plaintiff's Painting 1 was created based on Deceased Y's own unique motif, i.e., the depiction of the customs and lifestyle of the Edo era. Deceased Y intentionally removed some of the important expressions contained in Original 1 that are not in line with his motif and replaced them with different manners of expressions that are more suitable for his motif. In this respect, Plaintiff's Painting 1 may be considered to exhibit Deceased Y's own distinctive manners of expressions that are clearly different from those exhibited by Original 1; [ii] A comparison between Original 4 and Plaintiff's Painting 4 shows that the main theme of Original 4, which is an illustration for a romantic novel, is a depiction of three characters of the story (while the main theme of the imitative painting is a depiction of the tools presented in that scene). The motif of this scene is to



depict the moment when a woman leaning back to the extent that she is almost falling backward held up a child in the manner that shows an overall dynamic movement toward the upper right, while depicting the posture of a man on the left side. On the other hand, the motif of Plaintiff's Painting 4 is to depict "Kaibushi" (mosquito-fumigator), which is one of the everyday items in the Edo era, in line with the original purpose of depicting the customs and lifestyle of the Edo era. Such difference in motif resulted in a difference in the style of depiction as described in the attached "Appellant's Comparison Table 2." According to this table, as is the case with Plaintiff's Painting 1, Deceased Y created Plaintiff's Painting 4 by intentionally removing some of the important expressions contained in Original 4 that are not in line with his motif and replacing them with different manners of expressions that are more suitable for his motif. In this respect, Plaintiff's Painting 4 is clearly different from Original 4 in that Plaintiff's Painting 4 exhibits Deceased Y's own distinctive manners of expressions.

However, even in the case where the difference between an imitative work and its original in terms of motif produces difference between the two in terms of the manners and means of expression used therein respectively, the imitative work would not be regarded as a derivative work unless creative expressions that do not exist in the original have been added thereto. In other words, the mere difference in motif would not make an imitative work a derivative work that is independent from its original.

While the appellant alleged that the differences between Plaintiff's Paintings 1 and 4 and Originals 1 and 4 in terms of expressions may be regarded as differences in the manner of depiction caused by the difference in motif, all of those differences are actually the same as those pointed out in the prior instance. As described in the judgment in prior instance cited above (line 14 of page 29 to line 11 of page 32, line 26 of page 35 to line 19 of page 36), those differences do not provide sufficient grounds for recognizing that Plaintiff's Paintings 1 and 4 were created by adding creative expressions to Originals 1 and 4. As a result, Plaintiff's Paintings 1 and 4 must be regarded to be identical with Originals 1 and 4 in terms of expressions. Therefore, Plaintiff's Paintings 1 and 4 should be considered to be mere reproductions of Originals 1 and 4 and may not be regarded as derivative works created by Deceased Y. (Some differences were newly clarified in this instance, such as the blank spaces in the upper middle and the lower left (the parts in which the story is written) of Original 1, which makes Original 1 different from Plaintiff's Painting 1, and the word "Kaibushi" (mosquito-fumigator) was added to Plaintiff's Painting 4 and is written mostly in black ink. Even if these differences are taken into consideration, Plaintiff's Paintings 1 and 4

may not be regarded as derivative works of Originals 1 and 4.)

(2) Appellee's claim

The appellee alleged as follows: In light of the facts that, even if an imitation is created by changing any characteristic part of the original, there are cases where the change should be regarded not as an addition of creativeness but as a partial removal of creativeness; and where the change should be regarded as a mere addition of something other than creativeness, the change of the characteristic part of the original does not necessarily mean an addition of creativeness. In the case of Plaintiff's Painting 2, Deceased Y merely removed a characteristic part of Original 2, i.e., a depiction of a ceramic repairman surprised by a ghost, and replaced it with a depiction of an ordinary ceramic repairman. In the case of Plaintiff's Painting 3, Deceased Y merely removed a characteristic part of Original 3, i.e., a depiction of a noble person repairing ceramic, and replaced it with a depiction of the face of an ordinary merchant. In both cases, since the changes were uncreative and minor, Plaintiff's Paintings 2 and 3 may not be considered to go beyond the scope of their originals, to and from which some additions and removals were made, and should therefore be considered as reproductions. Therefore, Plaintiff's Paintings 2 and 3 may not be considered to be derivative works.

However, as found in the judgment in prior instance as cited above (line 12 of page 32 to line 25 of page 35), Plaintiff's Paintings 2 and 3 should be considered to be copyrightable derivative works of Originals 2 and 3 since both paintings were created by adding creative expressions by Deceased Y.

As described above, the appellee alleged that Plaintiff's Paintings 2 and 3 were created by merely removing characteristic parts of Originals 2 and 3 and making uncreative, minor changes to them. However, Since Plaintiff's Paintings 2 and 3 as a whole give viewers impressions that are different from Originals 2 and 3 due to the changes described below, which should not be regarded as minor changes, Plaintiff's Paintings 2 and 3 should be considered to have been given creative expressions by Deceased Y and make viewers perceive creative expressions that are different from those presented in Originals 2 and 3 and should therefore be regarded to be derivative works. The aforementioned changes are as follows: In the case of Plaintiff's Painting 2, the ceramic repairman is using his right hand to grab a cord that hangs a wooden box from the right side of a carrying pole without ducking his head. The depiction of his overall posture is different between Plaintiff's Painting 2 and Original 2. In the case of Plaintiff's Painting 3, a ceramic repairman is depicted as a person wearing a merchant-like topknot. Plaintiff's Painting 3 is different from Original 3 in terms of the appearance of the persons depicted therein, especially the depiction of the head and

face, which are the most noticeable parts of a figure painting.

### 3. Conclusion

As described above, the court found that there are grounds for the appellant's claims to a certain extent, i.e., an injunction against reprinting, sale, and distribution of the defendant's book containing reproductions of Plaintiff's Paintings 2 and 3, destruction of the part of page 258 of the defendant's book that contains Plaintiff's Paintings 2 and 3, and payment of 244,444 yen and delay damages accrued thereon at a rate of 5% per annum from June 7, 2005 until the date of full payment. The court found that there are no grounds for the rest of the appellant's claims.

Thus, the appeal filed by the appellant shall be dismissed. Furthermore, based on the incidental appeal filed by the appellee, the judgment in prior instance shall be partially modified, i.e., the order stated in the judgment in prior instance for payment of 288,888 yen as damages and delay damages accrued thereon at a rate of 5% per annum from June 7, 2005 until the date of full payment shall be modified to the order for payment of 244,444 yen as damages and delay damages accrued thereon at a rate of 5% per annum from June 7, 2005 until the date of full payment. In the incidental appeal, the other claims shall be dismissed and the judgment shall be rendered in the form of the main text.

Intellectual Property High Court, Third Division

Presiding judge: SATO Hisao

Judge: MIMURA Ryoichi

Judge: KOGA Yuji

Appellant's Comparison Table 1

	Original 1	Plaintiff's Painting 1
Motif	<p>Since Original 1 serves as an illustration for a yellow-backed novel:</p> <p>1. it is necessary to secure blank space for the text of the story and dialogue; and</p> <p>2. the purpose is to depict a scene of the story. Original 1 depicts a dramatic scene, i.e., "a servant boy running away, his master chasing after him, and the general manager trying to stop the master."</p>	<p>In line with the original purpose of depicting the customs and lifestyle of the Edo era, a typical liquor shop in the Edo era was depicted.</p> <p>In other words, the purpose of Plaintiff's Painting 1 is to "clearly show what kinds of people are conducting business by using certain kinds of tools and items in ways typical of a liquor store in the Edo era."</p>
Manner of depiction	<p>1. Since it is necessary to secure blank space for the text of the story and dialogue, the following manner of expression was naturally adopted.</p> <p>(1) Part A of Attachment 1: This part is left blank in order to secure space for the text of the story.</p> <p>(2) Part B of Attachment 1: In order to secure space for the text of the story, the space to depict a lattice was limited. As a result, the overall size of the lattice was reduced.</p> <p>(3) Part C of Attachment 1: In</p>	<p>1. Such space as mentioned in the left column was completely unnecessary. A more realistic manner of depiction was adopted.</p> <p>(1) Part A of Attachment 2: Since the limitation mentioned in the left column does not exist, the painter used his imagination when painting the part that is omitted from the original.</p> <p>(2) Part B of Attachment 2: Due to the absence of the limitation mentioned in the left column, the lattice was painted anew in a more realistic manner. As a result, the bar was depicted in a position much higher than the depiction thereof in the original.</p> <p>(3) Part C of Attachment 2: Due</p>

	<p>order to secure space for the lines of the master depicted in the lower part, the space to depict the bottom shelf was limited. As a result, the overall size of the bottom shelf was reduced.</p> <p>(4) Part D of Attachment 1: In order to secure space for the lines of the servant boy depicted in the lower part, the space to depict the boy was limited. As a result, the overall size of the boy was reduced.</p> <p>2. In order to depict, as a book illustration, a dramatic scene involving three characters of the story, i.e., "a servant boy running away, his master chasing after him, and the general manager trying to stop the master," the following manner of expression was naturally adopted.</p> <p>(1) Master (old man)</p> <p>The master, who is desperately chasing after the boy, was depicted with [i] his</p>	<p>to the absence of the limitation mentioned in the left column, the bottom shelf was painted anew in a more realistic manner. As a result, the shelf board of the bottom shelf was depicted in a position much lower than the depiction thereof in the original.</p> <p>(4) Part D of Attachment 2: Due to the absence of the limitation mentioned in the left column, the servant boy was painted anew in a more realistic manner. As a result, the servant boy, who was depicted in a horizontally long manner in the original, was depicted in a more vertically long manner.</p> <p>2. In line with the original purpose of depicting the customs and lifestyle of the Edo era, the interior of a liquor store was depicted to clearly show what kinds of tools existed (barrels, tubs, water tubs, liquor bottles, lighting equipment, etc.) and what kinds of people were working in there (their clothing and hairstyles). Since the dramatic manner of depiction in the original is unnecessary to show the customs and lifestyle of the Edo era, such manner of depiction was abandoned.</p> <p>(1) Master (old man)</p> <p>The master was painted anew in</p>
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	<p>neck forward, [ii] his left shoulder back, and [iii] his right leg forward.</p> <p>(2) Servant boy</p> <p>The servant boy, who is desperately running away, was depicted with [i] a horizontally long lower body in the motion of running with long strides and [ii] a horizontally long upper body as a whole with a small head and an omitted neck.</p> <p>(3) General manager</p> <p>The general manager, who is desperately trying to stop the master, who is desperately chasing after the boy, was depicted with [i] his neck sunk between his shoulders, which expresses that he is putting power around that area and [ii] his bottom in a lower position, which indicates that he is lowering his bottom down and putting power in his legs to hold on.</p>	<p>a standing posture that appears most natural.</p> <p>More specifically,</p> <p>[i] Unlike the original, he does not stick his neck forward, [ii] unlike the original, he does not forcefully pull his left shoulder back, and [iii] unlike the original, he does not put the right leg noticeably forward. The right leg was painted anew in a more natural position.</p> <p>(2) Servant boy</p> <p>The servant boy was painted anew as if moving slowly. In other words, the boy was depicted in a vertically long manner as a whole, with [i] a vertically long lower body running with shorter strides and [ii] an upper body with a head proportionate to the size of his body and a newly added neck.</p> <p>(3) General manager</p> <p>The general manager was painted anew in a standing posture that appears most natural. More specifically,</p> <p>[i] His neck is not sunk between his shoulders and has a more natural shape.</p> <p>[ii] His bottom was depicted in a higher position than the one shown in the original. He was painted anew in a standing posture that appears natural.</p>
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	<p>(4) Barrels and tubs placed on the left shelves</p> <p>The barrels and tubs were depicted in such way that they appear to tilt toward right relative to the pillar in the middle (please see the bold line in Attachment 1). This has created the impression of movement that corresponds to the dynamic left-to-right movement of the characters.</p>	<p>(4) Barrels and tubs placed on the left shelves</p> <p>Barrels and tubs were painted anew in the manner that appears most natural. As a result, they were depicted in parallel with the pillar in the middle (please refer to the bold line in Attachment 2).</p>
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Appellant's Comparison Table 2

	Original 4	Plaintiff's Painting 4
Motif	<p>An illustration for a romantic novel (however, the motif of the imitative work is the depiction of everyday items presented in the scene).</p> <p>The motif of Original 4 is the depiction of three characters from the story. This scene depicts the moment when a woman is leaning back to the extent that she was almost falling backward, holding up a child in the manner that shows an overall dynamic movement toward upper right, while depicting the posture of a man on the left side in a concerted manner.</p>	<p>In line with the original purpose of depicting the customs and lifestyle of the Edo era, "Kaibushi" (mosquito-fumigator), which is one of the everyday items in the Edo, was depicted.</p>
Manner of depiction	1. The dynamic movement of the smoke from "Kaibushi"	1. All of the dynamic movement depicted in the original was

	<p>(mosquito-fumigator) toward the upper right was depicted as if it were in concert with the dynamic movement of the characters of the story toward upper right.</p> <p>2. A basket containing pine needles is positioned diagonally backward right of the "Kaibushi."</p> <p>3. Original 4 does not contain</p>	<p>abandoned. From the perspective of depicting the customs and lifestyle of the Edo era, "Kaibushi" was depicted simply as an everyday item in the Edo era. Therefore, the smoke from "Kaibushi" was also depicted in a natural manner that was void of the dynamism observed in the original.</p> <p>2. Plaintiff's Painting 4 consists of three components, i.e., "Kaibushi," a basket containing pine needles, and the characters "蚊いぶし" (Kaibushi) enclosed in a box. Therefore, it is extremely important to determine appropriate positions for them. Since the positions observed in the original are not well balanced, i.e., the unbalanced position of the basket containing pine needles relative to "Kaibushi," from which smoke is rising toward the upper right, the three components were painted anew in different positions based on the understanding that, if the characters "蚊いぶし" are positioned on the right side of Kaibushi, the basket containing pine needles should be positioned on the right front area in order to achieve the best</p>
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	<p>the characters " 蚊いぶし " (Kaibushi) enclosed in a box.</p>	<p>balance.</p> <p>3. The addition of the characters "蚊いぶし" enclosed in a box is an important correction.</p> <p>Generally speaking, such characters are an important component of a painting. When Van Gogh copied a work of Ando Hiroshige, "Ōhashi atake no yūdachi," he intentionally removed all of the three indications of characters from the work and painted them in the margin. Conversely, this clearly shows that Van Gogh considered these characters to be a very important component of the painting.</p>
	<p>4. A colored woodblock print in which pale colors were added to the black ink lines.</p>	<p>4. When depicting items from the perspective of showing the customs and lifestyle of the Edo era, the painter considered that the ink brush painting style, which mainly uses high-contrast black ink lines, would be more effective than using pale colors. Moreover, since the painter had been long pursuing the beauty of Japanese-style paintings created by use of "sumi" (black ink) and modeling brushes, the painter intentionally painted an imitative work by adopting a style different from that adopted for the original, i.e., the ink brush painting style, which mainly</p>

		uses black ink lines.
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Attachment 1



