

Design Right	Date	October 12, 2017	Court	Osaka District Court, 21st Civil Division
	Case number	2015 (Wa) 8271		
- A case in which the court has dismissed a Plaintiff's claim for the compensation for an employee design against Defendant company, stating that Plaintiff does not correspond to a creator of the registered design of Defendant company.				

### Summary of the Judgment

This case is a case in which Plaintiff, who was a former employee of Defendant company and is allegedly a main creator of four designs (Designs 1 to 4) commercialized as implemented products of the registered designs in Defendant company, has claimed the following against Defendant company and Defendant design company who has prepared a design draft at the instance of the same company.

#### (1) Claim against Defendant company

A claim for the payment of an amount equivalent to the respective Designs 1 to 4 as a reasonable compensation under Article 35, paragraph (3) of the Patent Act before the amendment of Act No. 55 of 2015 as applied mutatis mutandis pursuant to Article 15, paragraph (3) of the Design Act on the premise that Design 1 to 4 are employee designs during continuance in Defendant company.

#### (2) Claim against Defendants

A claim for the payment of a compensation for damage in tort, stating that for Defendant's products of the implemented products of Design 1 and Design 2, Defendant has received two good design awards, in which Defendants omitted Plaintiff, a designer of these products, and applied for the award under the pretense that a representative of the Defendant design company is a designer, which corresponds to a joint tort of Defendants.

The court decision has made the following determination and dismissed all the Plaintiff's claims.

The court decision has determined in relation to (1) that every design has been completed through many reviews of a design draft with which a plurality of employees of Defendant company as well as Plaintiff were involved on the basis of an original version of a design draft prepared by the representative of Defendant design company or a previous product, etc. To be eligible for one person of joint creators in a design of such joint creation, it is not sufficient to simply provide an idea in a creation process, but one must be practically involved with the creation in a position beyond an assistant or an adviser. Further, the creation used herein must have a content and a level that can contribute to make the design eligible for a registered design since it will become a ground for sharing a right to obtain a design registration. Thus it is not sufficient to find that a design has been created to become a registered design if one is involved with the creation only to the extent that does not have an effect on aesthetic impression created by the whole article but only remains to be a modification of a design of a part of the article, or only suggests a common design modification easily conceivable by anyone. Further, it cannot be said that those who have suggested a draft amendment of a proposed design were involved with the creation unless the design draft in a creation process remains in the configuration of a completed design.

Furthermore, the court decision has determined that it cannot be seen from the creation process of Designs 1 to 4 that Plaintiff was involved with the creation of the content eligible for making Designs 1 to 4 the registered designs, and thus Plaintiff is not eligible to be one of the creators of Designs 1 to 4, and the Plaintiff's claim for the compensation of an employee design against Defendant company

is not reasonable.

Subsequently, the court decision has determined in relation to (2) that a creator of the Design Act is not completely identical to a designer in the good design award as a concept; however, from the nature of the reward, one who should be indicated as a designer is a person who had prepared a major design, and Plaintiff is not recognized as a creator of Designs 1 and 2 under the Design Act, nor a person who should be indicated as a designer in relation to the good design award, and therefore, the Plaintiff's claim against Defendants for the reason of legally protected interest being infringed by failure to indicate as a designer of an award-winning product in the good design award is not reasonable.