Date	May 29, 2014	Court	Tokyo District Court,
Case number	2013 (Wa) 6920		47th Civil Division
- A case wherein the court dismissed the plaintiff's claims, which were submitted based on the design right for which the article to the design is "dental implant" to seek an injunction against the manufacturing, use, assignment, etc. of the dental implant by the defendant, demand the disposal of the defendant's product, and claim damages.			

In this case, the plaintiff, who holds a design right for which the article to the design is "dental implant" (Design Registration No. 1393365; the "Design Right"), alleged against the defendant that the defendant infringes the Design Right by manufacturing and selling its dental implant (the "defendant's product"), and accordingly, the plaintiff sought an injunction against the manufacturing and sale of the defendant's product, demanded the disposal thereof, and claimed damages. The major issue of the case was whether or not the design of the defendant's product (the "defendant's design") is similar to the plaintiff's registered design (the "Design").

In this case, the court held as follows. Taking into consideration the nature, purpose, use, function and mode of use of a dental implant, in combination with the structure of the publicly known designs, the features of the Design that is most likely to attract attention from the consumers who see the Design (dentists) are the following features. With regard to the covered section, the thread part is formed on the side of the almost uniform cylinder from near the bottom to near the edge of the abutment. The grooves of the thread are formed in a manner that the grooves near the bottom are deeper than those near the abutment. The covered section is provided with two shaved surfaces (the "Smooth Surfaces"): one on the left side and the other on the right side, at the positions that are slightly below the middle of the implant and symmetric with respect to the central axis of the implant. The Smooth Surfaces extend over about two-thirds of the length of the covered section, and each looks like a spinal column in a plan view (the outer periphery is like a boat form), comprising the band-shaped part of the longer direction which is in parallel with the axis direction and the multiple parts extending in the cross direction in relation to the band-shaped part. The almost truncated cone-shaped part of the abutment is provided with two cut surfaces (the "Cut Surfaces"): one on the left side and the other on the right side, at the positions that are symmetric with respect to the central axis. Each Cut Surface comprises a flat surface inclined with respect to the side of the truncated cone-shaped part. These features can then be regarded as the essential features of the Design. There are differences between the defendant's design and the Design, in particular, in the following parts. In the case of

the Design, the thread part is formed on the covered section from near the bottom to near the edge of the abutment, and the Smooth Surfaces are formed, whereas in the case of the defendant's design, a microthread is formed near the edge of the abutment at a conspicuous position almost in the middle of the entire body, the thread part is formed from near the bottom to near the edge of the microthread, and the counterbore parts which are different from the Smooth Surfaces in terms of position, size and shape are formed. Thus, the defendant's design have features that are considerably different from the essential elements of the Design, and the microthread, which exists only in the defendant's design, attracts great attention from consumers. In light of this, although the defendant's design and the Design share some features in common, these designs, in their entirety, give different aesthetic impressions to consumers who see them, and therefore the defendant's design is not similar to the Design. Based on this finding, the court dismissed the plaintiff's claims.