

Date	July 23, 2009	Court	Osaka District Court, 26th Civil Division
Case number	2008 (Wa) 13282		
<p>– A case in which the court dismissed a claim for the payment of damages filed based on a design right for which the name of an article to the design is "cell container for medical testing," by ruling that the defendant's design is not similar to the design in question.</p>			

The plaintiff holds a design right (the "Design Right") for a design registration (Registration No. 888566) for which the name of an article to the design (the "Design") is "cell container for medical testing." The plaintiff filed this action against the defendant to seek compensation for damages by alleging that the design of the cell container for medical testing manufactured and sold by the defendant (the "Defendant's Product") is similar to the Design and the act of manufacturing and selling it constitutes infringement of the Design Right.

The issues of this case are whether the design of the Defendant's Product is similar to the Design as well as the amount of damages.

In this judgment, in consideration of the method of using a "cell container for medical testing," which is an article to the Design, and publicly known designs, the court found the essential feature of the Design to be a step (the "Step") which is provided in a manner that it projects nearly perpendicular to the side surface at the level around one-fourth of the height of the container body from the bottom of the long side of the container body and also becomes nearly perpendicular to the bottom. In this regard, the court ruled as follows: A step similar to the Step is provided in the defendant's design, but such a step is not highly novel in consideration of publicly known designs; rather, the defendant's design has a prominent difference to which consumers pay attention in the configuration of its leg part. Based on this ruling, the court found that the Design and the defendant's design are not similar to each other as a whole. Based on this finding, the court dismissed the plaintiff's claim.