

Date	December 15, 2011	Court	Osaka District Court, 26th Civil Division
Case number	2010 (Wa) 13746		
<p>– A case in which the court partially upheld the plaintiff's claims for an injunction against sale, etc. of the defendants' products, and for disposal of the defendants' products, half-finished products, and molds, as well as the payment of damages, which were made against two defendants based on a design right pertaining to a water cleaner.</p>			

The plaintiff, which holds a design right (the "Design Right") for a design (the "Design") pertaining to a water cleaner, alleged that the defendants' act of selling or otherwise handling water cleaners constitutes infringement of the Design Right. Based on this allegation, the plaintiff filed this action against the defendants to seek an injunction against manufacturing, sale, leasing, etc. of the defendants' products, and demand disposal of the defendants' products, half-finished products, and molds, as well as compensation for damages.

In this case, the parties agreed that the designs of the defendants' products are identical with the Design, and the issues were [i] the amount of damages sustained by the plaintiff and [ii] necessity of an injunction and disposal.

In this judgment, regarding damages sustained by the plaintiff due to the act committed by Defendant 1 (engaging in the business of manufacturing and selling water cleaners) in relation to issue [i], the court ruled as follows: A water cleaner is generally not an article on whose design emphasis is put at the time of purchase, and the defendants' products are ordinarily installed out of sight; therefore, the rate of contribution of the designs thereof can be considered as low; however, the defendants' products were manufactured to be delivered, as alternatives to a product in which the Design is worked, to Defendant 2 (engaging in the business of selling houses and renting water cleaners), which had decided to adopt said product; therefore, in the relevant transaction, the rate of contribution of the Design is not low. Based on this ruling, the court found the rate of contribution of the Design to be 10%. The court then calculated the amount of damages sustained by the plaintiff based on the marginal profit under Article 39, paragraph (2) of the Design Act.

Moreover, regarding damages sustained by the plaintiff due to the act committed by Defendant 2, the act of selling the water cleaners by mounting them in houses and the act of renting the water cleaners were questioned. For the former act, the court ruled that the defendants' profit under Article 39, paragraph (2) of the Design Act, which relates to the plaintiff's primary claim, had not been proven. Based on this ruling,

the court calculated damages based on a royalty ratio of 2% as damages under paragraph (3) of said Article, which were sought by the plaintiff as the secondary claim. For the latter act, the court ruled as follows: in terms of general transactions, the designs are considered to make only a small contribution to the sales from rental of the water cleaners; however, as long as Defendant 2 needs to use the Design, it is reasonable to consider the rate of contribution of the Design as 10% in the same way as in the case of Defendant 1. Based on this ruling, the court calculated the amount of damages sustained by the plaintiff based on the marginal profit under paragraph (2) of said Article.

Regarding issue [ii], the court ruled that there was no fact that Defendant 1 had leased the defendants' products and that Defendant 2 did not manufacture the defendants' products by itself and was thus not recognized as possessing half-finished products and molds. Based on this ruling, the court dismissed the plaintiff's claim against Defendant 1 for an injunction against leasing as well as the plaintiff's claims against Defendant 2 for an injunction against manufacturing and disposal of half-finished products and molds.