

Date	June 28, 2012	Court	Tokyo District Court, 47th Civil Division
Case number	2011 (Wa) 10705		
– A case wherein the court dismissed the plaintiff's claims for an injunction against the manufacture and sale of the defendant's product and compensation for damages based on the design right whose article to the design is a "ventilation opening."			

In this case, the plaintiff, who holds a design right whose article to the design is a "ventilation opening," alleged that the defendant's act of manufacturing and selling the defendant's product, which is a ventilation opening, constitutes infringement of the plaintiff's design right and claimed against the defendant an injunction against the manufacture and sale of the defendant's product and compensation for damages. The main issue 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 judgment, the court first held that a ventilation opening is normally installed on the exterior wall of the building and, in this usage, mostly the shape of the anterior surface side viewed from the front would be the portion observed. Based on such holding, the court took into consideration the structure of publicly known designs in addition to the characteristics, intended use and mode of use of such ventilation opening, and found that the essential part of the Design has the following structure: a structure wherein the portion of the anterior surface side viewed from the front, in particular, the louver part of the anterior cover, forms approximately seven-tenths of the height of the anterior surface cylindrical part from the top of the anterior end surface thereof; ten louver bars that extend in a longitudinal direction and align in parallel in the column direction (longitudinal louvers) are formed on said louver part; and, below the louver part, an approximately semicircular disk-shaped water reservoir part is formed on the same plane surface as the other parts of the anterior end surface of the anterior surface cylindrical part in a manner that forms the remaining approximately three-tenths of the height of such cylindrical part. The court then found that the defendant's design is substantially different from the Design in terms of the essential part and that the common feature found between the Design and the defendant's design is a structure found in publicly known designs and cannot be found to overwhelm the difference in the aesthetic impression as a whole that arises from the difference between the Design and the defendant's design. Based on such findings, the court held that the defendant's design cannot be found to be similar to the Design and dismissed the plaintiff's claims.