

Date	June 21, 2012	Court	Osaka District Court, 21st Civil Division
Case number	2011 (Wa) 9600		
– A case wherein, with respect to a design related to a portable thermos, the court dismissed the claims for an injunction, disposal and compensation for damages filed based on infringement of a design right.			

In this case, the plaintiff, who holds a design right (the "Design Right") whose article to the design is a "portable thermos," alleged that the defendant's act of manufacturing, selling or otherwise handling the defendant's product constitutes infringement of the Design Right and claimed against the defendant an injunction against the manufacture and sale, etc. of the defendant's product as well as the disposal thereof and payment of damages.

The issues in this case are: [i] whether or not the design of the defendant's product is similar to the design in question (the "Design"); [ii] whether or not it may be found that the registration of the Design should be invalidated in a trial for invalidation of design registration; and [iii] damages.

In this judgment, with respect to Issue [i], the court first held that consumers of portable thermoses would focus on their overall appearance, and made the following determination by taking into consideration publicly known designs, etc.: the essential part of the Design can be found in [a] the ratio between the diameter of the bottom surface and the height of the cylindrical form and the ratio between the height of the main body and that of the cap; [b] the specific shape of the thin strip circular pattern used in the lower edge of the cap; [c] the specific shape of the circular slit part (groove part) that exists between the lower edge of the cap and the main body; and [d] the specific shape of the circular line existing near the lower edge of the main body and the horizontal strip-like round bulge. Based on these findings, the court held that the differences found between the Design and the defendant's design are related to the essential part and these differences produce an aesthetic impression different from that of the Design with respect to the defendant's design in whole and thus the two designs are not similar. Based on this holding, the court dismissed the plaintiff's claims.