

Date	January 22, 2013	Court	Osaka District Court, 21st Civil Division
Case number	2011 (Wa) 529		
– A case in which, with regard to partial designs for discharge lamp, the court dismissed claims for injunction and disposal, as well as a claim for damages, based on an infringement of design rights.			

The plaintiff, who has design rights (principal design and related design) for designs for the article, "discharge lamp" (partial designs for the mouth ring part intended to fasten a discharge lamp on a lamp holder; hereinafter referred to as "Designs 1 and 2"), asserted that the design (hereinafter referred to as "Defendant's Design") of the replacement discharge lamps sold by the defendant (hereinafter referred to as "Defendant's Products") is similar to Designs 1 and 2. Based on the assertion, the plaintiff filed this action against the defendant to seek an injunction against the sale, etc. of the Defendant's Products and disposal, etc. thereof pursuant to Article 37, paragraphs (1) and (2) of the Design Act, as well as payment of compensation for damages in tort of infringement of the design rights.

The major issue of this case is whether the Defendant's Design is similar to Designs 1 and 2.

In this judgment, the court first ruled that it is reasonable to understand that the features of Designs 1 and 2 are not the groove part but are the shape of the lower surface of the first body, the shape of the upper surface of the second body, and the shape of the second cutout part. Then, the court ruled as follows: Comparing Design 1 and the Defendant's Design, looking at them as a whole, certain commonality arises in terms of the impression between them as both of them have the second cutout part; however, it is possible to say that the combination of differences in the shapes of the lower surface of the first body, the upper surface of the second body, and the second cutout part reinforces the regular and static impression of Design 1 because both the lower surface of the first body and the upper surface of the second body are line-symmetric, while the irregular and dynamic impression of the Defendant's Design is reinforced because the upper surface of the second body is line-symmetric but the lower surface of the first body is not line-symmetric; thus, when observing the Defendant's Design as a whole, it is not recognized as producing a sense of beauty similar to that of Design 1; therefore, it is not possible to say that the designs are similar to each other.

Moreover, with regard to comparison between Design 2 and the Defendant's Design, the court ruled as follows: Looking at them as a whole, certain commonality arises in terms of the impression between them as both of them have the second cutout part;

however, it is possible to say that the combination of differences in the shapes of the lower surface of the first body, the upper surface of the second body, and the second cutout part reinforces the regular and static impression of Design 2 because both the lower surface of the first body and the upper surface of the second body are line-symmetric, while the irregular and dynamic impression of the Defendant's Design is reinforced because the upper surface of the second body is line-symmetric but the lower surface of the first body is not line-symmetric; thus, when observing the Defendant's Design as a whole, it is not recognized as producing a sense of beauty similar to that of Design 2; therefore, it is not possible to say that the designs are similar to each other.

Incidentally, the plaintiff added a claim pertaining to infringement of a patent right in relation to the sale, etc. of the Defendant's Products by the defendant. However, the court determined in this judgment that the amendment through addition of the claim is not permitted as it falls under the cases "where such amendment would substantially delay the court proceedings" (Article 143, paragraph (1) of the Code of Civil Procedure).