

Date	September 28, 1981	Court	Osaka High Court
Case number	1980 (Ra) 542		
<p>– A case in which the court instructed the standard for determining the similarity or dissimilarity between the article embodying the relevant design and those embodying the publicly known designs that should be taken into consideration in determining whether or not the relevant design and publicly known designs are similar to each other.</p>			

References: Article 3, paragraph (1), item (iii) of the Design Act  
Number of related rights, etc.: Design Registration No. 411998

### Summary of the Ruling

The appellant held a design right for the design in question ("Design") for which the article to the design is a "storage cabinet" (Design Registration No. 411998). The appellant alleged against the adverse party that the design related to the medicament storage manufactured and sold by the adverse party (the "Adverse Party's Design") is similar to the Design and filed a request for a provisional disposition for an injunction against manufacture and sale of such medicament storage.

In the ruling of prior instance, the court identified the feature of the Design and determined that the Design and the Adverse Party's Design are not similar to each other and thereby dismissed the appellant's request.

In response to this, the appellant filed an appeal against the ruling based on the following allegation as one of the grounds for such appeal: The field to which the product embodying the Design belongs and the field to which the articles to the publicly known designs belong are different and thus the article to the Design and the articles to the publicly known designs are also different. Accordingly, the publicly known designs cannot be taken into account in determining the range of designs that can be considered to be similar to the Design.

In this ruling, the court determined as follows and dismissed the appeal by rejecting the abovementioned applicant's allegation and finding that the appeal is groundless as the Adverse Party's Design is not similar to the Design as found in the ruling of prior instance.

The similarity or dissimilarity between articles should be determined based on the purposes and functions of those articles, and whether those articles have been distributed in the same market or not would not affect such determination. It is reasonable to interpret that articles would be found to be identical if they have the same purposes and functions and that articles would be found to be similar if they have the same purposes but have

different functions. In this case, the product embodying the Design and the articles embodying publicly known designs can be found to have the same purposes because they are created for the purpose of storing relatively small objects. Said product and articles are different only in terms of functions, i.e., what kinds of objects will be stored. Therefore, the product embodying the Design should be considered to be similar to the articles embodying the publicly known designs. Thus, it is reasonable to take the publicly known designs into account when determining the range of designs that can be considered to be similar to the Design.

Judgment rendered on September 28, 1981

1980(Ra)542

(Indication of the parties is omitted)

Main text

This appeal against a ruling shall be dismissed.

The cost of this appeal shall be borne by the appellant.

Reasons

I. The purpose and reasons of this appeal against a ruling are as stated in the attachment.

II. Court decision

This court also found that the request for a provisional disposition in question shall be dismissed.

(Omitted)

1. The appellant alleged that the products embodying the disputed design have been distributed in the laboratory equipment-related market only by companies related to scientific instruments and reagents, whereas the articles embodying the design of the steel cabinet equipped with vertical-type drawers presented in Figure 1 on page 2 of the gazette concerning Publication of Examined Utility Model No. 26772 issued in 1968 ("Publicly Known Design I"), the design of the Watson Microfilm Cabinet presented on page 131 of the issue of January 1967 of the magazine titled "Gayer's Dealer Topics" ("Publicly Known Design III"), and the design of drawer-type storage shelves presented in Figure 1 on page 2 of the gazette concerning Publication of Examined Utility Model No. 8956 issued in 1962 ("Publicly Known Design IV") have been distributed in the market related to tools and office equipment, which is different from the market in which the products embodying the disputed design have been distributed. Based on these facts, the appellant further alleged that those products and articles are neither identical nor similar to each other and the aforementioned Publicly Known Designs shall not be taken into consideration when the range of designs that can be considered to be similar to the disputed design is determined. However, it should be interpreted that the similarity or dissimilarity between articles should be determined based on the purposes and functions of those articles. Whether those articles have been distributed in the same market or not would not affect such determination, despite the appellant's allegation to the contrary. It is reasonable to interpret that articles would be found to be identical if they have the same purposes and functions and that articles would be found

to be similar if they have the same purposes but have different functions. In this court case, the products embodying the disputed design and the articles embodying Publicly Known Designs I, III, and IV can be found to have the same purposes because they are created for the purpose of storing relatively small objects. Those products and articles are different only in terms of functions, i.e., what kinds of objects will be stored. Therefore, the products embodying the disputed design should be considered to be similar to the articles embodying the aforementioned Publicly Known Designs.

Thus, it is reasonable to take the aforementioned Publicly Known Designs into account when determining the range of designs that can be considered to be similar to the disputed design. Regarding this point, the appellant's allegation is unacceptable.

2. The appellant alleged that Publicly Known Design I is not similar to the disputed design in terms of the structure and configuration of the shelves and that Publicly Known Designs III and IV are not similar to the disputed design in terms of the positions of the handles, and therefore that these Publicly Known Designs should not be taken into consideration when determining the range of designs that can be considered to be similar to the disputed design. However, even if Publicly Known Designs I, III, and IV are not similar to the disputed design in terms of the features pointed out by the appellant, it is completely reasonable to take these Publicly Known Designs into consideration when determining the range of designs that can be considered to be similar to the disputed design as long as there are some similarities between the disputed design and the aforementioned Publicly Known Designs.

3. The appellant alleged that it is not certain whether Publicly Known Design II was publicly known as of August 9, 1972, on which an application was filed for registration of the disputed design. According to Exhibit So-Ko 8-3 (Exhibit So-Otsu 2-2), however, the catalog titled "SM-type Dispensing Counters" published by Sanwairikakogyo Kabushiki Kaisha contains the aforementioned Publicly Known Design and states its publication date as January 1910. Even after a detailed examination of this catalog, there is no evidence to suspect the credibility of the aforementioned publication date. Also, the appellant alleged that the storage cabinet embodying the disputed design is a single-shelf type, whereas the cabinets embodying the aforementioned Publicly Known Design are of the double-shelf type, and therefore that the disputed design is not similar to Publicly Known Design II. However, as found by the ruling of prior instance, the disputed design is identical or extremely similar to Publicly Known Design II in terms of basic structure. Thus, the aforementioned allegation of the appellant is unacceptable.

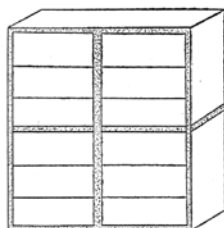
III. On these grounds, the ruling of prior instance can be found to be reasonable. Since this appeal against the ruling is groundless, the appeal shall be dismissed. Article 89 of

the Code of Civil Procedure shall apply to the payment of the cost of this appeal. In conclusion, the judgment shall be rendered in the form of the main text.

Osaka High Court

Judges: ONO Senri, HAYASHI Yoshikazu, INAGAKI Takashi

Atatted 1 Publicly Known Design



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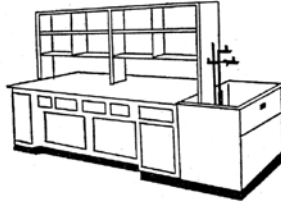
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