





【CN-C-9-1】


<b>CASE1</b>	
<b>procedure</b>	Post-grant procedure of making evaluation reports
<b>Product name</b>	Key storage
<i>The information that examiners provide for applicants in their reports when citing Internet information</i>	
<b>1 Graphic image of the cited design</b>	<p>蜜好的，云朵很可爱，吸力很强，要用力才能拿下来。希望也粘的牢不容易掉！</p>   <p>颜色分类：白色</p> <p>喜***花(匿)</p> <p>2015.09.20</p> <p>蜜好的，云朵很可爱，吸力很强，要用力才能拿下来。希望也粘的牢不容易掉！</p>   <p>颜色分类：白色</p> <p>喜***花(匿)</p> <p>2015.09.20</p>
<b>2 Type of Internet information</b>	Information provided by buyers on products/goods appeared on E-commerce websites
<b>3 To the effect that the information source was the Internet</b>	The source is the China shopping platform website TMALL( <a href="http://tmall.com">http://tmall.com</a> )
<b>4 URL of the webpage</b>	<a href="https://detail.tmall.com/item.htm?spm=a230r.1.14.1.n9OijF&amp;iid=39628953335&amp;ns=1&amp;abbucket=11">https://detail.tmall.com/item.htm?spm=a230r.1.14.1.n9OijF&amp;iid=39628953335&amp;ns=1&amp;abbucket=11</a>
<b>5 Date on which the examiner browsed the Internet information</b>	August 2, 2016
<b>6 Date on which the Internet information was published/posted</b>	September 20, 2015

**7 Information to specify the place/location of the graphic image of the cited design within the web page (Screenshot of the webpage)**

[illegible]

<p>按销量 按收藏</p> <p>000 四分格迷你箱 ¥11.88 已售 18319 件</p> <p>温柏家居专营店</p> <p>已售 4423 件</p> <p>M Square公交车卡套 ¥25.00 已售 4082 件</p> <p>M SquareT七伴套五 ¥139.00 已售 2622 件</p> <p>Vatrin乐伶 光合作用房 ¥32.00 已售 2387 件</p> <p>查看更多</p>	<p>本以为磁贴也许吸力不粘，承重不行，没想到一大串钥匙（其中还包括车钥匙）都可以吸住！再也不怕钥匙串把纱窗了，一进门老公就抱钥匙挂上了~</p> <p>商品评价 1693</p> <p>颜色分类：白色</p> <p>t***0 (匿名)</p> <p>手机购买</p>
<p>炫行茶叶盒</p> <p>炫彩双层便当盒</p>	<p>挺好的，云朵很可爱，吸力很强，要用力才能拿下来，希望也粘的牢不容易掉！</p> <p>颜色分类：白色</p> <p>慕***花 (匿名)</p>
<p>炫彩双层便当盒</p>	<p>很不错</p> <p>颜色分类：白色</p> <p>毛***豆 (匿名)</p>
<p>炫彩双层便当盒</p>	<p>此用户没有填写评论！</p> <p>颜色分类：蓝色</p> <p>q***g (匿名)</p>
<p>炫彩双层便当盒</p>	<p>很可爱的小东西，很久之前就收藏了，这次入手感觉很不错，吸力蛮大的，就是后面粘胶部分有气泡，不知道会不会掉下来</p> <p>颜色分类：白色</p> <p>不***么 (匿名)</p>
<p>炫彩双层便当盒</p>	<p>很漂亮的小东西，放在一进家门的地方，好漂亮好温馨</p> <p>颜色分类：白色</p> <p>b***7 (匿名)</p>
<p>炫彩双层便当盒</p>	<p>喜欢(???)</p> <p>颜色分类：白色</p> <p>萝***6 (匿名)</p>
<p>炫彩双层便当盒</p>	<p>那么好的东西 实用又创意 又美观 又方便！ ！！居然还包邮！ ！！ 卖家人大好客</p> <p>颜色分类：白色</p> <p>小***解 (匿名)</p>
<p>炫彩双层便当盒</p>	<p>收到以后全家很快就用到了，粘性真的挺厉害。挺有用，不知道以后怎么样</p> <p>颜色分类：白色</p> <p>糖***3 (匿名)</p>
<p>炫彩双层便当盒</p>	<p>超萌可爱 超级好用</p> <p>颜色分类：白色</p> <p>娃***5 (匿名)</p>
<p>炫彩双层便当盒</p>	<p>此用户没有填写评论！</p> <p>颜色分类：白色</p> <p>f***1 (匿名)</p>

## 【CN-C-9-2】

<b>CASE2</b>	
<b>procedure</b>	Post-grant procedure of making evaluation reports
<b>Product name</b>	earphone
<i>The information that examiners provide for applicants in their reports when citing Internet information</i>	
<b>1 Graphic image of the cited design</b>	
<b>2 Type of Internet information</b>	Information appeared on the website of publishers or new printed publications for many years
<b>3 To the effect that the information source was the Internet</b>	The source is IT168, one of the most influential IT professional
<b>4 URL of the webpage</b>	<a href="http://earphone.it168.com/a2014/0527/1627/000001627706">http://earphone.it168.com/a2014/0527/1627/000001627706</a>
<b>5 Date on which the examiner browsed the Internet information</b>	June 4, 2015
<b>6 Date on which the Internet information was published/posted</b>	May 27, 2014

- 7 Information to specify the place/location of the graphic image of the cited design within the web page (Screenshot of the webpage)





## 【JP-C-9】

Since it is not allowed to present an actual sample case, a sample form of the notification of refusal (only corresponding part) is attached.

**Grounds for refusal:**

**The design in the application for design registration is found to be similar to the design, as noted below, which was described in a distributed publication, or which was made publicly available through an electric telecommunication line in Japan or a foreign country, prior to the filing of the application, therefore, the design falls under the design as provided in Article 3(1)(iii) of the Japan's Design Act (an unregistrable design, as that is similar to publicly known designs).**

**Cited Design**

Design of ○○○○○○ represented in the following web site

Name of Author: ○○○○○○

Title: ○○○○○○

Relevant Part: ○○○○○○

Type of Media: [online]

Date of Publication(yyyy/mm/dd): ○○○○/○○/○○

Retrieving Date(yyyy/mm/dd): [Retrieved on ○○○○/○○/○○]

Source of Information: Retrieved from the internet

Address of Information: URL: http:// · · ·

(Number of Publicly Known Information: ○○○○○○)

Please refer to the following websites for the inspection of the cited documents.

- Japan Platform for Patent Information (J-Plat Pat)

<https://www.j-platpat.inpit.go.jp/web/all/top/BTmTopEnglishPage>

- JPO website

[https://www.jpo.go.jp/system/design/shinsa/general/kyozetsuriyuu\\_bunken.html](https://www.jpo.go.jp/system/design/shinsa/general/kyozetsuriyuu_bunken.html)

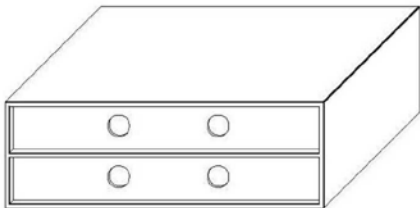



## 【KR-C-9】

**Notification of Refusal (DM/098580, No.2)**

This design applied for design registration may not obtain a design registration under Article 62(1) of the Design Protection Act, since it does not comply with Article 33(1)(iii) of the Design Protection Act, for the reason listed below.





- This design is similar to the cited design (Ackermann Nähgarnbox) that is publicly known or publicly used on August 11, 2016 prior to the application date.

	Applied design	Prior design								
representation										
	<p><b>&lt; Information of the cited design &gt;</b></p> <ul style="list-style-type: none"><li>- Web-site link: <a href="https://www.amazon.de/Ackermann-N%C3%A4hgarnbox-Polyester-Weiß-7-5/dp/B01KAMY5YY">https://www.amazon.de/Ackermann-N%C3%A4hgarnbox-Polyester-Weiß-7-5/dp/B01KAMY5YY</a></li><li>- Web title: Ackermann Nähgarnbox, Polyester, Weiß</li><li>- Date of publication: August 11, 2016</li><li>- Date of search: August 3, 2018</li></ul>									
	<p>Ackermann Nähgarnbox, Polyester, Weiß, 23 x 20 x 7.5 cm von <a href="#">Ackermann</a> ★★★★☆ 120 Kundenrezensionen   8 beantwortete Fragen</p> <table><tr><td>ASIN</td><td>B01KAMY5YY</td></tr><tr><td>Produktgewicht inkl. Verpackung</td><td>762 g</td></tr><tr><td>Modellnummer</td><td>10414</td></tr><tr><td>Im Angebot von Amazon.de seit</td><td>11. August 2016</td></tr></table>		ASIN	B01KAMY5YY	Produktgewicht inkl. Verpackung	762 g	Modellnummer	10414	Im Angebot von Amazon.de seit	11. August 2016
ASIN	B01KAMY5YY									
Produktgewicht inkl. Verpackung	762 g									
Modellnummer	10414									
Im Angebot von Amazon.de seit	11. August 2016									

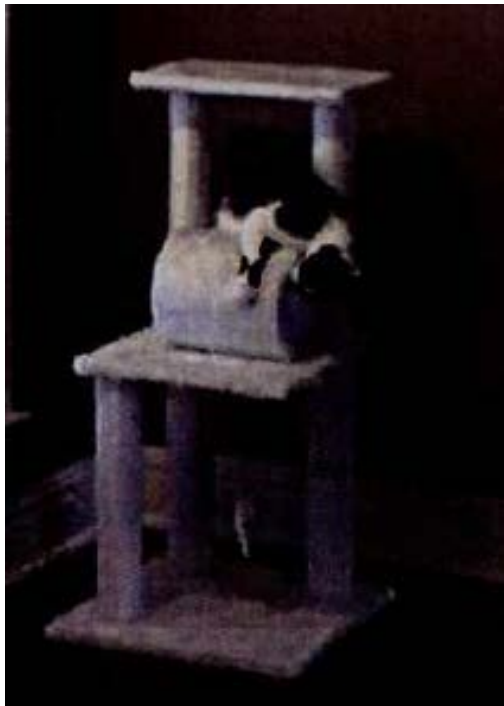



【CN-D-3-1】

<b>CASE3</b>	
<b>procedure</b>	Post-grant invalidation procedure initiated by claimants/invalidity applicants
<b>Product name</b>	Shoes
<i>The information that examiners provide for applicants in their reports when citing Internet information</i>	
<b>1</b>	<p><b>Graphic image of the cited design</b></p> 


		   
2	Type of Internet information	Notarized evidence provided by invalidity applicant appeared on E-commerce websites
3	To the effect that the information source was the Internet	The source is the China shopping platform website TAOBAO( <a href="http://taobao.com">http://taobao.com</a> )
4	URL of the webpage	—
5	Date on which the examiner browsed the Internet information	—
6	Date on which the Internet information was published/posted	July 20, 2017
7	Information to specify the place/location of the graphic image of the cited design within the web page (Screenshot of the webpage)	—

【CN-D-3-2】

<b>CASE4</b>	
<b>procedure</b>	Post-grant invalidation procedure initiated by claimants/invalidity applicants
<b>Product name</b>	Cat Tree House
<i>The information that examiners provide for applicants in their reports when citing Internet information</i>	
<b>1</b>	<p><b>Graphic image of the cited design</b></p>  <p>Evidence1</p>  <p>Evidence2</p>
<b>2</b>	<p><b>Type of Internet information</b></p> <p>① Notarized evidence provided by invalidity applicant</p>

		<p>appeared on E-commerce websites</p> <p>② Date and time notarized by certified timestamp</p>
3	<b>To the effect that the information source was the Internet</b>	<p>① The source is the shopping platform website Amazon(www.amazon.com)</p> <p>Key word: paws &amp; Pals 16x16x33 Inches Cat Tree House w/Scratching Post Towers, Pet Toy Ball and Rope and Mouse, Multi Level,3 Level condo – Brown</p> <p>② The source is the shopping platform website Amazon(www.jd.com)</p>
4	<b>URL of the webpage</b>	–
5	<b>Date on which the examiner browsed the Internet information</b>	–
6	<b>Date on which the Internet information was published/posted</b>	<p>① January 19,2017</p> <p>② November 21,2015</p>
7	<b>Information to specify the place/location of the graphic image of the cited design within the web page (Screenshot of the webpage)</b>	–

## 【CN-D-3-3】

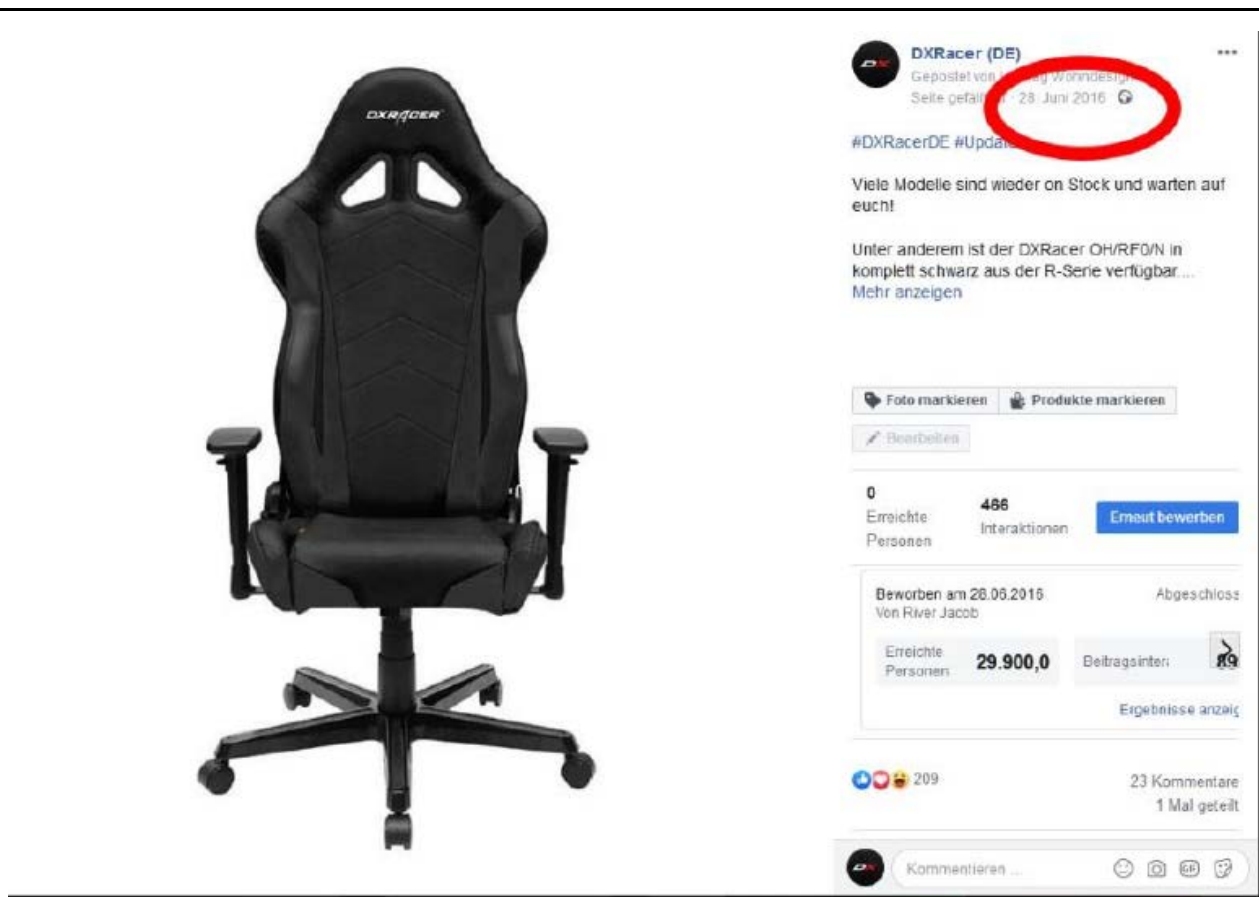
<b>CASE5</b>	
<b>procedure</b>	Post-grant invalidation procedure initiated by claimants/invalidity applicants
<b>Product name</b>	Bed
<i>The information that examiners provide for applicants in their reports when citing Internet information</i>	
<b>1 Graphic image of the cited design</b>	
<b>2 Type of Internet information</b>	Notarized evidence provided by invalidity applicant appeared on E-commerce websites
<b>3 To the effect that the information source was the Internet</b>	The source is the social media platform website (www.weibo.com)
<b>4 URL of the webpage</b>	—
<b>5 Date on which the examiner browsed the Internet information</b>	—
<b>6 Date on which the Internet information was published/posted</b>	April 26,2017
<b>7 Information to specify the place/location of the graphic image of the cited design within the webpage (Screenshot of the webpage)</b>	—

【EU-D-3】

ICD 107 639:

Evidence submitted by the invalidity applicant:





In Evidence cited in the decision:

In support of its observations, the applicant submitted the following evidence:

- Screenshots of the Facebook page of DXRacer Germany GmbH, capturing a post disclosing the same earlier design on 17/06/2016, 28/06/2016 and 18/11/2016 with the following views:



- A screenshot showing a page of the website DXRacer.com, as captured by the Internet Archive Wayback Machine on 06/06/2017, showing a number of designs, including the





DXRacer Gaming Stuhl,  
OH/RZ0/II, R-Serie,  
schwarz

following:


ICD 104 619

Evidence, submitted by the invalidity applicant:

← → ↺ 🏠 <https://www.youtube.com/watch?v=C61mhMxxHLw>

📱 Apps 📌 Bookmarks 📖 Dictionaries 🇬🇧 UK 🇺🇸 US 🇪🇦 EPO 🇮🇹 PCT 🇯🇵 Japanese 🇪🇺 EUIPO 🇮🇹 Other PO 🔍 Search 📰 News 📄 Exams 🇸🇪 Lar

☰ YouTube Search 🔍



Обзор Микроскоп DIGIMICRO Prof

398 views

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Published on Apr 1, 2016

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Идеи и полезные советы от 220 Вольт:  
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Evidence referred to in the decision:

In support of its observations, the applicant submitted, inter alia, the following evidence:

- Annex 1: a printout from the internet platform YouTube of a microscope called 'DIGIMICRO



Prof' published on 01/04/2016 with the following views:



## 【JP-D-3】

Since it is not allowed to present an actual sample case, a sample of evidence description document is attached.

Sample Description of Evidence (tentative translation, extract)

Description of Evidence																			
				DD/MM/YY															
To: Chief Administrative Judge of the Japan Patent Office																			
<p>1 Trial Number<sup>*1</sup></p> <p style="margin-left: 40px;">Invalidation Trial No. 0000 – 000000</p>																			
<p>2 <u>Demandant</u><sup>*2</sup></p> <p style="margin-left: 40px;">Address (Residence)</p> <p style="margin-left: 40px;">Name (Appellation)</p> <p style="margin-left: 40px;">Representative</p>																			
<p>3 Attorney</p> <p style="margin-left: 40px;">(Identification Number      100XXXXXX)</p> <p style="margin-left: 40px;">Address (Residence)</p> <p style="margin-left: 40px;">Telephone Number</p> <p style="margin-left: 40px;">Facsimile Number</p> <p style="margin-left: 40px;">Name (Appellation)</p>																			
<p>4 Description of Evidence</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Exhibit No.<sup>*3</sup></th> <th style="width: 25%;">Entry Heading (Differentiation between the original and a copy<sup>*4</sup>)</th> <th style="width: 10%;">Created Date<sup>*5</sup></th> <th style="width: 15%;">Creator<sup>*5</sup></th> <th style="width: 35%;">Aim of Presenting Evidence</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><u>Demandant's Exhibit No.1</u><sup>*6</sup></td> <td style="padding: 5px;">"OOO" (Title of the paper, etc.) http://...<sup>*7</sup></td> <td style="padding: 5px;">Copy</td> <td style="padding: 5px;">DD/MM/YY (Published Date)</td> <td style="padding: 5px;">OOO (Publisher of the article)</td> </tr> <tr> <td style="padding: 5px;"><u>Demandant's Exhibit No.2</u><sup>*6</sup></td> <td style="padding: 5px;">"OOO" (Title of the web page, etc.) http://...<sup>*7</sup></td> <td style="padding: 5px;">Original</td> <td style="padding: 5px;">DD/MM/YY (Output Date)</td> <td style="padding: 5px;">Attorney of the <u>Demandant</u> (Person who output the evidence)</td> </tr> </tbody> </table>					Exhibit No. <sup>*3</sup>	Entry Heading (Differentiation between the original and a copy <sup>*4</sup> )	Created Date <sup>*5</sup>	Creator <sup>*5</sup>	Aim of Presenting Evidence	<u>Demandant's Exhibit No.1</u> <sup>*6</sup>	"OOO" (Title of the paper, etc.) http://... <sup>*7</sup>	Copy	DD/MM/YY (Published Date)	OOO (Publisher of the article)	<u>Demandant's Exhibit No.2</u> <sup>*6</sup>	"OOO" (Title of the web page, etc.) http://... <sup>*7</sup>	Original	DD/MM/YY (Output Date)	Attorney of the <u>Demandant</u> (Person who output the evidence)
Exhibit No. <sup>*3</sup>	Entry Heading (Differentiation between the original and a copy <sup>*4</sup> )	Created Date <sup>*5</sup>	Creator <sup>*5</sup>	Aim of Presenting Evidence															
<u>Demandant's Exhibit No.1</u> <sup>*6</sup>	"OOO" (Title of the paper, etc.) http://... <sup>*7</sup>	Copy	DD/MM/YY (Published Date)	OOO (Publisher of the article)															
<u>Demandant's Exhibit No.2</u> <sup>*6</sup>	"OOO" (Title of the web page, etc.) http://... <sup>*7</sup>	Original	DD/MM/YY (Output Date)	Attorney of the <u>Demandant</u> (Person who output the evidence)															

## 5 List of Attached Documents or Materials

N/A

- 
- \*<sup>1</sup> If the Appeal/Trial Number is not assigned, state "Indication of Appeal/Trial Case" for "Number of Appeal/Trial" and state "Patent Invalidation Trial Case for JPOOOOOOOO," etc.
- \*<sup>2</sup> Please state "Demandee," "Opponent," etc., in accordance with the role of the person submitting evidence.
- \*<sup>3</sup> Please indicate evidence submitted by the demandant and the opponent as the demandant's Exhibit and evidence submitted by the demandee as the demandee's Exhibit. In addition, please assign an Exhibit number to each documentary evidence. Please do not assign the same Exhibit number to two different types of documentary evidence.
- \*<sup>4</sup> In "Differentiation between the original and a copy" column, when the document to be submitted is the original (If the original copy can be brought on the day of the oral proceedings), please state as "Original," and when it is a copy, please state as "Copy."
- \*<sup>5</sup> Even when a copy is the evidence (submitting a copy as the original), please state the created date and creator of the original copy in the columns for "Created Date" and "Creator."
- \*<sup>6</sup> If the published date and the creator are obvious from the content of the web page, please state the published date and the creator in the designated columns. In this case, "Differentiation between the original and a copy" will be a copy (See example of statement for the demandant's Exhibit No. 6). When the published date and the creator are not known, please write the output date and the person who output the data in the columns for "Published Date" and "Creator." In this case, "Differentiation between the original and a copy" will be the original (See example of statement for the demandant's Exhibit No. 7).
- \*<sup>7</sup> When a web page is the evidence, please state the web page URL in the "Entry Heading" column (It is also possible to add a "Remarks" column to the right end of the table and state the URL in that column.)
-

## 【JP-D-6】

Since it is not allowed to present an actual sample case, sample forms of certification document are attached.

## Examination Guidelines

## Part III Exception to Lack of Novelty

## Form of "Proving Document"

## Proving Document for seeking Application of Exceptions to Lack of Novelty of Design

1. Facts of Disclosure
  - 1) Disclosure date
  - 2) Disclosure site
  - 3) Discloser
  - 4) Contents of disclosed design (the photographs, etc. of the design needs to be attached)
2. Facts of Succession to Right to Obtain Design Registration, etc.
  - 1) Creator of disclosed design
  - 2) Person having right to obtain design registration as of action leading to disclosure of design (the right holder as of the action)
  - 3) Design registration applicant (the person stated in the application form)
  - 4) Discloser
  - 5) About succession to right to obtain design registration (succession to the right from the person in 1) to the person in 3) through the person in 2))
  - 6) About relation, etc. between right holder as of action and discloser (for example, the fact that the person in 4) disclosed the design resulting from the action of the person in 2) needs to be stated)

I hereby certify that the above statements are true.

YYYY/MM/DD

Applicant Name (Signature)



## FAQ about Provisions on Exception to Lack of Novelty of Design

Example Statement 4-1 of proving document  
(Example of posted on a website)

Proving Document for seeking Application of Exceptions to Lack of Novelty of Design

1. Facts of disclosure		
1) Website publication date	MM/DD/20YY	State the URLs of the main page of the website and the page on which the design is posted.
2) Website URLs	<a href="http://www.lshou-design.co.jp/">http://www.lshou-design.co.jp/</a> <a href="http://www.lshou-design.co.jp/news/index.html">http://www.lshou-design.co.jp/news/index.html</a> <a href="http://www.lshou-design.co.jp/products/chair/index.html">http://www.lshou-design.co.jp/products/chair/index.html</a>	
3) Discloser	Design Furniture Co., Ltd.	
4) Contents of disclosed design	Design Furniture Co., Ltd., disclosed, on the website identified by the above URLs, a chair design created by Ichiro Form. [Attach a printout of the home page of the website and the webpage on which the design was posted.] [Note: Refer to <a href="#">Q2-(g) (4)</a> for the method of statement.]	
2. Facts of Succession to Right to Obtain Design Registration, etc.		
1) Creator of disclosed design	Ichiro Form (City, Kanagawa)	
2) Person having right to obtain design registration as of action leading to disclosure of design (the right holder as of the action)	Design Furniture Co., Ltd. (Ward, Tokyo)	
3) Design registration applicant (the person stated in the application form)	Design Furniture Co., Ltd.	
4) Discloser	Design Furniture Co., Ltd.	When the applicant himself/herself disclosed in the website  Example statement of reservations of succession
5) About succession to right to obtain design registration	The disclosed design stated in the facts of disclosure is created by Ichiro Form. The right to obtain a design registration for the design has been transferred from Ichiro Form to Design Furniture Co., Ltd. immediately after the creation of the design according to the reservations of succession contract concluded between Design Furniture Co., Ltd. and Ichiro Form (MM/DD/20YY). At the time of disclosure on MM/DD/20YY, Design Furniture Co., Ltd., had the right to obtain a design registration. Subsequently, on MM/DD/20YY, Design Furniture Co., Ltd., filed an application for design registration.	
6) About relation, etc. between right holder as of action and discloser. (for example, the fact that the discloser disclosed the design as a result of an act by the right holder as of the action needs to be stated.)	Design Furniture Co., Ltd., which was the right holder as of action, disclosed the chair design by himself as stated in the facts of disclosure.	
	Case of Person in 2) = Person in 4)	
	The statement of item 6) may be omitted since the Person in 2) and 4) are identical.	

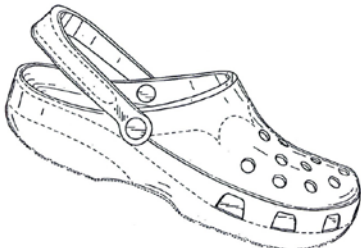
I hereby certify that the above statements are true.

MM/DD/20YY

Jiro Design, President, Design Furniture Co., Ltd.

&lt;Signature&gt;

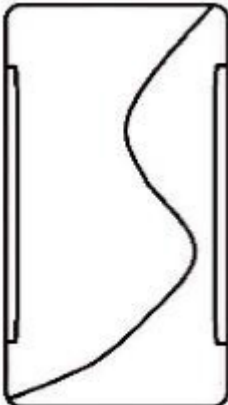
## 【EU-E-1-1】

Office name	European Union Intellectual Property Office
Case type	X E-1 (affirmed) <input type="checkbox"/> E-2 (denied) <input type="checkbox"/> E-3 (other)
	X Judicial case <input type="checkbox"/> Administrative case
	<input type="checkbox"/> Rejection (Ex parte)      X Invalidation (Inter partes)
	<input type="checkbox"/> Infringement <input type="checkbox"/> Other
Name of judgement authority	Court of Justice of the European Union
Case No. at the authority	T-651/16
Date of decision	14/03/2018
Party(ies) concerned	Crocs, Inc., (applicant), EUIPO (defendant), Gifi Diffusion (intervener)
URL (if the case is published)	<a href="http://curia.europa.eu/juris/document/document.jsf?text=&amp;docid=200246&amp;pageIndex=0&amp;doclang=en&amp;mode=lst&amp;dir=&amp;occ=first&amp;part=1&amp;cid=498424">http://curia.europa.eu/juris/document/document.jsf?text=&amp;docid=200246&amp;pageIndex=0&amp;doclang=en&amp;mode=lst&amp;dir=&amp;occ=first&amp;part=1&amp;cid=498424</a>
Reg./pat. No. of the design	Community design No 257001-0001
Article / product / title	Footwear
Point(s) in dispute	Design disclosure
Applicable provision(s)	Articles 5 and 7 of Community Design Regulation.
Summary of the case	
<p>Before filing an application for a registered Community design (RCD) the applicant presented its clogs in the boat show in Florida (US) and later published this information on its website showing the design of a clog (shown by printouts from WayBack Machine).</p> <p>The applicant argued that the circles specialized in the footwear sector operating in the European Union could not have become aware of this disclosure principally because the website was targeted at the US customers and could not have been found by someone from the European Union.</p> <p>The Court concluded that the publishing of the design on a website constitutes its disclosure within the meaning of Article 7 of Community Design Regulation. The applicant did not prove that it was not actually possible for the circles in question to become aware of that disclosure.</p>	
Reproduction of the design and/or copy of documents at issue	
	



## 【EU-E-1-2】

Office name	European Union Intellectual Property Office
Case type	X E-1 (affirmed) <input type="checkbox"/> E-2 (denied) <input type="checkbox"/> E-3 (other)
	X Judicial case <input type="checkbox"/> Administrative case
	<input type="checkbox"/> Rejection (Ex parte)      X Invalidation (Inter partes)
	<input type="checkbox"/> Infringement <input type="checkbox"/> Other
Name of judgement authority	The Court of Justice of the European Union
Case No. at the authority	T-166/15
Date of decision	27/02/2018
Party(ies) concerned	Claus Gramberg (applicant), EUIPO (respondent), Soroush Mahdavi Sabet (intervener)
URL (if the case is published)	<a href="http://curia.europa.eu/juris/document/document.jsf?text=&amp;docid=199687&amp;pageIndex=0&amp;doclang=en&amp;mode=lst&amp;dir=&amp;occ=first&amp;part=1&amp;cid=473789">http://curia.europa.eu/juris/document/document.jsf?text=&amp;docid=199687&amp;pageIndex=0&amp;doclang=en&amp;mode=lst&amp;dir=&amp;occ=first&amp;part=1&amp;cid=473789</a>
Reg./pat. No. of the design	Community design No 001968496-0002
Article / product / title	Covers for telephones, laptop bags, cases (mobile telephones), cases for computers, mobile telephone cases
Point(s) in dispute	Design disclosure
Applicable provision(s)	Article 7 of Community Design Regulation
Summary of the case	
<p>The intervener claimed that before filing an application for a registered Community design (RCD) the design in question was disclosed by putting a product to which design is applied on sale in the internet and also by sending commercial e-mails offering that product.</p> <p>The Applicant challenged the probative value of the respective evidence.</p> <p>The Court found that the credibility of the information contained in the printouts of the commercial website (amazon.de) was ensured by the presence of special identification number (ASIN) used for reference to specific goods. Moreover, it was considered that the e-mails sent by the online retailer (Alibaba) to wholesalers with the offer of the product in question cannot be regarded as a private correspondence and thus can serve to prove the disclosure of the design. Finally, the Court considered that the veracity of evidence originating from the internet should be presumed in the absence of any indications on the contrary.</p>	

Reproduction of the design and/or copy of documents at issue	
	

## 【JP-E-1-1】

Office name	JPO
Case type	<input checked="" type="checkbox"/> E-1 (affirmed) <input type="checkbox"/> E-2 (denied) <input type="checkbox"/> E-3 (other)
	<input checked="" type="checkbox"/> Judicial case <input type="checkbox"/> Administrative case
	<input type="checkbox"/> Rejection (Ex parte) <input type="checkbox"/> Invalidation (Inter partes)
	<input checked="" type="checkbox"/> Infringement <input type="checkbox"/> Other
Name of judgement authority	Tokyo District Court
Case No. at the authority	2004 (Wa) 10431
Date of decision	2005/02/23
Parties concerned	Plaintiff: X, Defendant: Y (Design right holder) (Case on confirmation request of the absence of right to demand an injunction for infringement of a design right)
URL (if the case is published)	<a href="http://www.courts.go.jp/app/files/hanrei_jp/754/009754_hanrei.pdf">http://www.courts.go.jp/app/files/hanrei_jp/754/009754_hanrei.pdf</a>
Reg./Pat. No. of the Design	Design Registration No. 1201825
Article / product / title	Ornamental hanging accessory
Points in dispute	(1) Existence of grounds for invalidation of the design right concerned Article 3 (1) (i) of the Design Act (Novelty) (2) The identity of the registered design and the design of the plaintiff's product
Applicable provision	Article 3(1)(i) of the Design Act
Summary of the case	
<p>In this case, the plaintiff sought confirmation of the absence of the right to demand an injunction for manufacturing, etc. by claiming the presence of grounds of invalidation, against the defendant who demanded suspension of sales, etc. of the straps for cellular phones sold by the plaintiff for the reason that the design of the straps infringes the defendant's design right. The plaintiff presented information obtained by using the "Internet Archive: Wayback Machine" as evidence for the fact that a design similar to the registered design was posted on the defendant's website, before the filing date. Due to the facts that the Guidelines on international search and international preliminary examination for international applications under the Patent Cooperation Treaty (PCT) administered by the World Intellectual Property Organization lists the "Internet Archive: Wayback Machine" as one of the means to learn the publication date of published information posted on websites, and that the indication of "Request made for the design registration" attached to the photos of defendant's products 1 and 2 posted on the defendant's website for a number of other dates as information obtained through the "Internet Archive: Wayback Machine" corresponds to the application history of</p>	

the design right concerned, the court determined that the data contents collected and the dates indicated by the “Internet Archive: Wayback Machine” are sufficiently reliable.

#### Reproduction of the design and/or copy of documents at issue



2  
【光る！白バイマスコット】

1/1 ページ

■ PK006 光る！白バイマスコット(赤) ■

携帯電話の電波・感度の電波によって光ります！人気の男性・女性から女性(赤)バージョンを作成！制服の色が赤というだけでなく、女性の優しさを演出す為に、サンブラスの色も赤系でツブツブに仕上げました！

男性(青)より生産数は少なめですので、貴重です！  
※ゆえに、在庫切れが多いです！(T.T)

LED:3色(赤・黄・緑)  
点灯時間:約15秒間  
電池:3Vボタン電池×1個

予備電池一袋つき  
※特殊電池の為、販売も行っています。

光る！白バイマスコット  
共通パッケージ

価格1000円

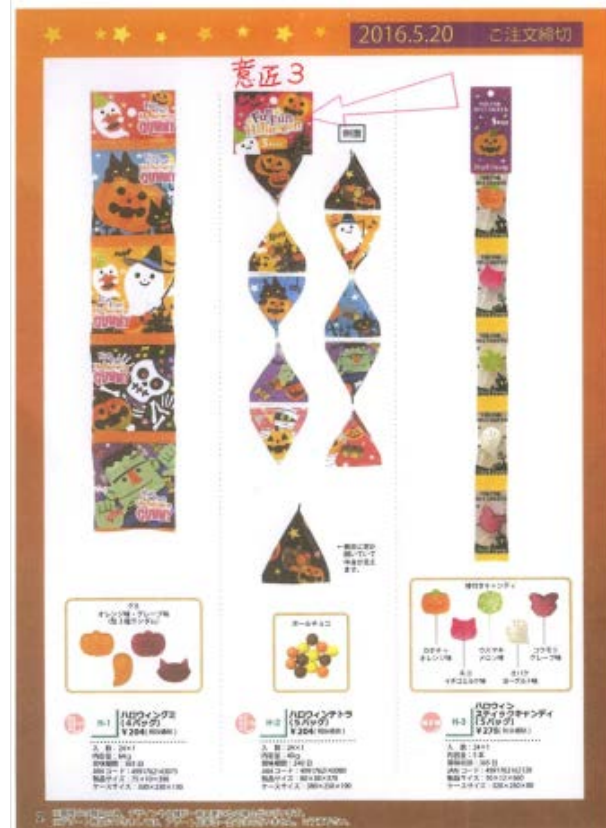
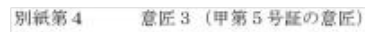
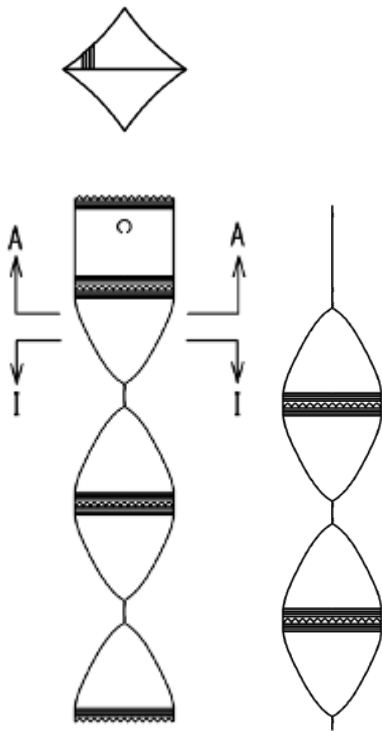
【注意】  
※本品は1.3GHzのデジタル式携帯電話に適合しますが、一部適合しない(新型)機種がございます。ご購入後お問い合わせ下さい。  
※Odina Oneにはご使用できません。

<http://web.archive.org/web/20030227015004/www.mametan2.com/police...> 2004/10/19

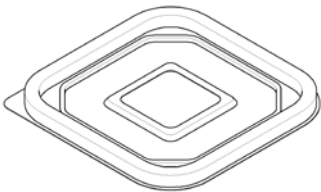

## 【JP-E-1-2】

Office name	JPO
Case type	<input checked="" type="checkbox"/> E-1 (affirmed) <input type="checkbox"/> E-2 (denied) <input type="checkbox"/> E-3 (other)
	<input type="checkbox"/> Judicial case <input checked="" type="checkbox"/> Administrative case
	<input type="checkbox"/> Rejection (Ex parte) <input checked="" type="checkbox"/> Invalidation (Inter partes)
	<input type="checkbox"/> Infringement <input type="checkbox"/> Other
Name of judgement authority	JPO
Case No. at the authority	Trial No.2017-880007
Date of decision	2018/05/10
Party(ies) concerned	Demandant: X, Demandee: Y
URL (if the case is published)	<a href="https://www.j-platpat.inpit.go.jp/c1800/DE/JP-2016-023814/D980970C8D16768E63A2C38ADE909D4DE3EFF48BD111882B6683A3B86368A2B0/30/ja">https://www.j-platpat.inpit.go.jp/c1800/DE/JP-2016-023814/D980970C8D16768E63A2C38ADE909D4DE3EFF48BD111882B6683A3B86368A2B0/30/ja</a>
Reg./pat. No. of the design	Design Registration No.1578031
Article / product / title	Packaging bag for articles
Point(s) in dispute	Existence of grounds for invalidation (Creative difficulty)
Applicable provision(s)	Article 3(2) of the Design Act
Summary of the case	
<p>The following determination concerns the date of publication of a product catalog published on the Internet. The panel said, “It is believed that this catalog was published on the Internet by IZUMICREATION INC. for conducting activities to take orders in preparation for the Halloween festival at the end of October. The cover (the first page of the demandant’s Exhibit No. 5) and the page for the Order Slip (the fourth page of the demandant’s Exhibit No. 5) respectively state “The deadline for making orders is May 20, 2016” and “The deadline for making orders is June 30, 2016”. In the “HALLOWEEN CATALOG 2017” (the demandant’s Exhibit No. 26-5) for the following year, it is also stated that the deadline for making orders is at around the same date, indicating that IZUMICREATION INC. conducts activities for taking orders at the same timing every year. Since there are no particular circumstances that cause doubt about the stated dates, the panel decided on the date of publication of the catalog as stated above.”</p>	

Reproduction of the design and/or copy of documents at issue

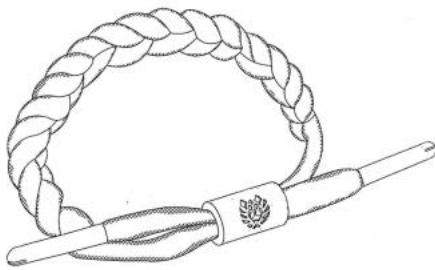


## 【KR-E-1】



Office name	KIPO
Case type	<input checked="" type="checkbox"/> E-1 (affirmed) <input type="checkbox"/> E-2 (denied) <input type="checkbox"/> E-3 (other)
	<input checked="" type="checkbox"/> Judicial case <input type="checkbox"/> Administrative case
	<input type="checkbox"/> Rejection (Ex parte) <input checked="" type="checkbox"/> Invalidity (Inter partes)
	<input type="checkbox"/> Infringement <input type="checkbox"/> Other
Name of judgement authority	The Patent Court of Korea
Case No. at the authority	2011Heo1103
Date of decision	July 27, 2017
Party(ies) concerned	Koreapla Inc.(Plaintiff), Seongsuk Yoo (Defendant)
Reg. No. of the design	300507737
Article / product / title	Lid for food container
Point(s) in dispute	The comparative design had been published via the website of the plaintiff before the date of the application of the registered design.
Applicable provision(s)	Article 33(1)(iii) of Design Protection Act
Summary of the case	
<p>This court has found no evidence clearly backing up the plaintiff's claim that on around October 7, 2018, when the plaintiff was posting the photo of the food container cover of Comparable Design No. 1 on his website, the domain and the host computer storage space were not linked, and that the plaintiff's web design company was responsible for the maintenance of confidentiality about the domain. According to the Evidence-10 and Evidence-12, it has turned out that the plaintiff's website had a notice saying, "Our website has been launched," on October 8, 2008, at the public notice section of the website and that the plaintiff registered his website with Naver, an online platform, on December 11, 2008. However, those facts do not indicate that the general public was unable to access the plaintiff's website by around October 8, 2008 or by around December 11, 2008. Rather, as a rule, it is reasonable to assume that once the domain and the host computer storage space are linked, anyone could access the plaintiff's website via web surfing starting from that moment on. As a consequence, this court does not accept any of the plaintiff's arguments.</p>	
Reproduction of the design and/or copy of documents at issue	
[Registered Design]	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  </div> <div style="text-align: center;"> <p>[Comparable Design No. 1]</p>  </div> </div>



## 【EU-E-2】

Office name	European Union Intellectual Property Office
Case type	<input type="checkbox"/> E-1 (affirmed) <input checked="" type="checkbox"/> E-2 (denied) <input type="checkbox"/> E-3 (other)
	<input type="checkbox"/> Judicial case <input checked="" type="checkbox"/> Administrative case
	<input type="checkbox"/> Rejection (Ex parte) <input checked="" type="checkbox"/> Invalidity (Inter partes)
	<input type="checkbox"/> Infringement <input type="checkbox"/> Other
Name of judgement authority	Third Board of Appeal of EUIPO
Case No. at the authority	R 779/2015-3
Date of decision	22/08/2016
Party(ies) concerned	MasterDis GmbH (applicant), Rastaclat LLC (respondent)
URL (if the case is published)	<a href="https://euipo.europa.eu/copla/trademark/data/002147975-0001/download/CLW/APL/2016/EN/20160822_R0779_2015-3.pdf?app=caselaw&amp;casenum=R0779/2015-3&amp;trTypeDoc=NA">https://euipo.europa.eu/copla/trademark/data/002147975-0001/download/CLW/APL/2016/EN/20160822_R0779_2015-3.pdf?app=caselaw&amp;casenum=R0779/2015-3&amp;trTypeDoc=NA</a>
Reg./pat. No. of the design	Community design No 2 147 975-0001
Article / product / title	Bangles
Point(s) in dispute	Disclosure of design
Applicable provision(s)	Article 7 of Community Design Regulation
Summary of the case	
<p>The applicant claimed that before filing an application for a registered Community design (RCD) the design in question was disclosed in the internet.</p> <p>The Court concluded that in the given case displaying a design in a blog of personal and private nature does not constitute its disclosure within the meaning of Article 7 of Community Design Regulation, because the specialized circles could not have become aware of such disclosure.</p>	
Reproduction of the design and/or copy of documents at issue	
	

## 【KR-E-2】

Office name	KIPO
Case type	<input type="checkbox"/> E-1 (affirmed) <input checked="" type="checkbox"/> E-2 (denied) <input type="checkbox"/> E-3 (other)
	<input type="checkbox"/> Judicial case <input type="checkbox"/> Administrative case
	<input checked="" type="checkbox"/> Positive Confirmation trial for the scope of a design right
Name of judgement authority	The Patent Court of Korea
Case No. at the authority	2011Heo8716
Date of decision	December 9, 2011
Party(ies) concerned	Seongsuk Yoo (Plaintiff), Koreapla Inc.(Defendant)
Reg./pat. No. of the design	300507737
Article / product / title	Lid for food container
Point(s) in dispute	The published design is not identical or similar to the registered design.
Applicable provision(s)	Article 33(1)(iii) of the Design Protection Act
Summary of the case	
<p>The plaintiff argues that in February 2007, the defendant sold food container covers of Comparable Design No. 2 (Evidence 6 &amp; 7), identical or similar to the registered design in this case at Naver Shopping(<a href="http://shopping.naver.com">http://shopping.naver.com</a>), and so the design was publicly known prior to the application of the registered design involved in this case. However, despite the publication of Evidence No. 6 is shown on the website, but it is impossible to compare to the registered design since the picture is not clear. Also, the Evidence 7 which is connected from Evidence 6 by clicking a button on the webpage of Evidence 6, cannot be approved the admissibility because the publication date of Evidence 7 is not disclosed and even if the Evidence 7 can be accessed by clicking the photo of Evidence No.6, the publication date of Evidence 7 cannot be proved. Therefore, it is hard to agree that the designs of the food container cover in the above photos were in a state in which the general public could use them by accessing them through a telecommunications network before application for the registered design of this case was made, based only on the texts and images mentioned in Documents Evidence-6 and 7. Nor is there any clear evidence supporting the argument, either. It is hard to consider Comparable Design No. 2 as having been submitted before the registered design in this case. Therefore, the design is not appropriate to be regarded as a comparable design.</p>	
Reproduction of the design and/or copy of documents at issue	
[Registered Design]	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>[Evidence 6]</p>  </div> <div style="text-align: center;"> <p>[Evidence 7]</p>  </div> </div>

## 【JP-E-3-1】

Office name	JPO
Case type	<input checked="" type="checkbox"/> E-1 (affirmed) <input type="checkbox"/> E-2 (denied) <input type="checkbox"/> E-3 (other)
	<input checked="" type="checkbox"/> Judicial case <input type="checkbox"/> Administrative case
	<input checked="" type="checkbox"/> Rejection (Ex parte) <input type="checkbox"/> Invalidation (Inter partes)
	<input type="checkbox"/> Infringement <input type="checkbox"/> Other
Name of judgement authority	Intellectual Property High Court
Case No. at the authority	2013 (Gyo-Ke) 10223
Date of decision	2014/03/24
Party(ies) concerned	Plaintiff: X, Defendant: JPO Commissioner
URL (if the case is published)	<a href="http://www.courts.go.jp/app/files/hanrei_jp/066/084066_hanrei.pdf">http://www.courts.go.jp/app/files/hanrei_jp/066/084066_hanrei.pdf</a>
Reg./pat. No. of the design	Patent Application No.2008-149853
Article / product / title	-
Point(s) in dispute	Existence of grounds for refusal (Inventive step)
Applicable provision(s)	Article 29(2) of the Patent Act
Summary of the case	
<p>(Extract)</p> <p>“4 As for the Grounds for Revocation 4 (Determination that cited documents 2, 3, and 4 are not publicly known documents)</p> <p>The articles of cited documents 2 to 4 are articles posted on websites of “Yahoo Blog”, “Livedoor Blog” and “OSHIETE Watch”. These websites are all famous blog sites or Q&amp;A sites and it is acknowledged that the time and date attached to each article (time stamp) are not attached by the users who posted the article at their own discretion and that they are automatically attached to the articles by the website. Furthermore, no particular circumstances were found that cause doubt about the time and date (time stamp) attached to the series of comments that follow the blog text and the answers to the questions.</p> <p>In addition, blog sites that post articles contributed by individuals such as the cited documents 2 and 3 or Q&amp;A sites that posts questions and answers such as the cited document 4 have, in general, the purpose of enabling unspecified large number of people using the Internet to promptly and easily browse the articles. Moreover, based on the facts that a series of comments following the blog text and a series of answers to the questions were found in these cited documents, it can be acknowledged that the cited documents 2 to 4 were accessible by unspecified large number of people using the Internet.</p> <p>Therefore, it is proper to acknowledge that the cited documents 2 to 4 were publicly known before the present application was filed.</p> <p>Based on this determination, the court finds no validity of the Grounds for Revocation 4 claimed by the plaintiff.”</p>	

## 【JP-E-3-2】

Office name	JPO
Case type	<input type="checkbox"/> E-1 (affirmed) <input checked="" type="checkbox"/> E-2 (denied) <input type="checkbox"/> E-3 (other)
	<input checked="" type="checkbox"/> Judicial case <input type="checkbox"/> Administrative case
	<input type="checkbox"/> Rejection (Ex parte) <input type="checkbox"/> Invalidation (Inter partes)
	<input checked="" type="checkbox"/> Infringement <input type="checkbox"/> Other
Name of judgement authority	Osaka High Court
Case No. at the authority	2011 (Ne) 2651
Date of decision	2013/04/18
Party(ies) concerned	Appellant (Defendant of the first trial): X Respondent (Plaintiff of the first trial): Y
URL (if the case is published)	<a href="http://www.courts.go.jp/app/files/hanrei_jp/222/083222_hanrei.pdf">http://www.courts.go.jp/app/files/hanrei_jp/222/083222_hanrei.pdf</a>
Reg./pat. No. of the design	-
Article / product / title	Kitchen knife sharpener
Point(s) in dispute	Whether the shape of the defendant's product is a copy of the plaintiff's product (Point 1)
Applicable provision(s)	Article 2(1)(iii) of the Unfair Competition Prevention Act
Summary of the case	
<p>(Extract)</p> <p>“d. As for the archived graphic images in the Wayback Machine, there are cases where only the graphic image's URL is stored and cases where both the URL and the graphic image itself are stored. In the former case, the URL of the graphic image is linked to the data that is present outside the archive and the linked external data will be displayed in the archive. Therefore, even after the image is archived, the image that will be displayed in the archive will be changed when the linked external data is changed.</p> <p>All the displayed graphic image parts of the Company C product ② in the archive stated in c above fall under the case where only the graphic image's URL is stored, and the URL is linked to the graphic image data on the server for the Alibaba Website. Therefore, when the graphic image data on the server for the Alibaba Website is changed, the archived displayed image will also be changed. (plaintiff's Exhibits 91 – 94)</p> <p>e. As stated in the original judgment No. 4 – 1 (2) c “Facts and Grounds,” the document (defendant's Exhibit 16 – 1 and 16 – 2) “Explanation of circumstances” submitted by the appellant in the court of first instance states the facts that Company C developed its product (LX-0809) on March 10, 2005, started manufacturing and selling the product in March 2015, and on November 6, 2006, the Representative Director and a department manager of the Company D brought a sample to the Company C factory and requested Company C to manufacture the plaintiff's product. This content is based on the presupposition that on November 6, 2006, the product with the shape of the product at issue in this case was still at the stage of planning development.</p> <p>In addition, according to the abovementioned Wayback Machine, no graphic image of the</p>	

Company C product ② is present in the archived website of Company C for the period of March 2005 to January 2007. (plaintiff's Exhibits 86 – 88)

(B) Judgment is made based on the certified facts of the foregoing paragraph.

The appellant claims that based on the graphic image of the abovementioned (A) c, the Company C product ② existed at the time of March 20, 2006.

However, as stated in above (A) d, the graphic image could be changed at a later date through changing the graphic image on the server for the Alibaba Website. Furthermore, according to above (A) b, it can be assumed that a person in charge at Company C can change the graphic image on the server for the Alibaba Website. As the appellant received the document "Explanation of circumstances" (defendant's Exhibit 16 – 1) from the Representative Director of Company C, indicating that he/she was in a position that he/she can come into contact with Company C. Thus, the court cannot say that the possibility of the appellant asking someone at Company C to change the graphic image is nil, and there is also a possibility that the person in charge at Company C changed the graphic image for some reason, without any relevance to the appellant.

In light of the facts that the product name and model number in the written product explanation of the graphic image (it is believed that the indication of this part has not been changed from the time the data was archived) were completely different from that of the Company C product ② and match the product name and model number of another existing Company C product, the graphic image was listed in the page for "hand tools" which was different from the relevant category of the product, and the explanation in the document "Explanation of circumstances" (defendant's Exhibit 16 – 1, 16 - 2) created by the Representative Director of Company C states on the assumption that the Company C product ② was still not developed in March 2006, it should be natural to assume that the graphic image of a pair of pliers with the model number "lxpl001" was displayed at the timing of March 20 and was later replaced with the graphic image of the Company C product ②. And there is such a possibility of the graphic image to be replaced as stated above.

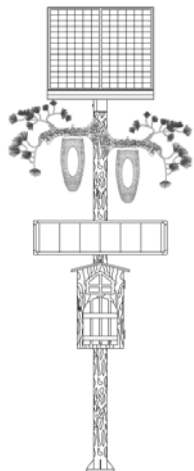
Based on these facts and the graphic images concerned, it cannot be acknowledged that the Company C product ② existed as of March 20, 2006 (This also applies to the time of April 13 and April 18, 2006), the abovementioned finding that the respondent developed the plaintiff's product after going through communications with Company D shall not be affected, and therefore it cannot be acknowledged that the Company C product ② was developed prior to the plaintiff's product."

## 【KR-E-3】

Office name	KIPO
Case type	<input type="checkbox"/> E-1 (affirmed) <input type="checkbox"/> E-2 (denied) <input checked="" type="checkbox"/> E-3 (other)
	<input type="checkbox"/> Judicial case <input type="checkbox"/> Administrative case
	<input checked="" type="checkbox"/> Positive confirmation trial for the scope of a design right
Name of judgement authority	The Patent Court of Korea
Case No. at the authority	2011Heo156
Date of decision	April 15, 2011
Party(ies) concerned	Yunku Kim (Plaintiff), K-IOTT.Inc (Defendant)
URL (if the case is published)	
Reg./pat. No. of the design	300523126
Article / product / title	Voice Guidance kiosk with solar panel
Point(s) in dispute	The act to directly or indirectly post on the Internet a design subject to confirmation for product sales corresponds to 'offering to assign or rent an article or displaying an article for assigning or renting' as stipulated in Article 2.6 of the design Protection Act.
Applicable provision(s)	Article 2(6) of the Design Protection Act
Summary of the case	
<p>As far as there is no evidence or circumstance indicating that Jeonnam Forestry has posted information related to the design subject to confirmation without the plaintiff's consent on Korea On-Line E-Procurement System, it can be ratified that the plaintiff posted information on his products that work on the design subject to confirmation on the aforementioned website or at least was involved in the process by consenting or cooperating with the posting of the abovementioned product information before judgement is made in this case. The act to directly or indirectly post on the Internet a design subject to confirmation for product sales corresponds to 'offering to assign or rent an article or displaying an article for assigning or renting' as stipulated in Article 2.6 of the design Protection Act. So, the plaintiff's abovementioned action corresponds to the working of the design subject to the confirmation mentioned in the act. Therefore, this court does not accept the plaintiff's argument that the plaintiff's petition filing does not hold confirmation benefits on the grounds that the design subject to confirmation has not been worked since before judgement was made in this case.</p>	

Reproduction of the design and/or copy of documents at issue

[Registered Design]



[Design subject to confirmation]

