

Trial decision

Invalidation No. 2012-880005

Osaka, Japan

Demandant

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The case of trial regarding the invalidation of design registration for Design Registration No. 1406548, entitled "CASE FOR STORING OFFICE CLIP" between the parties above has resulted in the following trial decision.

Conclusion

Design Registration No. 1406548 is invalidated.

The costs in connection with the trial shall be borne by the demandee.

Reason

No. 1 Registered Design

The application for design registration of Design Registration No. 1406548 (hereinafter, referred to as the "Registered Design") was filed on April 2, 2010 (Heisei 22), and an establishment of the design right was registered on January 7, 2011 (Heisei 23). The article to the Registered Design, according to the descriptions of the application, is "CASE FOR STORING OFFICE CLIP" and its shape, patterns, or colors, or any combination thereof (hereinafter, referred to as "form"), are per the descriptions described in the application and the drawings attached to the application. (See Appendix No. 1)

No. 2 Allegations of the parties

1 The demandant's allegation

The demandant petitioned, "we request a trial decision that registration of design registration No. 1406548 is invalidated, and that the costs in connection with the trial shall be borne by the demandee"; as the reason for that, alleged as follows; and submitted Evidence A No. 1 to A No. 30 as means of proof. (A written request for trial dated March 19, 2012, a written refutation of a trial case dated November 29, 2012, a first oral proceedings statement brief dated August 09, 2013, first oral proceedings record, a second oral proceedings statement brief dated December 12, 2013, second oral proceedings record, and second oral proceedings and evidence examination record)

(1) Gist of reasons for invalidation of design registration

The Registered Design is similar to Cited Design 1 publicly known prior to the filing of the application (note by the body: hereinafter, referred to as "Design A-1" (see Appendix No. 2)), so that the Registered Design is similar to a design which had been publicly known in Japan or a foreign country prior to the filing of the application and thus should not be registered under Article 3(1)(iii) of the Design Act, and should be invalidated under the provisions of Article 48(1)(i) of the same Act. (Note by the body: hereinafter, referred to as "Reasons for invalidation 1.")

Also, the Registered Design is a design that is constituted merely by replacing the shape of an outer frame body of both side surface portions in a longitudinal direction of a design of Design A-1 publicly known prior to the filing of the application to the shape of an outer frame body of both side surface portions in a longitudinal direction of a design of Cited Design 2 (note by the body: hereinafter, referred to as "Design A-2" (see Appendix No. 3)) which is another publicly known design by an ordinary techniques for a person skilled in the art. Therefore, the Registered Design is a design which could be easily created by a person of ordinary skill in the art of the design (note by the body: hereinafter, referred to as "a person skilled in the art"), based on shape, patterns, or colors, or any combination thereof which had been publicly known in Japan or a foreign country, prior to the filing of the application for design registration, and thus should not be registered under the provisions of Article 3(2) of the Design Act, and therefore, the Registered Design falls under the provisions of Article 48(1)(i) of the same Act and should be invalidated. (Note by the body: hereinafter, referred to as "Reasons for invalidation 2.")

(2) Means of proof

Evidence A No. 1:	Pyonchan clip case used for advertisement and sales promotion of SSP Co., Ltd. (Cited Design 1)
Evidence A No. 2:	The South Korean Design Gazette, volume 1525, (1997-5-9), page 21, 195465 (Cited Design 2)
Evidence A No. 3:	Design published in Pages 126 to 127 of a catalog "MIDORI PRODUCTS CATALOG 2009" issued in March, 2009 by Designphil Inc. (Item numbers "43147006," "43148006," "43149006," "43150006," "43151006," "43152006," "43153006," "43154006"). (Peripheral Design 1)

Evidence A No. 3-2:	Photograph of a clip case of "43148006" on Page 126 of the catalog "MIDORI PRODUCTS CATALOG 2009" issued in March, 2009 by Designphil Inc.
Evidence A No. 4:	Design Registration No. 1256476 (Peripheral Design 2)
Evidence A No. 5:	Design Registration No. 1256946 (Peripheral Design 3)
Evidence A No. 6:	Design Registration No. 1256947 (Peripheral Design 4)
Evidence A No. 7:	Design Registration No. 1256948 (Peripheral Design 5)
Evidence A No. 8:	Design Registration No. 1255949 (Peripheral Design 6)
Evidence A No. 9:	Design Registration No. 1256950 (Peripheral Design 7)
Evidence A No. 10:	Design Registration No. 1256951 (Peripheral Design 8)
Evidence A No. 11:	Design Registration No. 1256952 (Peripheral Design 9)
Evidence A No. 12-1:	E-mail dated January 27, 2010
Evidence A No. 12-2:	Production schedule of this case attached to e-mail dated January 27, 2010
Evidence A No. 13-1:	E-mail dated January 28, 2010
Evidence A No. 13-2 to 7:	CG images of this case attached to e-mail dated January 28, 2010
Evidence A No. 14-1:	E-mail dated January 28, 2010
Evidence A No. 14-2, 3:	Drawings of this case attached to e-mail dated January 28, 2010
Evidence A No. 15-1:	E-mail dated January 28, 2010
Evidence A No. 15-2, 3:	CG images of this case attached to e-mail dated January 28, 2010
Evidence A No. 16-1:	E-mail dated January 28, 2010
Evidence A No. 16-2, 3:	Drawings of this case attached to e-mail dated January 28, 2010
Evidence A No. 17-1:	E-mail dated March 3, 2010
Evidence A No. 17-2 to 5:	Photograph of this case attached to e-mail dated March 3, 2010
Evidence A No. 18:	Import consent form
Evidence A No. 19:	Invoice
Evidence A No. 20:	Invoice
Evidence A No. 21:	Packing/weight/list
Evidence A No. 22:	Waybill
Evidence A No. 23:	E-mail dated March 8, 2010
Evidence A No. 24:	Bill

Evidence A No. 25:	Delivery Note
Evidence A No. 26:	Bill
Evidence A No. 27-1, 2:	Delivery instruction
Evidence A No. 28:	Statement
Evidence A No. 29:	Statement
Evidence A No. 30:	E-mail dated June 3, 2009

(3) Regarding Reasons for invalidation 1

A Regarding the Registered Design

[Gist of the Registered Design]

The Registered Design is related to a case for storing office clips.

[Form of the Registered Design]

As a basic constitution,

- (I) It is a rounded corner rectangular parallelepiped with relatively thin thickness, is composed of a storage portion and an outer frame body, and the storage portion can be put in and taken out from the outer frame body.
- (II) The storage portion is a generally rectangular parallelepiped opening at an upper part.
- (III) The outer frame body is provided with a generally rectangular plate body covering the upper part of the storage portion and generally rectangular wall plates downward on bottom surfaces of three sides of the plate body, and surrounds the upper part, both side surfaces in a longitudinal direction, and one side surface in a lateral direction, of the storage portion.

As a specific constitution,

- (i) In a left side view, a lateral side surface portion of a clip storage case is generally rectangular, and a trapezoidal notch is provided at a center of the outer frame body.
- (ii) In a rear view, two L-shaped protrusions are formed on a back side of the lateral side surface portion on an extraction side of the storage portion.
- (iii) A longitudinal side surface portion of the clip storage case, in a bottom view, has a "ㄣ" (kanji "cliff" radical) shape at a boundary between the outer frame body and the storage portion. In a plane view, it is line symmetrical.
- (iv) On an upper part of the outer frame body, a projecting portion is formed, which has a small step of a rectangular shape slightly smaller than an outer periphery of the clip storage case.

- (v) A bottom part of the storage portion forms a curved slope gradually rising toward the extraction side, and the slope is formed from an extraction side end to a position corresponding to approximately one-third in the longitudinal direction.
- (vi) Both side surface portions of the clip storage case have flat planar shapes in both the storage portion and the outer frame body.

B Regarding Design A-1

[Gist of Design A-1]

Design A-1 is a design related to "a clip storage case" delivered from the demandant to SSP Co., Ltd. through i's FACTORY co., ltd. and Best Project Co., Ltd., on March 16, 2010 before the application of the Registered Design was filed.

[Form of Design A-1]

Basic Constitution

- (I) It is a rounded corner rectangular parallelepiped with relatively thin thickness, is composed of a storage portion and an outer frame body, and the storage portion can be put in and taken out from the outer frame body.
- (II) The storage portion is a generally rectangular parallelepiped opening at an upper part.
- (III) The outer frame body is provided with a generally rectangular plate body covering the upper part of the storage portion and generally rectangular wall plates downward on bottom surfaces of three sides of the plate body, and surrounds the upper part, both side surfaces in a longitudinal direction, and one side surface in a lateral direction, of the storage portion.

Specific Constitution

- (i) In a left side view, a lateral side surface portion of a clip storage case is generally rectangular, and a trapezoidal notch is provided at a center of the outer frame body.
- (ii) In a rear view, two L-shaped protrusions are formed on a back side of the lateral side surface portion on an extraction side of the storage portion.
- (iii) A longitudinal side surface portion of the clip storage case, in a bottom view, has a "ㄣ" (kanji "cliff" radical) shape at a boundary between the outer frame body and the storage portion. In a plane view, it is line symmetrical.
- (iv) On an upper part of the outer frame body, a projecting portion is formed, which has a small step of a rectangular shape slightly smaller than an outer periphery of the clip storage case.

(v) A bottom part of the storage portion forms a curved slope gradually rising toward the extraction side, and the slope is formed from an extraction side end to a position corresponding to approximately one-third in the longitudinal direction.

(vi) Of both side surface portions in a longitudinal direction of the clip storage case, the storage portion has a flat planar shape, and the outer frame body is provided with a rib. The shape of the rib is one in which a plurality of projection strips extending in a vertical direction are arranged at equal intervals in the longitudinal direction.

C Regarding Design A-2

[Gist of Design A-2]

Design A-2 makes an article to the design to be "a gum case," as described in The South Korean Design Gazette, volume 1525, (1997-5-9), page 21, 195465 distributed on May 9, 1997 before the application of the Registered Design was filed.

[Form of Design A-2]

Basic Constitution

(I) It is a rounded corner rectangular parallelepiped with relatively thin thickness, is composed of a storage portion and an outer frame body, and the storage portion can be put in and taken out from the outer frame body.

(II) The storage portion is a generally rectangular parallelepiped opening at an upper part.

(III) The outer frame body is provided with a generally rectangular plate body covering the upper part of the storage portion and generally rectangular wall plates downward on bottom surfaces of three sides of the plate body, and surrounds the upper part, both side surfaces in a longitudinal direction, and one side surface in a lateral direction, of the storage portion.

Specific Constitution

(i) In a left side view, a lateral side surface portion of a gum case is generally rectangular, and a trapezoidal notch is provided at a center of the outer frame body.

(ii) In a rear view, a back side of the lateral side surface portion on an extraction side of the storage portion is a flat plane.

(iii) A longitudinal side surface portion of the gum case, in a bottom view, has a "ㄱ"(kanji " cliff" radical) shape at a boundary between the outer frame body and the storage portion. In a plane view, it is line symmetrical.

(iv) A bottom part of the storage portion is a flat plane.

(v) Both side surface portions of the gum case have flat planar shapes both in the storage portion and the outer frame body.

D Indication of prior Peripheral Design

Regarding the design of "a clip storage case" or "a storage case" which is common with the article to the Registered Design, the following publicly known design (peripheral design) exists, and had been publicly known before the application was filed.

Peripheral Design 1 to Peripheral Design 9 (Evidence A No. 3 to A No. 9)

E Explanation of the fact that Design A-1 had been publicly known prior to the filing of the Registered Design

Design A-1 is a design related to "a clip storage case" of novelty goods of "Pyonchan gem clips and a storage case thereof" sold to i's FACTORY co., ltd. by the demandant, then finally to SSP Co., Ltd. sold from i's FACTORY co., ltd. through Best Project Co., Ltd., and is used for advertisement and sales promotion of SSP Co., Ltd..

Design A-1 was created by Mr. Yuki OHARA, who is an employee of the demandant, in the factory of 馬●成社 (馬● is kanji "馬" radical and "華" radical," the same shall apply hereinafter) in China, around December, 2009 for design development of the novelty goods of SSP Co., Ltd.

When Mr. OHARA inquired about the sales of gem clips of a character "Pyonchan" and a case storing the gem clips of this case to i's FACTORY co., ltd., it was determined to deliver that from i's FACTORY co., ltd. to SSP Co., Ltd. through Best Project Co., Ltd., and specific delivery times were presented from the demandant to i's FACTORY co., ltd., on January 27, 2010 (Evidence A No. 12-1, 2). Simultaneously, the demandant requested 馬●成社 to manufacture this case, and drawings of this case were presented from 馬●成社 to the demandant (Evidence A No. 13-1 to 7, Evidence A No. 14-1 to 3). Then, the demandant immediately presented the drawings to i's FACTORY co., ltd. on the same day (Evidence A No. 15-1 to 3, and Evidence A No. 16-1 to 3).

After that, work for adding slight change to a position and shape of protrusions clipping a magnet on this case was advanced (Evidence A No. 17-1 to 5). Then, the demandant imported 10,200 pieces of this case from 馬●成社 (Evidence A No. 19 to A No. 22) under an import consent form of SSP Co., Ltd. dated March 11, 2010 (Evidence A No. 18), sent 2 pieces of them to Eco Angel co., Ltd. for various

inspections (Evidence A No. 23 and A No. 24), and delivered 10,000 pieces to the east Japan distribution center of SSP Co., Ltd on March 16. At this point, since the demandant had concluded a sales contract of this case with i's FACTORY co., ltd., although a delivery address of a delivery note (Evidence A No. 25) and a bill (Evidence A No. 26) produced by the demandant was written as i's FACTORY co., ltd., actually, as a delivery instruction (Evidence A No. 27-1, 2), they were delivered to the east Japan distribution center of SSP Co., Ltd..

As described above, Design A-1 became publicly known when this case was delivered on March 16, 2010, prior to April 2, 2010, which is the filing date of the Registered Design.

F Comparison of the Registered Design and Design A-1

[Regarding articles of both designs]

The article to the Registered Design is related to "a case for storing office clips," and the article to Design A-1 is also "a clip storage case," so that they are identical in this aspect.

[Regarding forms of both designs]

[The common features]

The two designs, in the basic constitution, are common in the following points.

- (A) A clip storage case is a rounded corner rectangular parallelepiped with relatively thin thickness, is composed of a storage portion and an outer frame body, and the storage portion can be put in and taken out from the outer frame body.
- (B) The storage portion is a generally rectangular parallelepiped opening at an upper part.
- (C) The outer frame body is provided with a generally rectangular plate body covering the upper part of the storage portion and generally rectangular wall plates downward on bottom surfaces of three sides of the plate body, and surrounds the upper part, both side surfaces in a longitudinal direction, and one side surface in a lateral direction, of the storage portion.

The two designs, in the specific constitution, are common in the following points.

- (D) In a left side view, a lateral side surface portion of a clip storage case is generally rectangular, and a trapezoidal notch is provided at a center of the outer frame body.
- (E) In a rear view, two L-shaped protrusions are formed on a back side of the lateral

side surface portion on an extraction side of the storage portion.

(F) A longitudinal side surface portion of the gum case, in a bottom view, has a "厩" (kanji "cliff" radical) shape at a boundary between the outer frame body and the storage portion. In a plane view, it is line symmetrical.

(G) On an upper part of the outer frame body, a projecting portion is formed, which has a small step of a rectangular shape slightly smaller than an outer periphery of the clip storage case.

(H) A bottom part of the storage portion forms a curved slope gradually rising toward the extraction side and the slope is formed from an extraction side end to a position corresponding to approximately one-third in the longitudinal direction.

[The different features]

The two designs are different in the following points.

(a) Both side surface portions of the clip storage case of the specific constitution (VI) of the Registered Design have flat planar shapes both in the storage portion and the outer frame body, whereas the storage portion of a longitudinal side surface portion of the clip storage case of the specific constitution (vi) of Design A-1 has a flat planar shape, and the outer frame body is provided with a rib. The shape of the rib is one in which a plurality of projection strips extending in a vertical direction are arranged at equal intervals in a longitudinal direction.

[Similarity]

In comparison of the Registered Design and Design A-1, since both are designs related to a case for storing clips, the articles to which both designs are applied are common.

The common features (A), (B), and (C) of the two designs indicate a skeletal form of the design, and the basic constitutions of the designs are common. However, in this kind of case, as shown in Peripheral Design 1 to Peripheral Design 9, they are the shape that is extremely commonly adopted, so that although attracting observers to a certain extent, it cannot be said that they are common features to a sufficient degree to become characteristics of both designs.

Also, the common feature (F) is a boundary between a principal part and the outer frame body, so that it cannot be said that the common feature (F) is characteristics of the two designs.

Also, the common feature (D) is a form having a functional meaning that the

storage portion can be pushed with the fingers when the storage portion is extracted from the outer frame body because a notch exists, and a design property, and as can be understood from Design A-2 and peripheral designs, is a form which has conventionally existed.

Also, although the common feature (G) is also a form having a functional meaning that the clip storage cases are easily stacked because a projecting portion with a small step of a rectangular shape slightly smaller than an outer periphery of the clip storage case is formed, it is a form which is also presented in Peripheral Design 1.

Therefore, although the common features (D) and (G) attract observers to a certain extent, it cannot be said that they are common features to a sufficient degree to become characteristics of both designs.

However, the forms of the common features (E) and (H) are novel designs which do not exist in prior peripheral designs and are common only with the Registered Design and Design A-1. Furthermore, they are original forms different from the conventional design, and attract consumers and the like.

The common feature (H) is a form having a functional meaning that the clips are possible to be easily taken out while a user is holding the clips in the storage portion with a finger one by one and is moving that along a curved slope gradually rising toward the extraction side. Looking at the form of the bottom surface of the clip storage case, consumers and traders can assume the functional meaning, and the basic constitutions of the Registered Design is the shape that is generally adopted., Therefore, the common feature (H) is a part to which the consumers and the like pay particular attention.

The common feature (E) enables two L-shaped protrusions provided on a back side of the lateral side surface portion on an extraction side of the storage portion to clip a platy magnet. The common feature (E) is a form having a functional meaning that the clips moved along the curved slope provided on the bottom portion of the storage portion of the common feature (H) mentioned above are stopped by the magnet near an extraction port, and the clips are easily taken out. The common feature (E), together with the common feature (H), is a part to which the consumers and the like pay attention, and further strengthen a common feeling of the two designs.

Incidentally, although both of the common features (E) and (H) are a form of the bottom surface of the case, in a case of the design of the case for storing clips which is the article to the Registered Design, it is visually observed actually in the hands when being purchased and used, and the design should be observed with the same specific gravity as a whole.

Furthermore, from the facts that in the column "descriptions of the article to the design" of the Registered Design, it is described "the article is a case for storing office clips. A bottom surface of the case is formed in a slope-shape toward an extraction side, and a magnet is attached to a lower side back surface on the extraction side, so that office clips are enabled to slide along the bottom surface, and since the office clips are prevented from dropping, by the magnetic force of the magnet, extraction work of the office clips can be easily carried out," and that "a perspective view in an open state" and the like are attached for the understanding a state of the slope, it can be seen that a right holder recognizes that the common features (E) and (H) are main parts of the Registered Design as of the time of filing the application, and filed the application for design registration.

Therefore, a visual effect that basic constitutions are identical, that the constitutions of the common feature (E) are focused and that the common constitutions of the two designs are shown together creates a common aesthetic impression on both designs as a whole design.

On the other hand, the different features of the two designs are feeble and do not change the common aesthetic impression of the two designs.

Namely, the different of (a) is only a slight difference within a range ordinarily seen in a field of this type case, and does not attract consumers and traders. It is routine in this field whether or not a rib for anti-slip and the like is formed on both side surface portions in the longitudinal direction of the case such as the Registered Design in which the storage portion can be put in and taken out from the outer frame body, it is not recognized that there are special features, and thus the influence exerted on the determination of similarity is just small.

This can be understood for example, from the fact that Design Registration No. 1256951 (Peripheral Design 8) is registered as a related design of Design Registration No. 1256476 (Peripheral Design 2) mentioned as a prior peripheral design.

The difference of the two designs is only whether or not the ribs are provided on both side surface portions in the longitudinal direction of the case which becomes a problem of the case, and the influence exerted by the different feature on the determination of similarity is small, so that the two designs are similar to each other.

Therefore, like the Registered Design and Design A-1, the difference of whether the ribs are provided on both side surface portions in the longitudinal direction of the case is only a small difference, and the difference of the constitution (a) does not attract consumers and the like and does not change the common aesthetic impression of both designs.

As described above, the two designs have the common article to the design. As for the form, the common features are superior to the different features, and the aesthetic impressions are common as the whole design. As such, Design A-1 is similar to the Registered Design.

(4) Regarding Reasons for invalidation 2

In comparison of the Registered Design and Design A-1, the different features of the Registered Design and Design A-1 are only the shape of the outer frame body of both side surface portions in the longitudinal direction of the clip storage case.

Then, the Registered Design is nothing more than a design in which the shape of the outer frame body of both side surface portions in the longitudinal direction of the clip case that is a part of the component of Design A-1 is replaced with the shape of the outer frame body of both side surface portions in the longitudinal direction of the gum case of Design A-2, which is another publicly known design.

Also, in the art to which the Registered Design pertains, it is an ordinary technique for a person skilled in the art whether the ribs are provided on the storage portion or the outer frame body of both side surfaces portions in the longitudinal direction of the case, or the flat plane without the rib is made, or the shape and range of the rib are changed.

Also, in the first place, in the field of the case such as the Registered Design, a case in which a side surface portion has no design and is made to be a flat plane is a widely known shape, and routine means for a person skilled in the art without showing evidence.

According to the above, the Registered Design is nothing more than a design in which the shape of the outer frame body of both side surface portions in a longitudinal direction of the clip storage case of Design A-1 is merely replaced with the shape of the outer frame body of both side surface portions in the longitudinal direction of the gum case of Design A-2 by ordinary techniques for a person skilled in the art, could be easily created based on Design A-1 and A-2 publicly known, and thus has reasons for invalidation of Article 3(2) of the Design Act.

(5) Closing

As described above, the Registered Design falls under Article 3(1)(iii) of the Design Act and Article 3(2) of the Design Act, and the registration of the Registered Design should be invalidated under the provisions of Article 48(1)(i) of the same Act.

2 The demandee's allegation

The demandee made a reply "the demandee seeks for a trial decision to the effect that the demand for trial regarding the invalidation of Design Registration No. 1406548 is groundless, and the costs in connection with the trial shall be borne by the demandant," alleges the reasons therefor as outlined below, and submitted Evidence B No. 1 to B No. 30. (a written reply of the trial case dated May 28, 2012, a first oral proceedings statement brief dated August 23, 2013, first oral proceedings record, a written statement dated September 19, 2013, a written request for the examination of a witness and statement of matters for examination dated October 3, 2013, a written withdrawal of the examination of a witness dated October 9, 2013, a second oral proceedings statement brief dated January 10, 2014, and second oral proceedings record and the trial record of the examination of evidence)

(1) Means of proof

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|--------------------|------------------------------------------------------------------------------------------------------------------|
| Evidence B No. 1: | Sample photograph of a flap type clip case (with a slope and a magnet) ordered to 錦豪社 |
| Evidence B No. 2: | Sample photograph of a flap type clip case (with a slope and a magnet) ordered to 錦豪社 |
| Evidence B No. 3: | Sample photograph of a flap type clip case (with a slope and a magnet) ordered to 錦豪社 |
| Evidence B No. 4: | Sample photograph of a flap type clip case (with a slope and a magnet) ordered to 錦豪社 |
| Evidence B No. 5: | Sample photograph of a flap type clip case (with a slope and a magnet) ordered to 錦豪社 |
| Evidence B No. 6: | Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd. |
| Evidence B No. 7: | Sample photograph of a match box type clip case (without a slope and a magnet) ordered to 錦豪社 |
| Evidence B No. 8: | Sample photograph of a match box type clip case (without a slope and a magnet) ordered to 錦豪社 |
| Evidence B No. 9: | Sample photograph of a match box type clip case (without a slope and a magnet) ordered to 錦豪社 |
| Evidence B No. 10: | Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd. |
| Evidence B No. 11: | Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd. |

Evidence B No. 12:	A sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd.
Evidence B No. 13:	Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd.
Evidence B No. 14:	Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd.
Evidence B No. 15:	Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd.
Evidence B No. 16:	Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd.
Evidence B No. 17:	Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd.
Evidence B No. 18:	Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd.
Evidence B No. 19:	Sample photograph of a match box type clip case (without a slope and a magnet) ordered to Eijichemical Co., Ltd.
Evidence B No. 20:	Photograph of an imitation of Eijichemical Co., Ltd.
Evidence B No. 21:	Comparison photograph of a sample of MESSE Co., Ltd. related to Evidence B No. 18 and the imitation of Eijichemical Co., Ltd. related to Evidence B No. 20
Evidence B No. 22	News release dated February 29, 2008 announced by Chugai Pharmaceutical Co., Ltd.
Evidence B No. 23:	Written statement
Evidence B No. 24:	Delivery note
Evidence B No. 25:	Sales slip
Evidence B No. 26:	Record of Passport
Evidence B No. 27:	Statement note for travelling expenses
Evidence B No. 28:	Prototype examined when producing Evidence B No. 1 to B No. 5
Evidence B No. 29:	Magnet using neodymium magnet
Evidence B No. 30:	Delivery note of Evidence B No. 29

(2) Rebuttal against demandant's allegation

A Introduction

The Registered Design is a design to which Article 4(1) of the Design Act may be applicable.

Therefore, even by Design A-1 which is grounds for Reasons for invalidation 1 alleged by the demandant, the so-called novelty of the Registered Design is not lost. Evidence A-1 is principal grounds for Reasons for invalidation 2 alleged by the demandant, so that a premise alleged by the demandant in Reasons for invalidation 2 is not rationalized. Furthermore, it is obvious that the Registered Design cannot be created only from Design A-2, without discussing.

Thus, the Registered Design is a design to which Article 4(1) of the Design Act may be applicable, and it is obvious that Reasons for invalidation 1 and Reasons for invalidation 2 alleged by the demandant assuming that Design A-1 is Cited Design are groundless.

B Regarding the fact that the Registered Design is a design to which Article 4(1) of the Design Act may be applicable

(a) Regarding the fact that Design A-1 was independently created by the demandee

The demandant alleges "Design A-1 was created by Mr. Yuki OHARA who is an employee of the demandant, in the factory of 馬●成社 (馬● is kanji "馬" radical and "華" radical," the same shall apply hereinafter) in China, around December, 2009 for design development of the novelty goods of SSP Co., Ltd.," and "this case was created by Mr. Yuki OHARA, by forming a curved slope on a bottom part of a storage portion toward an extraction side so as to make it easier to take out stored clips, and thinking that the clips can be further easily taken out if a magnet is provided near the extraction side."

However, from products created by the demandee and manufacturing and sales record thereof or a relationship between the demandee and Eijichemical Co., Ltd., Design A-1 was substantially created by Mr. Kuniaki TATSUMI, and Mr. Yuki OHARA is the one who illegally used the creation of Mr. Kuniaki TATSUMI.

For a match box type clip case delivered for sales promotion of Product name "Mucosta" of Otsuka Pharmaceutical Co., Ltd. on July 24, 2009, there was a need to propose a new design, during development thereof, while conferring with a person in charge of the requestor about the structure of the clip case, so we set up an opportunity to examine various types of molds. The examination was carried out in 馬●成社 on June 10, 2009, the participants were Mr. Kuniaki TATSUMI, Mr. Shoichi NISHIDA of Eijichemical Co., Ltd., and a person in charge of 馬●成社, but in the end, only Mr. Kuniaki TATSUMI proposed various variations, and proposed a design provided with a slope and a magnet on the match box type clip case. The design,

finally, was not adopted, based on the intention of the requestor, and became the design shown in Evidence B No. 11, but the former was known by Mr. Shoichi NISHIDA of Eijichemical Co., Ltd., and the person in charge of 馬●成社 who were present.

According to this situation, it can be acknowledged that Mr. Kuniaki TATSUMI independently had created the design provided with the slope and the magnet on the match box type clip case on June 10, 2009 examined above. Then, since Mr. Shoichi NISHIDA of Eijichemical Co., Ltd., and the person in charge of 馬●成社 were, of course, able to know this design, Mr. Yuki OHARA, who visited to 馬●成社 in December, 2009 after June 10, 2009, obtained information from Mr. Shoichi NISHIDA or the person in charge of 馬●成社, and based on the information, Eijichemical Co., Ltd. substantially commercialized the match box type clip case equipped with the slope and the magnet substantially created by Mr. Kuniaki TATSUMI as it was.

(b) Regarding the fact that Design A-1 was publicly known against the will of the demandee

The demandant alleged "after the delivery of this case, the demandant, for developing new sales channels, with the sample item of the clip storage case having the same form as this case, disclosed a sample of the same case to the demandee having a trading relation from before, and handed the same sample to the demandee."

According to this allegation, Design A-1 was disclosed to the demandee after the delivery to SSP Co., Ltd.. However, Mr. Kuniaki TATSUMI does not know that Eijichemical Co., Ltd. delivered the cases to SSP Co., Ltd. at all.

Although it is true that Mr. Kuniaki TATSUMI saw the sample, it is as described above that Design A-1, in the first place, was substantially created by Mr. Kuniaki TATSUMI, and it was already delivered to SSP Co., Ltd. when receiving the disclosure, so that for Mr. Kuniaki TATSUMI, who does not know the fact of the delivery, the fact of the disclosure of the sample to himself is merely presented to Mr. Kuniaki TATSUMI who is a creator of the sample as a report of the fact that the sample was manufactured by Eijichemical Co., Ltd. who has a duty to keep information confidential, and there is no influence on the application of Article 4(1) of the Design Act to the Registered Design.

As described above, although Mr. Kuniaki TATSUMI who is the demandee tried to keep Design A-1 secret prior to the filing of the application for design registration by himself, the demandant delivered that to a third party without

permission of the demandee.

Therefore, it is obvious that Design A-1 was publicly known against the will of the demandee.

Although the demandee, in an oral proceedings statement brief dated August 23, 2013, stated that he acknowledged that Design A-1 was similar to the Registered Design, and acknowledged that the Registered Design could be easily created based on Design A-1 and Design A-2, during the first oral proceedings on August 23, 2013, the demandee submitted a written statement again and withdrew the previous words according to the allegation of the demandant that Design A-1 was not attached with a magnet, and alleged that Design A-1 was not similar to the Registered Design and that the Registered Design could not be easily created based on Design A-1 and Design A-2.

(3) Regarding Reasons for invalidation 1

(A) The Constitution of the Registered Design

a Basic Constitution

(I) It is a case for storing office clips composed of a storage portion and an outer frame body, in which the storage portion can be put in and taken out from the outer frame body, and which has a rounded corner rectangular parallelepiped form when the storage portion is stored in the outer frame body.

(II) The storage portion is equipped with a relatively thin platy bottom surface portion and a side wall portion, and has a generally rectangular parallelepiped form opening at an upper part.

(III) The outer frame body is equipped with a relatively thin platy plate body and wall plates, in which the plate body has a generally rectangular shape covering the whole of the opening upper part of the storage portion, and wherein the wall plates have generally rectangular shapes provided downward on bottom surfaces of three sides of the plate body so as to surround both sides surfaces in a longitudinal direction and one side surface in a lateral direction of the storage portion.

b Specific Constitution

(i) The bottom surface portion of the storage portion forms a curved slope gradually rising toward an extraction side and reaching a lateral side wall portion upper end, and the slope is formed from an extraction side end to a position corresponding to approximately one-third in the longitudinal direction.

(ii) In a rear view of the case for storing office clips, on a back side of the lateral side

wall portion on the extraction side of the storage portion, a platy magnet is disposed, and two L-shaped protrusions are formed so as to clip and fix both end portions of the magnet.

(iii) In the rear view of the case for storing office clips, on a lower side end portion of a longitudinal side wall portion of the storage portion, a recessed portion with a stepwise lateral cross-section over a predetermined range in the longitudinal direction, and a semi-columnar projecting portion is protrusively provided on the extraction side of the recessed portion toward the wall plate side of the outer frame body.

(iv) The storage portion is opaque.

(v) In a left side view of the case for storing office clips, on the lateral side wall portion of the outer frame body, which is provided on the opposite side to the extraction side of the storage portion, a trapezoidal notch is formed at a center thereof.

(vi) In a bottom view of the case for storing office clips, so as to have a "厂" (kanji "cliff" radical) shape at a boundary between the outer frame body and the storage portion, on the extraction side, both wall plates of the outer frame body become notch shapes, and the width of both side walls in the longitudinal direction of the storage portion becomes wide.

(vii) On an upper part of the outer frame body, a projecting portion is formed, which has a small step of a rectangular shape slightly smaller than an outer periphery of the case for storing office clips.

(viii) Surfaces of the wall plates of the outer frame body are smoothly formed.

(B) Constitution of Design A-1

a Basic Constitution

In the same manner as the Registered Design, Design A-1 has the constitutions (I) to (III) above.

b Specific Constitution

Of the specific constitutions of the Registered Design, Design A-1 has the constitutions (i), (iii), and (v) to (vii), and also has the following constitutions.

(ii') On a back side of the lateral side wall portion on the extraction side of the storage portion, only two L-shaped protrusions are merely formed.

(iv') The storage portion is transparent.

(viii') Over the whole surfaces of the longitudinal wall plates of the outer frame body, ribs are provided, in which a plurality of projection strips extending in a vertical

direction is arranged at equal intervals in the longitudinal direction.

(C) Regarding the common features and the different features of the Registered Design and Design A-1

A Regarding the article to the design

The article to the Registered Design is "a case for storing office clips," and the same article as that to Design A-1.

B Regarding the common features in the form

Both of the Registered Design and Design A-1 have the basic constitutions (I) to (III) above, and the specific constitutions (i), (iii), and (v) to (vii) above.

C Regarding the different features in the form

The Registered Design and Design A-1 have the following different features.

The Registered Design has the specific constitutions (ii), (iv), and (viii) above.

On the other hand, Design A-1 has the specific constitutions (ii'), (iv'), and (viii') above.

D Regarding individual evaluation of the common features and the different features in the form

(A) Regarding the common features

Of the above mentioned common features, the basic constitutions (I) to (III), like Peripheral Design shown in Evidence A No. 3-2 to A No. 11, are ordinary forms in this type case, and do not significantly affect consumers.

Of the above mentioned common features, the specific constitutions (iii), (v), (vi), and (vii), like respectively the design shown in Evidence A No. 4 to A No. 11 or Evidence B No. 9 and the like, the design shown in Evidence A No. 2, Evidence A No. 3-2, Evidence B No. 9 and the like, the design shown in the design shown in Evidence B No. 9 and the like, and the design shown in evidence A No. 3-2, and Evidence B No. 9 and the like, are acknowledged as ordinary forms in this type case, and do not significantly affect consumers.

Of the above mentioned common features, the specific constitution (i) is certainly a form excluded in the design shown in Evidence A No. 2 to A No. 11. However, a usage state of the case for storing office clips, namely, a state storing the clips, it does not appear so much in appearance, and thus does not significantly affect consumers.

(B) Regarding the difference between the specific constitution (viii) and the specific constitution (viii')

The Registered Design, unlike Design A-1, is smoothly formed on the surfaces of the wall plates in the longitudinal direction of the outer frame body. Thus, the whole of the case for storing office clips gives a neat impression to consumers. Against this, Design A-1 is provided with the rib in which the plurality of projection strips extending in a vertical direction is arranged at equal intervals over the entire longitudinal direction, on the surfaces of both wall plates in the longitudinal direction of the outer frame body. Then, forming such a rib gives a rustic image to consumers. Also, the surfaces of the wall plates in the longitudinal direction of the outer frame body appear in the appearance of the case for storing office clips, and it can be said that it significantly affects consumers.

Regarding the rib of Design A-1, the demandant alleges that it is routine whether or not the rib is formed on both side surfaces in the longitudinal direction of the case for anti-slip and the like and that the effects on the determination of similarity is just small, by illustrating the principal design shown Evidence A No. 4 and A No. 10 and a related design thereof.

Concerning this point, it is thought that the design shown in Evidence A No. 10 is acknowledged as the related design of the principal design shown in Evidence A No. 4, because the rib of the principal design shown in Evidence A No. 4 is provided only at a slight part appearing in the appearance of the case for storing office clips of the side wall portions of the storage portion, and the presence/absence of the rib at the corresponding part does not affects consumers so much.

Therefore, even if the design shown in Evidence A No. 10 is acknowledged as the related design of the principal design shown in Evidence A No. 4, it cannot be said that it is routine whether or not the rib is formed on the generally whole of the surfaces of both wall plates in the longitudinal direction of the outer frame body. Also, it can be said that the form of the surfaces of both side plates in the longitudinal direction of the outer frame body largely appearing in the appearance of the case for storing office clips affects consumers so much, and the allegation of the demandant is unreasonable.

(C) Regarding difference between the specific constitution (ii) and the specific constitution (ii')

In the Registered Design, unlike Design A-1, on the back side of the lateral side

wall portion on the extraction side of the storage portion, the platy magnet is disposed, and the two L-shaped protrusions are formed so as to clip and fix both end portions of the magnet. Therefore, the clip is held near an inclined portion, so that the clips can be easily taken out only by a required quantity. Then, this can be easily recognized from the appearance of the back side of the case for storing office clips. Therefore, the Registered Design gives a convenient image, and in a normal usage state, always presents a state in which the clip is held by the magnet, and thus has a strong impression of functional beauty performed by the magnet.

Against that, Evidence A-1 is merely formed with only two L-shaped protrusions, and is not provided with a magnet, so that of course it does not give such an image of the Registered Design. On the contrary, without the magnet, there is a high possibility that the clip falls off from the storage portion when making the storage portion and the outer frame body relatively slide to open the case for storing office clips or when taking out the clips, and it gives a useless image.

Thus, on the back side of the slope of the bottom surface portion at the storage portion, the magnet installed on the back side of the lateral side wall portion on the extraction side of the storage portion becomes a factor strongly impressing consumers about the convenience which is a functional important element of the Registered Design, so that it can be said that the presence/absence of the magnet which can be recognized from the appearance significantly affects consumers.

On the other hand, the L-shaped protrusions for fixing the magnet in the Registered Design is just an existence associated with the magnet, and it can be said that the L-shaped protrusion does not affect consumers so much. Also, in Design A-1, the magnet is not provided, so that there is no reason for especially paying attention to the mere L-shaped protrusions provided on the back side of the case for storing office clips, and it can be said that it does not affect consumers so much. When visually recognized from the appearance, it rather gives a sense of incongruity as a meaningless structure.

The demandant, since the magnet was planned to be provided in a development stage, alleges as if the L-shaped protrusions of Design A-1 hold the magnet, and alleges that both of the mere L-shaped protrusions of Design A-1 in which the magnet is not disposed and the L-shaped protrusions of the Registered Design in which the magnet is disposed are parts to which consumers pay attention and the like.

However, the similarity of the designs compare the specifically presented designs, and should be determined by an objective impression when observed by consumers while excluding a subjective viewpoint, so that it is obvious that the L-

shaped protrusions in Design A-1 in which the magnet is not disposed are nothing more than mere L-shaped protrusions. Also, although the design shown in Evidence B No. 1 exists, there is no circumstance that the placement of the magnet was widely done in the case for storing office clips in the form such as Evidence A No. 3-2 and the like. Therefore, looking at the L-shaped protrusions of Design A-1 in which the magnet is not disposed, consumers never recognize that the magnet exists. Also, it is impossible to certify the existence of the magnet which does not actually exist, and to compare the design in which the magnet exists and the design in which the magnet does not exist by assuming the certification to determine the similarity of the designs.

Therefore, the allegation of the demandant assuming the existence of the magnet which does not actually exist is unreasonable.

(D) Regarding difference between the specific constitution (iv) and the specific constitution (iv')

In the Registered design, unlike Design A-1, the storage portion is opaque. Thus, the shape of the storage portion can be easily grasped, and it enables consumers to easily and visually recognize the slope. Therefore, even if it does not appear much on the appearance due to the clip in the normal usage state, it becomes easy to recognize the existence of the slope. Thus, it is possible to easily recognize that the clip can be slid and taken out along the slope.

Also, since the storage portion is opaque, in the normal usage state, the existence of the magnet is difficult to understand. However, this makes consumers, when taking out the clip, to recognize a function that the clip is held by the magnet and prevented from slipping off from the storage portion when making the storage portion and the outer frame body relatively slide to open the case for storing office clips or when taking out the clip, with surprise.

Therefore, the Registered Design not only gives a convenient image and an impression of functional beauty, but also gives a fun image of a use feeling.

Also, so as to explore the reasons for realizing the above functions, it gives consumers motivation to check the back side of the case for storing office clips which is hardly noticed by the consumer normally, and to visually recognize the existence of the magnet.

Contrarily, in Design A-1, the storage portion is transparent. Hence, it is difficult to grasp the shape of the storage portion, and together with the fact that it does not appear much on the appearance due to the clip in the normal usage state, it is difficult for consumers to recognize the existence of the slope. Thus, since it is

misjudged that there is no slope, there is a high possibility that the clip falls off due to momentum from the slope when making the storage portion and the outer frame body relatively slide to open the case for storing office clips or when taking out the clip.

Therefore, Design A-1 gives a useless image.

As described above, whether or not the storage portion is transparent or opaque becomes a factor that strongly impresses consumers about the convenience which is a functional important element of the Registered Design, and is also greatly different in appearance, so that it can be said that whether or not the storage portion is transparent affects consumers so much.

E Determination of similarity as the entire design

The basic constitutions (I) to (III) and the specific constitutions which are the common features mentioned above (iii), and (v) to (vii) have been ordinarily usual shapes since the filing of the application, and the specific constitution (i) does not appear much on the appearance in a usage state storing the clips, and does not affect consumers so much.

On the other hand, the Registered Design and Design A-1 have a plurality of different features as described in C above.

First, difference between the specific constitution (viii) and the specific constitution (viii') appears on the whole of surfaces of the wall plates in the longitudinal of the outer frame body, and largely appears on the appearance of the case for storing office clips, so that it can be said that it affects consumers so much.

Also, concerning difference between the specific constitution (ii) and the specific constitution (ii') and difference between the specific constitution (iv) and the specific constitution (iv'), like the Registered Design, by having the specific constitutions (ii) and (iv), these specific constitutions are combined with each other, and the Registered Designs not only can give a convenient image and an impression of functional beauty, but also can give a fun image of a use feeling, and the magnet disposed on the back side of the lateral side wall portion on the extraction side of the storage portion draws further attention of consumers.

Then, by having the specific constitutions (ii), (iv), and (viii), these specific constitutions are combined with each other, and the Registered Design can give a strong impression of a fun to use and functionally excellent smart image to consumers.

Against this, Design A-1 has the specific constitutions (ii') and (iv'), but cannot give the image like the image of the Registered Design. Rather, it gives not only a useless image but also even discomfort due to a meaningless structure, and the mere L-

shaped protrusions disposed on the back side of the lateral side wall portion on the extraction side of the storage portion do not draw attention of consumers.

Then, Design A-1, by having the specific constitutions (ii'), (iv'), and (viii'), gives an impression of a messy and bad-functioning image to consumers.

F Conclusion

Concerning the forms of the Registered Design and Design A-1, it cannot be said that the common features do not affect the determination of similarity, whereas it is acknowledged that the different features have an important influence on the determination of similarity between the two designs, so that the different features exceed the common features, and it is obvious that the two designs are not similar to each other.

(4) Regarding Reasons for invalidation 2

The Registered Design and Design A-1 are different in the point that the Registered Design has the specific constitutions (ii), (iv), and (viii), whereas Design A-1 has the specific constitutions (ii'), (iv'), and (viii').

Therefore, the allegation of the demandant "the different features of the Registered Design and Design A-1 are only the shape of the outer frame body of both side surface portions in the longitudinal direction of the clip storage case" is unreasonable.

Also, it can be said that the difference between the specific constitution (viii) and the specific constitution (viii') largely appears on the appearance, and affects consumers on the appearance so much. Also, for example, the shape of the rib for anti-slip is not limited to that shown in Design A-1, but may be various, so that the appearance greatly differs. Also, if eliminating the rib provided for anti-slip, there is a possibility that ease of opening and closing may be affected by losing the function of anti-slip, and it is obvious that the presence/absence of the rib has an important meaning on the design from a functional viewpoint. Therefore, in Design A-1, it cannot be said that it is an ordinary technique for a person skilled in the art to eliminate the rib and make a flat plane.

Hence, the allegation of the demandant "in the art of the Registered Design, it is an ordinary technique for a person skilled in the art whether the ribs are provided on the storage portion or the outer frame body of both side surfaces portions in the longitudinal direction of the case, or the flat plane without the rib is made, or the shape and range of the rib are changed" is unreasonable.

Also, in Design A-1, even if the outer frame body thereof is replaced with the outer frame body of Design A-2, it is different in the specific constitutions (ii) and (ii') and in the specific constitutions (iv) and (iv'), and is not identical to the Registered Design.

Therefore, it cannot be said that the Registered Design could be easily created based on Design A-1 and Design A-2 even if Design A-1 is a design publicly known, and it does not fall under the provisions of Article 3(2) of the Design Act and also does not fall under Article 48(1)(i) of the Design Act.

No. 3 Judgment by the body

1 Regarding Reasons for invalidation 1

We will examine and judge Reasons for invalidation 1 alleged by the demandant; namely, whether or not the Registered Design is similar to Design A-1.

1-1 The Registered Design

The article to the Registered Design, as described in No. 1, is "a case for storing office clips," and the form thereof is as follows.

The form of the Registered Design is,

(A) as the basic constitutions,

It is a flat rounded corner rectangular parallelepiped as a whole in which a ratio of length, width, and height is set to about 4: 7: 1, is composed of an outer frame body and a storage portion, and the storage portion can be put in and taken out from the outer frame body.

The outer frame body is provided with a rounded corner rectangular plate body covering an upper part of the storage portion, and generally rectangular wall plates downward on bottom surfaces of three sides of the plate body, and surrounds the upper part, both side surfaces in a longitudinal direction, and a left one side surface in a lateral direction, of the storage portion.

The storage portion is a generally rectangular parallelepiped opening at the upper part.

(B) As the specific constitutions,

(A) Concerning the outer frame body,

(A-1) in a front view, an outer shape is made to be a rounded corner horizontal rectangular shape, and a projecting portion is formed, which has a small step of the rounded corner horizontal rectangular shape slightly smaller than the outer shape.

(A-2) In a left side view, a trapezoidal notch is provided at a center of the outer frame body.

(A-3) In a bottom view, an eaves portion of approximately one-ninth of the entire length is provided on a right upper side (a right lower side on a plane side), and a right lower side corner portion (a right upper corner portion on the plane side) is slightly rounded.

(A-4) A surface of the outer frame body is a flat plane.

(B) Concerning the storage portion

(B-1) A bottom part of the storage portion is formed with a slope from an extraction side end (a right side) to a position corresponding to approximately one-third in the longitudinal direction.

(B-2) In a bottom view, steps are provided at upper and lower sides on the right side (the right side on the plane side) of the storage portion so as to fit with eaves portion notches of the outer frame body.

(B-3) In a rear view, two L-shaped protrusions are formed on a back side of a right side lateral side surface portion so as to face each other.

(B-4) In the L-shaped protrusions on the back side of the right side lateral side surface portion, thin platy magnets are fitted.

(B-5) The storage portion is an opaque body.

1-2 Design A-1

According to Evidence A No. 1 in which there is no conflict in establishment, the article to Design A-1 is "a clip storage case," and the form thereof is as follows.

The form of Design A-1 is

(A) as the basic constitutions,

It is a flat rounded corner rectangular parallelepiped as a whole in which a ratio of length, width, and height is set to about 4: 7: 1, is composed of an outer frame body and a storage portion, and the storage portion can be put in and taken out from the outer frame body.

The outer frame body is provided with a rounded corner rectangular plate body covering an upper part of the storage portion, and generally rectangular wall plates downward on bottom surfaces of three sides of the plate body, and surrounds the upper part, both side surfaces in a longitudinal direction, and a left side surface in a lateral direction, of the storage portion.

The storage portion is a generally rectangular parallelepiped opening at the upper part.

(B) As the specific constitutions,

(A) Concerning the outer frame body,

(A-1) in a front view, an outer shape is made to be a rounded corner horizontal rectangular shape, and a projecting portion is formed, which has a small step of the rounded corner horizontal rectangular shape slightly smaller than the outer shape.

(A-2) In a left side view, a trapezoidal notch is provided at a center of the outer frame body.

(A-3) In a bottom view, an eaves portion of approximately one-ninth of the entire length is provided on a right upper side (a right lower side on a plane side), and a right lower side corner portion (a right upper corner portion on the plane side) is slightly rounded.

(A-4) Ribs are provided on both side surfaces in a longitudinal direction of the outer frame body, and the shape of the rib is one in which a plurality of projection strips extending in a vertical direction in a plane view are arranged at equal intervals in the longitudinal direction.

(A-5) On a front surface of the outer frame body, patterns is attached to the whole surface.

(B) Concerning the storage portion

(B-1) A bottom part of the storage portion is formed with a slope from an extraction side end (a right side) to a position corresponding to approximately one-third in the longitudinal direction.

(B-2) In a bottom view, steps are provided at upper and lower sides on the right side (the right side on the plane side) of the storage portion so as to fit with eaves portion notches of the outer frame body.

(B-3) In a rear view, two L-shaped protrusions are formed on a back side of a right side lateral side surface portion so as to face each other.

(B-4) The storage portion is a material having transparency.

1-3 Comparison of the Registered Design and Design A-1

(1) Regarding articles of the two designs

The articles to the Registered Design and Design A-1 are both "a clip storage case," so that the articles to the two designs are identical.

(2) Concerning the form

(A) The common features

(A) as the basic constitutions,

Both designs are common in the point that it is a flat rounded corner rectangular parallelepiped as a whole in which a ratio of length, width, and height is set to about 4: 7: 1, are composed of an outer frame body and a storage portion, and the storage portion can be put in and taken out from the outer frame body,

the point that the outer frame body is provided with a rounded corner rectangular plate body covering an upper part of the storage portion, and generally rectangular wall plates downward on bottom surfaces of three sides of the plate body, and surrounds the upper part, both side surfaces in a longitudinal direction, and a left side surface in a lateral direction, of the storage portion, and

the point that the storage portion is a generally rectangular parallelepiped opening at the upper part.

(B) As the specific constitutions,

(A) Concerning the outer frame body,

The two designs are common in

(A-1) the point that in a front view, an outer shape is made to be a rounded corner horizontal rectangular shape, and a projecting portion is formed, which has a small step of the rounded corner horizontal rectangular shape slightly smaller than the outer shape,

(A-2) the point that in a left side view, a trapezoidal notch is provided at a center of the outer frame body,

(A-3) the point that in a bottom view, an eaves portion of approximately one-ninth of the entire length is provided on a right upper side (a right lower side on a plane side), and a right lower side corner portion (a right upper corner portion on the plane side) is slightly rounded,

(B) Concerning the storage portion

(B-1) the point a bottom part of the storage portion is formed with a slope from an extraction side end (a right side) to a position corresponding to approximately one-third in the longitudinal direction,

(B-2) the point that in a bottom view, steps are provided on the right side (the right side on the plane side) of the storage portion so as to fit with eaves portion notches of the outer frame body, and

(B-3) the point that in a rear view, two L-shaped protrusions are formed on a back side of a right side lateral side surface portion so as to face each other.

(B) The different features

On the other hand, the two designs are different, as the specific constitutions, in

- (a) the point that the Registered Design makes a surface of the outer frame body to be a flat plane, whereas Design A-1 is provided with the ribs on both side surface portions in a longitudinal direction of the outer frame body, and the shape of the rib is one in which a plurality of projection strips extending in a vertical direction in a plane view are arranged at equal intervals in the longitudinal direction,
- (b) the point that the Registered Design has no pattern, whereas Design A-1 attaches patterns the whole front surface of the outer frame body,
- (c) the point that the Registered Design fits thin platy magnets in the L-shaped protrusions on the back side of the right side lateral side surface portion, whereas Design A-1 does not fit the magnets, and
- (d) the point that the storage portion of the Registered Design is an opaque body, whereas the storage portion of Design A-1 is a material having transparency.

1-4 The determination of similarity between the Registered Design and Design A-1

Evaluating and summarizing the influence exerted by the above common feature and the different features to the determination of similarity between the two designs, similarity between the two designs is integrally examined as the entire design and judged.

(1) Evaluation of the common features

It cannot be said that the common features of the basic constitutions of the Registered Design and Design A-1 are novel features found only in the form of both designs, and they are very common features found in this type of clip storage case.

The common features (A) and (B-2) in the specific constitutions are general forms found in this type clip storage case, and cannot be features, so that there is little effect on the determination of similarity between the two designs.

Concerning the point that the bottom part of the storage portion of the common feature (B-1) of the specific constitutions is formed with a slope from an extraction side end (a right side) to a position corresponding to approximately one-third in the longitudinal direction, although the constitution provided with the slope at the storage portion of the match box type clip case such as the Registered Design and Design A-1 is not found prior to the filing dates and the publication dates of both designs, the constitution provided with the slope at the storage portion is a constitution already common in a flip type storage case, as shown in Evidence B No. 1 to Evidence B No. 5 and the like, so that the effect of the common feature (B-1) on the determination of

similarity between the two designs remains to a certain degree.

Although the point that in the rear view of the common feature (B-3) of the specific constitutions, two L-shaped protrusions are formed on a back side of a right side lateral side surface portion so as to face each other, is a feature not found in another prior publicly known design, in the normal usage state of the clip storage case, they are very small L-shaped protrusions provided on the limited part of the back part where consumers do not pay much attention, are not so noticeable, and thus do not affect the determination of similarity so much.

In summary of the above mentioned common features of the two designs, all of them are found in this type clip storage case have no feature, and even if summarizing the common features, it can be said that the effect on the determination of similarity is small.

(2) Evaluation of the different features

Regarding the different feature (a),

the constitution making a surface of the outer frame body of the Registered Design to be a plane, is a constitution very common in this type match box type clip case and has no feature, whereas the constitution in which a rib with a plurality of projection strips extending in a vertical direction in a plane view on the whole surface of both side surface portions in the longitudinal direction of the outer frame body of Design A-1 at equal intervals in the longitudinal direction, is an extremely novel constitution and is not found before the publication date of Design A-1, and both side surface portions in the longitudinal direction of the outer frame body are parts where consumers fit fingers upon using this type match box type clip case and particularly attractive parts, so that it affects an anti-slip effect or a visual effect by providing the ribs so much.

The demandant uses the design provided with the ribs on the corresponding parts as the principal design, and alleges that the presence/absence of the ribs does not affect the determination of similarity from the fact that a flat design is registered as the related design thereof, but in the corresponding case, the provided ribs are applied on the limited small range on the side surfaces of the storage portion, and it was registered as the principal design and the related design thereof since, as compared with another common features, the difference thereof is very small, and have a different ground for the determination from the one provided with the ribs on the whole of both side surface portions in the longitudinal direction of the outer frame body like Design A-1 and

greatly attracting the attention of consumers.

Therefore, it can be said that the different feature (a) affects the determination of similarity between the two designs so much.

Regarding the different feature (b),

Even if the Registered Design has no pattern, whereas patterns is attached to the whole surface of the front surface of the outer frame body of Design A-1, the pattern attached to Design A-1 is one in which various patterns and the like are added later to a case with no pattern, according to a request of a delivery destination as novelty goods, and it can be said that the effect of the presence/absence of the pattern on the determination of similarity between the two designs is extremely small.

Regarding the different feature (c),

concerning the point that the point that the Registered Design fits thin platy magnets in the L-shaped protrusions on the back side of the right side lateral side surface portion, whereas Design A-1 does not fit the magnets, when using the clip storage case, even if the difference appears in the effect of making the clip easier to hold or take out, it is difference at an inconspicuous part on the back side of the lateral side surface portion of the storage portion back surface that consumers do not care about so much during normal usage, so that it cannot be greatly evaluated from a design viewpoint, and it can be said that the effect of the different feature (c) on the determination of similarity is small.

Regarding the different feature (d),

considering that the storage portion of the Registered Design is an opaque body, whereas the storage portion of Design A-1 is a material having transparency, in a small article storage instrument molded by plastic such as this type of clip storage case, it is very normal practice to use a translucent material so that the contents to be stored can be seen, or conversely, to make it opaque so that the contents cannot be seen, so that difference in the material does not affect an aesthetic impression given to consumers so much, and it can be said that the effect of the difference thereof on the determination of similarity is small.

Summarizing these different features of both designs, although it can be said that the different feature (b) to the different feature (d) do not affect the determination of similarity so much, it can be said that the different feature (a) is an extremely novel

feature point which is not found in other than Design A-1, and thus much affects the determination of similarity between the two designs.

1-5 Summary of Reasons for invalidation 1

Then, although the articles to the design of both designs are identical, in the form of the Registered Design and Design A-1, the different features exceed the common features, and create different aesthetic impression for consumers as a whole design, so that it cannot be said that the Registered Design is similar to Design A-1.

Therefore, the Registered Design does not fall under the category of Article 3(1)(iii) of the Design Act, and Reasons for invalidation 1 alleged by the demandant are groundless.

2 Regarding Reasons for invalidation 2

Then, we will examine and judge Reasons for invalidation 2 alleged by the demandant; namely, whether or not the Registered Design could be easily created based on Design A-1 and Design A-2.

2-1 The Registered Design

The form of the Registered Design is as described in "1-1 The Registered Design."

2-2 Design A-1

The form of Design A-1 is as described in "1-2 Design A-1."

2-3 Design A-2

According to Evidence A No. 2 in which there is no conflict in establishment, the article to Design A-2 is "a gum case," and the form thereof is as follows.

The form of Design A-2,

(A) as the basic constitution,

It is a flat rounded corner rectangular parallelepiped as a whole in which a ratio of length, width, and height is set to about 4: 7: 1, is composed of an outer frame body and a storage portion, and the storage portion can be put in and taken out from the outer frame body.

The outer frame body is provided with a rounded corner rectangular plate body covering an upper part of the storage portion, and generally rectangular wall plates downward on bottom surfaces of three sides of the plate body, and surrounds the upper

part, both side surfaces in a longitudinal direction, and a left side surface in a lateral direction, of the storage portion.

The storage portion is a generally rectangular parallelepiped opening at the upper part.

(B) As the specific constitution,

(A) Concerning the outer frame body,

(A-1) in a front view, an outer shape is made to be a rounded corner horizontal rectangular shape.

(A-2) In a left side view, a trapezoidal notch is provided at a center of the outer frame body.

(A-3) In a bottom view, an eaves portion of approximately one-ninth of the entire length is provided on a left upper side (a left lower side on a plane side).

(A-4) A surface of the outer frame body is a flat plane.

(B) Concerning the storage portion

(B-1) A bottom part of the storage portion is formed to be flat.

(B-2) In a bottom view, steps are provided on the left side (the left side on the plane side) of the storage portion so as to fit with eaves portion notches of the outer frame body.

(B-3) The storage portion is an opaque body.

2-4 Whether or not the Registered Design could be easily created based on Design A-1 and Design A-2

(1) Regarding the fact that the slope is provided on the storage portion of the Registered Design

The constitution in which the slope is provided on the storage portion of the clip storage case appeared in the clip storage case storage portion of Design A-1 which had been publicly known before the application of the Registered Design was filed, and the constitution of the slope of the storage portion of Design A-1 is expressed in the storage portion of the Registered Design as it is, so that it can be said that it could be easily conceived by a person skilled in the art.

(2) Regarding the fact that the storage portion of the Registered Design is made to be opaque

In a small article storage instrument molded by plastic such as this type clip

storage case, it is very normal practice to use a translucent material so that the contents to be stored can be seen, or conversely, to make it opaque so that the contents cannot be seen, so that it cannot be said that there was special difficulty in making the storage portion of the Registered Design an opaque material.

(3) Regarding the fact that the magnets are provided on the storage portion of the Registered Design

Even if Design A-1 and Design A-2 are not provided with the magnets on the storage portion, the one in which the magnets were already provided on the clip storage case before the application of the Registered Design was filed to devise to make it easier to hold or take out the clip, as shown in Evidence A No. 1 to B No. 5 and the like, is publicly known, so that providing the magnets in the Registered Design provided with the slope on the storage portion is within a range that naturally comes up. When the magnets are provided in the Registered Design, of course, the magnets are disposed only on the back side of the extraction side lateral side surface portion. Also, it can be said that it could be easily conceived to provide a structure the same as the L-shaped protrusions of Design A-1 which had been publicly known before the application of the Registered Design was filed and to fit the thin platy magnets in the L-shaped protrusions.

Furthermore, even if the demandee presented to provide the magnets on the match box type clip case before Design A-1 became publicly known, it cannot be acknowledged that the specific constitution thereof was also illustrated, and from the fact that the demandant indicates the one which has no pattern, is made from the opaque material, has the outer frame body with the ribs, and fits the thin platy magnets in the L-shaped protrusions to the demandee before the application of the Registered Design was filed, as a sample of prototype of Design A-1, it cannot be acknowledged that there was a creation unique to the demandee in the constitution which fits the magnets in the L-shaped protrusions of the Registered Design.

(4) Regarding both side surface portions in the longitudinal direction of the outer frame body of the Registered Design

In the clip storage case, it is a novel feature not found before to disposed the plurality of projection strips extending in a vertical direction in a plane view on the whole surface of both side surface portions in the longitudinal direction of the outer frame body like in Design A-1, and it can be said that it is very common feature to make it a flat plane shown in the Registered Design or Design A-2.

Therefore, the Registered Design is the design in which the outer frame body with the ribs of Design A-1 is just replaced with the outer frame body made to be the flat plane without the ribs on both side surface portions in the longitudinal direction shown in Design A-2, so that it can be said that it could be easily conceived.

2-5 Summary of Reasons for invalidation 2

Then, the Registered Design, based on Design A-1 which is the match box type clip case provided with the slope on the storage portion, replaces the outer frame body thereof with the flat one with no pattern in Design A-2, makes the material of the storage portion opaque by very common techniques in this type of articles, and fits the magnets in the L-shaped protrusions on the back side of the extraction side lateral side surface portion based on a more common method, so that it can be acknowledged that it could be easily created by a person skilled in the art.

Therefore, the Registered Design corresponds to the provisions of Article 3 (2) of the Design Act, and Reasons for invalidation 2 alleged by the demandant have reasons.

3. Whether or not Design A-1 was publicly known against the will of the demandee

The demandee alleges that Design A-1 was created by the demandee himself and was publicly known against the will of the demandee, so that the Registered Design falls under the provisions of Article 4(1) of the Design Act, and Reasons for invalidation 1 and Reasons for invalidation 2 alleged by the demandant assuming that Design A-1 is Cited Design are groundless; we will examine and judge this point.

The demandee alleges "the examination was carried in 馬●成社 on June 10, 2009, the participants were Mr. Kuniaki TATSUMI, Mr. Shoichi NISHIDA of Eijichemical Co., Ltd., and a person in charge of 馬●成社, but after all, only Mr. Kuniaki TATSUMI proposed various variations, and proposed a design provided with a slope and a magnet on the match box type clip case. The design, finally, was not adopted depending on the intention of the requestor, and became the design shown in Evidence B No. 11, but it was known by Mr. Shoichi NISHIDA of Eijichemical Co., Ltd., and the person in charge of 馬●成社 who were present.

According to this situation, it can be acknowledged that Mr. Kuniaki TATSUMI independently had created the design provided with the slope and the magnet on the match box type clip case on June 10, 2009 examined above. Then, since Mr. Shoichi NISHIDA of Eijichemical Co., Ltd. and the person in charge of 馬●

成社 were, of course, able to know this design, Mr. Yuki OHARA, who visited to 馬●成社 in December, 2009 after June 10, 2009, obtained information from Mr. Shoichi NISHIDA or the person in charge of 馬●成社, and based on the information, Eijichemical Co., Ltd. substantially commercialized the match box type clip case equipped with the slope and the magnet substantially created by Mr. Kuniaki TATSUMI as it was," and "although Mr. Kuniaki TATSUMI, who is the demandee, tried to keep Design A-1 secret prior to the filing of the application for design registration by himself, the demandant delivered that to a third party without permission of the demandee.

Therefore, it is obvious that Design A-1 was publicly known against the will of the demandee."

Article 4(1) of the Design Act alleged by the demandee stipulates that " In the case of a design which has fallen under item (i) or (ii) of Article 3 (1) against the will of the person having the right to obtain a design registration, such a design shall be deemed not to have fallen under item (i) or (ii) of Article 3 (1) for the purposes of Article 3 (1) and (2) for any design in an application for design registration which has been filed by the said person within six months from the date on which the design first fell under either of those items," and concerning the design publicly known against the will of the person himself, the design registration application made by the person himself within 6 months is not used for the basis for the determination, in the application of the provisions of Article 3(1) and Article 3 (2) of the Design Act.

However, as described in "No. 3 Judgment by the body 1 Regarding Reasons for invalidation 1," it is acknowledged that Design A-1 is not similar to the Registered Design, and that Design A-1 and the Registered Design are respectively created separately.

Also, it cannot be confirmed that Design A-1 was created based on the design provided with the slope and the magnets on the match box type clip case proposed by the demandee, which is alleged by the demandant, from documents and examination of evidence submitted from the demandant and the demandee, and even if there is the fact that the demandee proposed the design provided with the slope and the magnets on the match box type clip case, it cannot be acknowledged that the demandee created provision of the ribs on the whole surface of both side surface portions in the longitudinal direction of the outer frame body shown in Design A-1, so that it can be acknowledged that Design A-1 was independently created by the demandant.

Then, Design A-1 was independently created by the demandant, and it cannot

be confirmed that there was a contract relation about the manufacturing and disclosure of Design A-1 between the demandant and the demandee, so that it cannot be said that Design A-1 was publicly known against the will of the demandee.

Therefore, it cannot be said that Design A-1 was created by the demandee himself, and also it cannot be said that Design A-1 became publicly known against the will of the demandee, so that the allegation of the demandee "the Registered Design falls under the provisions of Article 4(1) of the Design Act, and Reasons for invalidation 1 and Reasons for invalidation 2 alleged by the demandant assuming that Design A-1 is Cited Design are groundless" cannot be adopted.

No. 5 Closing

As described above, by the allegation and the means of proof of the demandant, although Reasons for invalidation 1 are groundless, Reasons for invalidation 2 have reasons.

The Registered Design does not fall under the provisions of Article 4(1) of the Design Act alleged by the demandee.

Therefore, the Registered Design was registered contrary to the provisions of Article 3(2) of the Design Act, and falls under Article 48 (1)(i) of the Design Act, and thus the Registered Design should be invalidated.

The costs in connection with the trial shall be borne by the demandee under the provisions of Article 61 of the Code of Civil Procedure which is applied mutatis mutandis in the provisions of Article 169(2) of the Patent Act which is applied mutatis mutandis in the provisions of Article 52 of the Design Act.

Therefore, the trial decision shall be made as described in the conclusion.

March 11, 2014 (Heisei 26)

Chief administrative judge:	HARADA, Masami
Administrative judge:	TOMINAGA, Wataru
Administrative judge:	SAITO, Takae

Design Registration No. 1406548

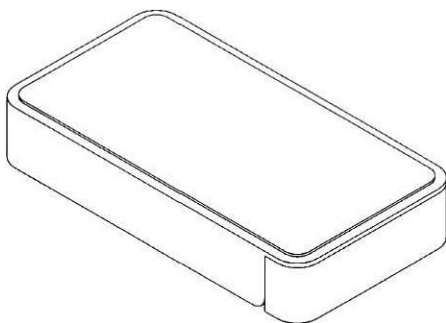
Article to the design

A case for storing office clips

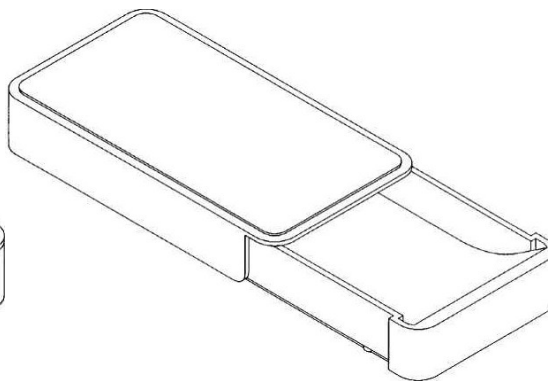
Description of the article to the design

This article is a case for storing office clips. A bottom surface of the case is formed in a slope-shape toward an extraction side, and magnets are attached on a lower back surface on the extraction side, so that the office clips are enabled to slide along the bottom surface, and the office clips are prevented from dropping, due to the magnetic force of the magnets, so that extraction work of the office clips can be facilitated.

Perspective View



Perspective View in Open State



Front View



Rear View



Left Side View



Right Side View



Top View



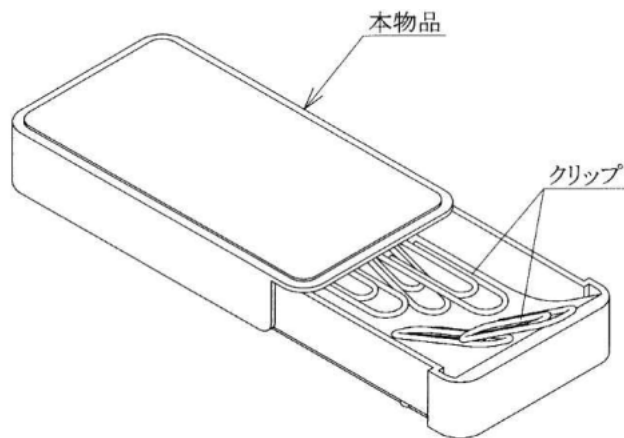
Bottom View



A-A Line Sectional View



Reference Perspective View Showing the State Of Use



本物品 The article

クリップ Clips

Reference A-A Line Sectional View



磁石 Magnet

Pyonchan clip case

(Perspective View)



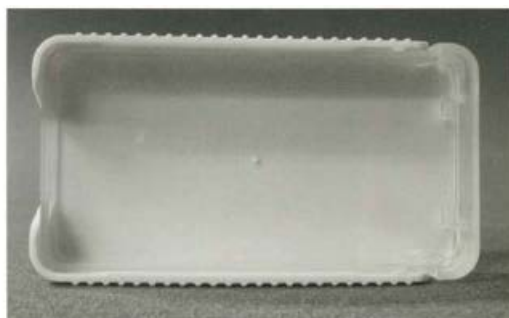
(Perspective View)



(Front View)



(Rear View)



(Left Side View)



(Right Side View)



(Top View)



(Bottom View)



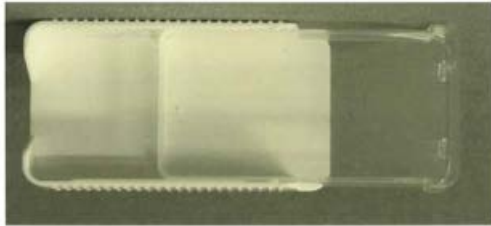
(Bottom View in open state)



(Bottom View of Storage Portion)



(Rear View in Open State)



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 의장등록 195465 1/1

대한민국 특허청 (KR)

의 장 공 보 (S)

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⑬ 등록번호 195465


담당심사관 조 국 현

의 겹 케이스


의장 창작 내용의 요점
 "의 겹 케이스"의 형상과 모양의 결합을 의장 창작 내용의 요점으로 함.

의장의 설명
 1. 재질은 합성수지제임.


정 면 도
(배면은 대칭)




평 면 도




저 면 도




좌 측 면 도



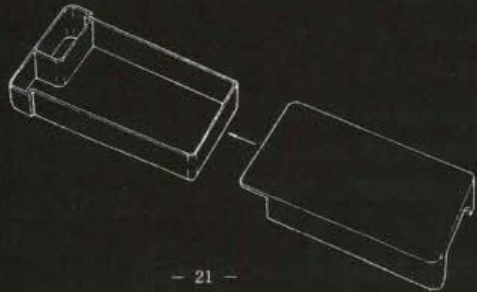
우 측 면 도



사 시 도



참고 사시도



- 21 -