Trial decision

Invalidation No. 2014-880005

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The case of trial regarding the invalidation of design registration of JapaneseDesign Registration No. 1423705, entitled "Handrail" between the parties above has resulted in the following trial decision.

Conclusion

The registration of Japanese Design Registration No. 1423705 is invalidated.

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

Reason

No. 1 The demandant's object of the demand and the grounds therefor

The demandant demanded the trial decision that "Design Registration No. 1423705 is invalidated, and the costs in connection with the trial shall be borne by the demandee," summarized grounds for the demand as follows, and submitted Evidence A No. 1 to A No. 11 as means of evidence.

1. Gist of reasons for invalidation of design registration

History of the procedures

Filing Date: May 28, 2010

Registration Date: August 26, 2011

Design Registration No. 1423705 (hereinafter, referred to as the Registered Design (Evidence A No. 1)) is similar to a design described in a publication distributed prior to the filing of the application for the Registered Design (Evidence A No. 4 to A No. 10) (hereinafter, Publicly Known Designs 4 and 10, respectively corresponding to Evidence A No. 4 to A No. 10), and falls under the Article 3(1)(iii) of the Design Act.

Also, the Registered Design would have been able to easily create based on designs described in the design bulletin issued prior to the filing of the application for the Registered Design (Evidence A No. 2 and A No. 3) (hereinafter, Publicly Known Designs 2 and 3), the said Publicly Known Designs 4 and 10, and designs described a publication issued prior to the filing of the application for the Registered Design (Evidence A No. 11) (hereinafter, Publicly Known Design 11), and falls under the Article 3(2) of the Design Act.

Therefore, the Registered Design should not be registered and its design registration should be invalidated under the provision of Article 48(1)(i) of the Design

Act.

2. Reasons for invalidation of the registration of the Registered Design

(1) The Registered Design

The Registered Design is as shown in Evidence A No. 1, relates to an article "Handrail," and has the following constitution.

That is, basic constitution thereof consists of,

A. A horizontally long handrail piece is supported by strut pieces arranged at equal intervals, thereby configuring a framework.

B. A face plate material is installed in a unit frame body space formed by the handrail piece and the strut pieces.

C. The face plate material is configured by a glass plate material.

Then, specific constitutions thereof are followings:

D. The glass plate material has high transparency in an upper part and low transparency in a lower part.

E. The transparency is changed in a gradation manner.

F. The intervals between struts are formed to be generally equal to strut height.

G. Under the framework, a support piece is provided in parallel with the handrail piece, and legs of the struts are exposed under the support piece.

(2) The design essential part of the Registered Design

With regard to the Registered Design, during the examination history thereof, Japanese Design Registration No. 1260850 (Publicly Known Design 2 (Evidence A No. 2)) and Japanese Design Registration No. 1318894 (Publicly Known Design 3

(Evidence A No. 3)) described in a design bulletin issued prior to the filing of the application for the Registered Design, are cited as references.

Taking these references into consideration, it is obvious that the basic constitution of the Registered Design A, B, C; namely, a constitution in which a horizontally long hand rail piece is supported by support pieces arranged at equal intervals to configure a unit frame body space, and a face plate material made from a glass plate material is installed in the space, and F, G of the specific constitution; namely, a constitution in which the intervals between struts are formed to be generally equal to strut height to form the unit frame body space in a generally square shape, and a constitution in which under the framework, a support piece is provided and legs of the struts are exposed under the support piece, are also publicly known.

Since the Registered Design is registered despite the existence of Publicly Known Designs 2 and 3 cited as the references, it is considered to be reasonable to consider that the design essential part of the Registered Design, even if it is assumed that the known basic constitution A, B, and C are included, exists in the specific constitutions D and E; that is, the constitution in which the transparency of a glass face plate material installed in a unit frame body space configuring "a handrail" is changed in a gradation manner and the transparency is made to be high in an upper part and low in a lower part.

Actually, in an article "Handrail," the face plate material that is installed in the unit frame body space is the easiest to attract the eye of the viewer, and it is assumed that a new constitution which is not found in Publicly Known Designs 2 and 3 that are references exists in that part, so that it is obviously reasonable that this constitution is determined as the design essential part of the Registered Design.

Concerning that there is a description that "the design of the handrail is directed to a laminated glass used for a face plate material" in the column "description of the article to the design" of the design bulletin of the Registered Design, since a design is required to "create an aesthetic impression through the eye" for establishment in the Design Law, and the said aesthetic impression is set as the object of substantive protection, even if the technique of applying gradation patterns is specified as the "laminated glass," it is not acknowledged that a peculiar aesthetic impression different from gradation patterns applied by other techniques is created, and even if there is such a description, it is not thought that it constitutes the design essential part relating to the aesthetic impression, so that it has been excepted from the constitution which is the design essential part.

(3) Publicly Known Designs

There are listed Publicly Known Designs 4 to 11 which show that the Registered Design falls under the provision of Article 3(1)(iii) of the Design Act or the provision of Article 3(2) of the Design Act, and should not be registered, in the following table.

Publicly Known Designs 4 to 11 were described in publications issued prior to the filing of the application for the Registered Design, and publication names and the dates of issue, or the acceptance dates to the National Diet Library are prescribed, thereby showing that these Designs 4 to 11 were publicly known prior to the filing of the application for the Registered Design.

(4) Applicability to Article 3(1)(iii) of the Design Act

The Registered Design is similar to Publicly Known Designs 4 to 10, and falls

under the provision of Article 3(1)(iii) of the Design Act, and thus the design registration should be invalidated.

Hereinafter, detailed descriptions of the reasons will be provided.

1) Regarding Publicly Known Designs 4 and 8

Publicly Known Design 4 was described on Pages 26 to 27, and 29 of a magazine "NIKKEI ARCHITECTURE 2005.12-12" (an excerpt/Evidence A No. 4) accepted in the National Diet Library on December 20, 2005, and Publicly Known Design 8 was described on Pages 66 to 67, and 71 of a magazine "SHINKENCHIKU/2006/2" (an excerpt/Evidence A NO. 8) accepted in the National Diet Library on February 3, 2006. The two were shown as example photos relating to a "Handrail" installed in the "Kyushu National Museum" opened on October 16, 2005.

In Publicly Known Designs 4 and 8, as the face plate material installed in the unit frame body space configuring the "Handrail," a design using a glass material with a gradation of high transparency in an upper part and low transparency in a lower part is shown.

Comparing the Registered Design with Publicly Known Designs 4 and 8, in Publicly Known Designs 4 and 8, a horizontal piece is provided across each strut in parallel with a lower side of the handrail piece, whereas, in the Registered Design, such a horizontal piece does not exist, and in this point, constitutions are different.

However, in the article "Handrail," it is merely an issue of choice or planning as to whether or not the horizontal piece and the like is adopted when constructing a framework, and being provided with no horizontal piece does not add any change to "the whole aesthetic impression due to the gradation effect of the glass face plate material" which is brought by the constitution common in Publicly Known Designs 4

and 8 and the Registered Design.

Thus, although the Registered Design differs from Publicly Known Designs 4 and 8 in the point that it does not have a horizontal piece, the existence/absence of the horizontal piece is merely an issue of choice or planning in this kind "Handrail," the other constitutions are identical to those of Publicly Known Designs 4 and 8, and the whole aesthetic impression due to the gradation effect of the glass face plate material created by the design essential part of the design is shown in Publicly Known Designs 4 and 8 as is.

Therefore, the Registered Design is identical to Publicly Known Designs 4 and 8 in the constitution that is the design essential part, creates the same aesthetic impression, is similar to Publicly Known Designs 4 and 8, and falls under the provision of Article 3(1)(iii) of the Design Act, and its registration should be invalidated under the provision of Article 48(1)(i) of the Design Act.

2) Regarding Publicly Known Design 5

Publicly Known Design 5 was described on Pages 160 and 161 of a magazine "KINDAI KENCHIKU 7, Vol. 60 July 2006" (an excerpt/Evidence A No. 5) accepted in the National Diet Library on July 14, 2006, and shown as an example photo relating to a "Handrail" installed in "Ibaraki City Lifelong Learning Center KIRAMEKI."

In Publicly Known Design 5, a gradation of high transparency in an upper part and low transparency in a lower part is applied on the glass face plate material in the "Handrail" unit frame body space.

In Publicly Known Design 5, a handrail piece does not exist on the uppermost end side of the "Handrail," and a horizontal piece is applied in parallel with and below the uppermost end side, and in this point, the Registered Design differs in constitution

from Publicly Known Design 5.

However, this difference is merely an issue of choice in a normal "Handrail," and the difference of the constitution does not add any change to "the whole aesthetic impression due to the gradation effect of the glass face plate material" which Publicly Known Design 5 has. The Registered Design creates the aesthetic impression as it is, and is similar to Publicly Known Design 5.

3) Regarding Publicly Known Designs 6 and 7

Publicly Known Design 6 was described in a magazine "SHINKENCHIKU 2003. 11" (an excerpt/Evidence A No. 6) issued on November 1, 2003, and accepted in the Construction Industry Library, and Publicly Known Design 7 was described on Pages 8, 9, and 12 of a magazine "NIKKEI ARCHITECTURE 2003. 11-10" (an excerpt/Evidence A No. 7) issued on November 10, 2003, and accepted in the Construction Industry Library. The two are shown as an example photo relating to a "Handrail" installed in "Tamagawa Takashimaya S. C., New South Bldg."

In Publicly Known Designs 6 and 7, a gradation of high transparency in an upper part and low transparency in a lower part is applied on a glass face plate material of the "Handrail."

However, in Publicly Known Designs 6 and 7, it is not clear whether or not a support piece under a "Handrail" framework exists and whether or not legs of struts are exposed under the framework. Although there cannot be denied the possibility that the Registered Design differs from Publicly Known Designs 6 and 7 in this point, even if there is a difference, the difference is merely an issue of choice in a normal "Handrail," and does not add any change to the whole aesthetic impression due to the gradation effect created by the glass face plate material in the unit frame body space, and thus the

Registered Design which is common with Publicly Known Designs 6 and 7 in the design essential part is also similar to Publicly Known Designs 6 and 7.

4) Regarding Publicly Known Designs 9 and 10

Publicly Known Design 9 was described in a magazine "SHINKENCHIKU 2006. 11" (an excerpt/Evidence A No. 9) issued on November 1, 2006, and accepted in the Construction Industry Library, and Publicly Known Design 10 was described on Pages 8, 9, and 11 of a magazine "NIKKEI ARCHITECTURE 2006. 11-27" (an excerpt...Evidence A No. 10) accepted in the Construction Industry Library. The two are shown as an example photo relating to a "Handrail" installed in "Seikei University Information Library."

In Publicly Known Designs 9 and 10, gradation patterns of high transparency in an upper part and low transparency in a lower part are applied on the glass face plate material installed in the handrail unit frame body space, and in this point, the Registered Design has the same constitution as Publicly Known Designs 9 and 10. The design essential part of the Registered Design is shown in Publicly Known Designs 9 and 10.

However, in Publicly Known Designs 9 and 10, two horizontal pieces are provided in parallel with and below a handrail piece at an upper end of the "Handrail," and the constitution of the Registered Design which does not have such horizontal pieces differs in this point.

However, it is merely an issue of choice or design in this kind "Handrail" whether or not the horizontal pieces are provided, and the difference does not add any change to the whole aesthetic impression created due to the gradation effect of the glass face plate material, provided by Publicly Known Designs 9 and 10, so that, the Registered Design creates the same aesthetic impression by the constitution common

with Publicly Known Designs 9 and 10. Therefore, the Registered Design is also similar to Publicly Known Designs 9 and 10.

5) Summary

As described above, Publicly Known Designs 4 and 8, Publicly Known Design 5, Publicly Known Designs 6 and 7, and Publicly Known Designs 9 and 10 which were distributed prior to the filing of the application for the Registered Design, disclose the constitution applying gradation patterns of high transparency in an upper part and low transparency in a lower part are applied on the glass face plate material installed in the unit frame body space of the "Handrail."

On the other hand, the constitution which is understood as the design essential part of the Registered Design exists in the constitution in which the transparency of the glass face plate material installed in the unit frame space of the "Handrail" is changed in a gradation manner, and the transparency is changed in a gradation manner and the transparency is made to be high in an upper part and low in a lower part.

Therefore, the constitution which is the design essential part of the Registered Design is entirely equipped respectively by Publicly Known Designs 4 and 8, Publicly Known Design 5, Publicly Known Designs 6 and 7, and Publicly Known Designs 9 and 10, and the Registered Design is respectively similar to Publicly Known Designs, and falls under the provision of Article 3(1)(iii) of the Design Act, and its registration should be invalidated under the provision of Article 48(1)(i) of the Design Act.

(5) Applicability to Article 3(2) of the Design Act

The Registered Design would have been able to be easily created created based on Publicly Known Designs 2 to 11, and falls under the provision of Article 3(2) of the

Designs Act, and thus the design registration should be invalidated.

Hereinafter, detailed descriptions of the reasons will be provided.

1) Evaluation of the Registered Design

The design essential part of the Registered Design exists in the constitution as described above, and although it is described above that the so-called novelty of the Registered Design is denied by the existence of Publicly Known Designs 4 to 10 entirely equipped with the design essential part and its design registration should be invalidated as a design prescribed in Article 3(1)(iii), the Registered Design, even if a design entirely equipped with the above described basic constitution A, B, and C and the specific constitutions D, E, F, and G corresponds to the design essential part, it corresponds to a design which would have been able to be easily created based on Publicly Known Designs 2 to 11.

2) Regarding Publicly Known Design 11

Publicly Known Design 11 was described on Pages 4 to 9 of a catalog "3M/Fasara/Fasara Glass Shade/2008-2009" (an excerpt/Evidence A No. 11) issued in 2008 at the latest, and shows a design applying a gradation not only on a face plate material of the "Handrail" on Page 5, but also on a glass material configuring windows, wall surfaces, and the like to adjust transparency as an example photo, and various construction techniques of a "gradation" were described on other pages of the catalog.

A design installed in stairs as a "Handrail" (Hand Rail) on Page 5 of Evidence A No. 11, and the constitution thereof is obvious, in which gradation patterns on the glass face plate material are formed to have high transparency in an upper part and low transparency in a lower part.

Also, on Page 9, there is a description that "walls and windows expressing a

smooth gradation from soft milky white to transparent by gradually changing the concentration of continuous white points on a glass shade"; in any case, the transparency is formed to be high in an upper part and low in a lower part.

Also, on Pages 12 to 15, as means for forming a gradation, means of "Light frosty dots," "Sand eye pattern," "Sharp stripes," and the like are shown, and thus it is obvious that the gradation changing the transparency is formed by various means.

3) Regarding the ease of creation

Considering these points, it can be said that the constitution of the Registered Design is identical with the constitutions of Publicly Known Designs 2 and 3 equipped with the constitutions A, B, C, F, and G, and is merely a design in which a glass face plate material is replaced with a gradation made to have high transparency in an upper part and low transparency in a lower part which is shown in Publicly Known Design 11.

A glass gradation (although using a glass shade) formed to have high transparency in an upper part and low transparency in a lower part which is shown in Publicly Known Design 11 is applied on walls and windows (although one applied on handrails is also shown), and it is extremely easily conceived by a person skilled in the art that the glass gradation is diverted to a face plate material of a "Handrail" which is a construction material requiring opaque and transparent parts as well as windows. Also, only by replacing the face plate material used for the publicly known "Handrail" frame body with the glass material having the gradation in such a way, there is no contrivance in the constitution, and it is merely to replace as it is. Furthermore, even if replacing such a glass gradation body with the "Handrail" for use, it does not generate new unique aesthetic impression.

Therefore, the Registered Design is merely a design which merely replaces the

face plate material installed in the unit frame body space in Publicly Known Designs 2 and 3 with the glass face plate material on which the gradation made to have high transparency in an upper part and low transparency in a lower part which is shown in Publicly Known Design 11 is applied, and corresponds to "a design which would have been able to be easily created by a person who has ordinary skill in the field of handrails based on forms, patterns, or colors or any combination thereof publicly known in Japan."

Also, as described in the applicability to Articles 3(1)(iii) of the Design Act, in Publicly Known Designs 4 to 10, a gradation made to have high transparency in an upper part and low transparency in a lower part is disclosed. Therefore, as in the cases of Publicly Known Design 11, if the face plate material in the unit frame body space in the "Handrail" in Publicly Known Designs 2 and 3 is replaced with the glass face plate material of Publicly Known Designs 4 to 10, it also corresponds to "a design which would have been able to be easily created by a person who has ordinary skill in the field of handrails based on forms, patterns, or colors or any combination thereof publicly known in Japan."

4) Summary

Thus, since the Registered Design corresponds to a design which would have been able to be easily created based on forms, patterns, or colors or any combination thereof expressed in Publicly Known Designs 2 to 11, and falls under a design prescribed in Article 3(2) of the Design Act, and therefore its registration should be invalidated by the provision of Article 48(1)(i) of the Design Act.

3 Closing

As described above, the Registered Design is similar to Publicly Known Designs 4 to 10 described in Evidence A No. 4 to A No. 10 distributed prior to the filing of the application for the Registered Design, and falls under the provision of Article 3(1)(iii) of the Design Act, and thus its registration should be invalidated.

Also, the Registered Design is a design which would have been able to be easily created by a person who has ordinary skill in the field of "Handrails" based on "forms, patterns, or colors, or any combination thereof" described in Evidence A No. 2 and A No. 3, Evidence A No. 11, and Evidence A No. 4 to A No. 10, and falls under the provision of Article 3(2) of the Design Act, and thus its registration should be invalidated.

After examination, the trial decision "the registration of Japanese Design Registration No. 1423705 is invalidated" and "the costs in connection with the trial shall be borne by the demandee" is demanded.

4. Means of evidence

(1) Evidence A No. 1 Design bulletin (copy) relating to Japanese Design Registration No. 1423705

(2) Evidence A No. 2 Design bulletin (copy) relating to Japanese Design Registration No. 1260850

(3) Evidence A No. 3 Design bulletin (copy) relating to Japanese Design Registration No. 1318894

(4) Evidence A No. 4 A magazine "NIKKEI ARCHITECTURE 2005.12-12" an excerpt (copy) (accepted in National Diet Library on December 20, 2005)

(5) Evidence A No. 5 A magazine ""KINDAI KENCHIKU 7, Vol. 60 July

2006" an excerpt (copy) (accepted in National Diet Library on July, 14 2006)

(6) Evidence A No. 6 A magazine "SHINKENCHIKU 2003. 11" an excerpt (copy) (issued on November 1, 2003)

(7) Evidence A No. 7 A magazine "NIKKEI ARCHITECTURE 2003. 11-10" an excerpt (copy) (issued on November 10, 2003)

(8) Evidence A No. 8 A magazine "SHINKENCHIKU 2006. 2" an excerpt (copy) (accepted in National Diet Library on February 3, 2006)

(9) Evidence A No. 9 A magazine "SHINKENCHIKU 2006. 11" an excerpt (copy) (issued on November 1, 2006)

(10) Evidence A No. 10 A magazine "NIKKEI ARCHITECTURE 2006. 11-27" an excerpt (copy) (issued on November 27, 2006)

(11) Evidence A No. 11 A catalog "3M/Fasara/Fasara Glass Shade/2008-2009" an excerpt (copy) (issued in 2008)

No. 2 The demandee's reply and the gist of the reasons

1. Object of the reply

In reply to the demandant's object of the demand and the grounds therefor, the demandee replied requesting that "The demand for trial of the case was groundless. The costs in connection with the trial shall be borne by the demandant."

2 Statement of the reply

2-1 Approval or disapproval of the written request for trial

(1) Of reasons of the demand of the written request for trial, "1. History of the procedures" is approved.

(2) "2. Reasons for invalidation of the registration of the Registered Design" of reasons of the demand of the written request for trial, is denied.

Concerning 2. (1) of reasons of the demand of the written request for trial, it is approved to have the constitutions A to G. However, it is described while assuming "a handrail piece" of the item A as "an upper rail (called "a coping" in industry terms)," "a strut piece" of the same item as "a strut," and "a support piece" of item G as "a lower rail."

2. (2) to (5) of reasons of the demand of the written request for trial are denied.

(3) "3. Closing" of reasons of the demand of the written request for trial is denied.

2-2 Regarding the Registered Design

(1) The registered design of Japanese Design Registration No. 1423705 (hereinafter, referred to as the Registered Design) is a partial design in which an article to the design is a "Handrail, " and its form is as shown in drawings of the design bulletin of Evidence A No. 1.

(2) The "Handrail" relating to the Registered Design relates to a handrail mainly used for a balcony and the like of an apartment house, in which a face plate material is made to be a laminated glass for preventing the deterioration of a film joined to an outer surface of a glass plate when used outdoors, and in which gradation patterns changing transparency are formed on a film sandwiched between two glass plates.

"The part for which the design registration is requested" registered as a partial design is a face plate part (hereinafter, referred to as "the registered design part") drawn by a solid line in a part surrounded by a rail of a handrail, a lower rail, and five struts, in the drawings of Evidence A No. 1, and a form of the registered design part is as follows.

That is, (3) the basic constitution of the Registered Design is

a It is composed by aligning four slightly vertically long rectangular platy glass face plates in parallel (hereinafter, referred to as the "glass face plates").

b On the glass face plates, gradation patterns (hereinafter, referred to as the "gradation patterns") which gradually change transparency by making the transparency high in an upper part and low in a lower part and which is arranged at a center part in a thickness direction of the laminated glass are applied.

(4) Regarding the specific constitutions

c The gradation patterns arranged at the center part in the thickness direction of the laminated glass of the glass face plate can be seen through a transparent wall thickness part on a front surface when viewed from either a front side or a rear side of the glass face plate; the gradation patterns express gloss having a depth depending on the wall thickness of the glass; an optical image by reflection of the outer surface on the front side and the rear side of the glass face plate is superimposed on the gradation patterns to change the gradation patterns by ambient brightness; and

d the change in transparency of the gradation patterns is composed of three band-shaped parts of upper and lower three stages which have a fixed width in a front view and extend in a horizontal direction, in which the band-shaped part on the lower side has the lowest transparency, the band-shaped part in the intermediate part has intermediate transparency, and the band-shaped part on the upper side has the highest transparency, each band-shaped part gradually increasing transmittance from a lower side toward an upper side and the transparency gradually changing between the band-shaped parts, the gradation patterns being formed as a whole on the glass face plate due to changes in transmittance in the height direction.

(5) The essential part of the design is a combination of a, b, c, and d described above, and has features in which a visual effect is provided such that the gradation patterns express depth and gloss through a thick transparent coating layer because it can be seen through the transparent glass wall thickness part on the front surface when viewed from either the front side or the rear side of the glass face plate by being arranged at the center part in the thickness direction of the laminated glass of the glass face plate; and various expressions are shown according to a layout aspect of the gradation patterns on the glass face plate, such as the glass front surface is reflected and the gradation patterns are visually recognized as being thin according to a visual angle. As one of creative purposes of the Registered Design, since it is a handrail used outdoors such as on a balcony and the like of an apartment house, a film with the gradation patterns is arranged at the center part of the wall thickness of the laminated glass, thereby preventing aging degradation such as peeling and staining, and the like of the gradation patterns.

2-3 Refutation against the Reasons for Invalidation of Article 3(1)(iii) of the Designs Act

(1) Evidence A No. 4 and Evidence A No. 8

Evidence A No. 4 and Evidence A No. 8 relate to a partition plate also functioning as a falling-down preventive plate of a stairwell in Kyushu National Museum, and one corresponding to the partial design of the case is a glass face plate disposed along a peripheral edge portion of the stairwell.

Although the glass face plate of Evidence A No. 4 and Evidence A No. 8 is frosted glass, it is not clearly shown whether or not it necessarily has a gradation. The

glass face plate of this evidence does not disclose the constitution of items c and item d of the Registered Design.

Also, in the partition plate of the evidence, as shown in Appendix Drawing 1, a pipe handrail is directly exposed at a position of intermediate height. Parts of seats of brackets for mounting the pipe handrail appear through the glass face plate. In a front view, the brackets which are intermittently arranged in a horizontal direction are clearly visually recognized.

For the reason above, it is obvious that the glass face plate of the evidence and the Registered Design are in a dissimilar relationship with each other.

(2) Evidence A No. 5

Evidence A No. 5 is a partition plate also functioning as a falling-down preventive plate in a stairwell part of Ibaraki City Lifelong Learning Center KIRAMEKI, and glass face plates corresponding to the Registered Design are aligned on the stairwell part at the same height in a lateral direction. Although the glass face plate of the evidence is recognized as a translucent glass plate, it is not necessarily clear whether or not it has a gradation. The design of the evidence is not equipped with the constituents of items c and b of the Registered Design.

Also, as shown in Appendix Drawing, the glass face plate is equipped with hand rail mounting brackets for mounting a pipe handrail.

For the reason above, it is clear that the glass face plate relating to the design of Evidence A No. 5 is obviously different from the glass face plate of the Registered Design, and the two are in a dissimilar relationship with each other.

(3) Evidence A No. 6 and Evidence A No. 7

Evidence A No. 6 and Evidence A No. 7 disclose a falling-down preventive

partition plate in a stairwell part in Tamagawa Takashimaya S.C., New South Bldg. A glass face plate of the partition plate corresponds to the glass face plate relating to the Registered Design.

Although the glass face plate of Evidence A No. 6 and Evidence A No. 7 is thin and frosted, it is not clear whether or not it has a gradation by increasing transparency from a lower part toward an upper part. Also, the glass face plate of the evidence is not equipped with the constitution of items c and d of the Registered Design.

Also, in the glass face plate of the evidence, as shown in Appendix Drawing 3, small rectangular metal fittings for fixing to struts arranged along a joining part on the inside at the joining part of each glass face plate are exposed (refer to a front view). Therefore, such a glass face plate is obviously dissimilar to the glass face plate of the Registered Design.

(4) Evidence A No. 9 and Evidence A No. 10

Evidence A No. 9 and Evidence A No. 10 disclose a design of a partition plate also functioning as a falling-down preventive plate in a stairwell of Seikei University Information Building, and a glass face plate of the partition plate corresponds to the glass face plate of the Registered Design.

Although the glass face plate of Evidence A No. 9 and Evidence A No. 10 is a thin translucent glass face plate, it is difficult to say that a gradation with a transparent upper part and an opaque lower part is clearly formed along a height direction.

Also, the glass face plate disclosed in the evidence does not disclose the constitution of items c and b of the Registered Design.

Also, as shown in Appendix Drawing 4, in the glass face plate of these evidences, small rectangular fixing metal fittings are exposed between the glass face plates in the

front view.

For the reason above, the glass face plate of Evidence A No. 9 and Evidence A No. 10 is obviously different from the glass face plate of the Registered Design, and the two are in a dissimilar relationship with each other.

2-4 Refutation against the Reasons for Invalidation of Article 3(2) of the Design Act

(1) The written request for trial alleges that since the gradation of high transparency in an upper part and low transparency in a lower part is disclosed in Evidence A No. 11, the Registered Design merely combines or replaces such a gradation with the constitutions of Evidence A No. 2 and A No. 3, and thus the Registered Design corresponds to the reasons for invalidation of Article 3(2) of the Design Act.

Also, since Evidence A No. 4 to A No. 10 disclose the gradation of high transparency in an upper part and low transparency in a lower part, it alleges that the Registered Design replacing the face plate material in the handrail with the glass face plate of Evidence A No. 4 to A No. 10 has no creative essence.

However, such an allegation is obviously inappropriate.

(2) The evidence of Evidence A No. 11 does not at all disclose the constitutions of items c and b which constitute the constitution of the Registered Design. Therefore, even if Evidence A No. 11 is combined with Evidence A No. 2 or Evidence A No. 3, the Registered Design is not guided, and it is obvious that the Registered Design is not obtained by such a combination or replacement. Namely, the Registered Design does not correspond to a design which would have been able to be easily created based on the combination of Evidence A No. 11 and Evidence A No. 2 or Evidence A No. 3.

(3) Also, Publicly Known Document of Evidence A No. 11 is a printed matter of

unknown origin such as a catalog of a private company, and lacks qualification requirements as a Publicly Known Document. Namely, in this evidence, a record, such as one corresponding to a colophon, showing that it was publicly published does not exist, and there is merely a number 2008-2009 on a front page, and there is no proof of publication as reasons for invalidation distributed in Japan. Therefore, Evidence A No. 11 is not sufficient to serve as evidence with qualification requirements as reasons for invalidation.

(4) Then, we will refuse the allegation that the Registered Design would have been able to be easily created based on the combination of Evidence A No. 4 to A No. 10, and Evidence A No. 2 or Evidence A No. 3, as follows.

None of Evidences A No. 4 to A No. 10 discloses at all the constitution of items c item d of the Registered Design. Therefore, even if the evidences of Evidences A No. 4 to A No. 10 are combined with Evidence A No. 2 or Evidence A No. 3, the Registered Design would have been able to be easily created. Thus, the reasons of the request for trial that the Registered Design corresponds to a design which would have been able to be easily created by the combination of Evidence A No. 4 to A No. 10, and Evidence A No. 2 or Evidence A No. 3, is obviously inappropriate.

2-5 Refutation against laminated glass

(1) The demandant alleges as follows, Page 4, Lines 16 to 24 in 2. (2) of the reasons of the request for trial.

"Regarding the Registered Design, in the column 'description of the article to the design' of the design bulletin, although there is a description 'the design of the handrail is directed to a laminated glass used for a face plate material,' a design is required to

'create an aesthetic impression through the eye' for establishment, and the aesthetic impression concerned is set as the object of substantive protection, even if the technique of applying gradation patterns is specified as the 'laminated glass,' it is not acknowledged that a peculiar aesthetic impression different from gradation patterns applied by other techniques is created, and even if there is such a description, it is not thought that it constitutes the design essential part relating to the aesthetic impression, so that it has been excepted from the constitution which is the design essential part."

However, the demandant's allegation about such essential part recognition is inappropriate.

In a case that the glass face plate is configured from a single glass plate and a film applied with gradation patterns is joined on an upper surface thereof, features do not appear, in which a visual effect is provided that the gradation patterns express depth and gloss through a thick transparent coating layer because it can be seen through the transparent glass wall thickness part on the front surface when viewed from either the front side or the rear side of the glass face plate by being arranged at the center part in the thickness direction of the laminated glass of the glass face plate of essential part of the Registered Design; and various expressions are shown according to a layout aspect of the gradation patterns on the glass face plate, such as the glass front surface is reflected and the gradation patterns are visually recognized thin according to a visual angle. Also, if the film applied with the gradation pattern on a surface thereof is incidentally joined, peeling, breakage, wrinkling, staining, and the like occur. Especially in a case of the glass face plate used outdoors, an adhesive adhering the film loses adhesive performance due to rain, and the film is easily peeled by that. Also, breakage and the like due to poor adhesion of a peripheral edge portion of the adhesive

film occurs. Furthermore, due to temperature change, the adhesive film expands/contracts, and the adhesive joining the adhesive film to the glass face plate is softened, to generate wrinkles on the film. Furthermore, a stain, which is not conspicuous so much in a case of a glass plate, becomes conspicuous in the film. Thus, the glass face plate adhering the film on the single glass cannot be used outdoors. This is obvious from the fact that when sticking a film for preventing peeping or shielding a light beam to a window glass of a vehicle, it is stuck to the inside of the window glass.

In a case of a balcony in an apartment house, rain blows not only on the outer surface side (front side) of the glass face plate but also on the inner surface side (rear side). Since the balcony is normally positioned outside a room, the outside surface and the inside surface are the same in the point that they get wet by dew at dawn. Thus, in such a balcony of the apartment house, if using one sticking the film on a surface of a single glass plate as the glass face plate, the joint film is peeled off, broken, wrinkled, and stained. Therefore, in a handrail of the balcony forming the gradation patterns with the adhesive film, the aesthetic impression of the gradation patterns cannot be maintained. Namely, in the Registered Design, the laminated glass is used as the glass face plate material, the configuration forming the gradation patterns with the film sandwiched between both side glass plates (refer to Evidence A No. 1 "C-C' reference cross-sectional detail view") has a high design property as an outer construction material, by providing a visual effect that the gradation patterns express depth and gloss through a thick transparent coating layer because it can be seen through the transparent glass wall thickness part on the front surface when viewed from either the front side or the rear side of the glass face plate, and contributes to the effect of preventing aging degradation of the gradation patterns and maintaining the original design property with

this configuration. Even with the film having patterns configuring a gradation while changing transmittance was known at the time of filing of the application for the design of the case, unless it is combined with the configuration of the "laminated glass," the Registered Design cannot be established.

Therefore, the Registered Design, even if the evidence of Evidence A No. 11 is a Publicly Known Design, does not correspond to a design which merely replaces the face plate material arranged in the unit frame body space in the designs of Evidences A No. 2 and A No. 3 with the glass face plate material on which the gradation of high transparency in an upper part and low transparency in a lower part is applied, and does not correspond to "a design which would have been able to be easily created by a person who has ordinary skill in the field of handrails based on forms, patterns, or colors or any combination thereof publicly known in Japan."

Also, in Evidences A No. 4 to A No. 10, the glass face plate in which transparency is made to be high in an upper part and low in a lower part is not necessarily clearly disclosed, and there is no disclosure about the formation of the aesthetic impression of the gradation using the laminated glass. Even if such Publicly Known Design is replaced with the face plate material in the unit frame body space of the glass face plate of Evidences A No. 2 and A No. 3, the Registered Design cannot be conceived, and they are not sufficient to be a handrail enabling the design capable of maintaining the aesthetic impression and being equipped with the aesthetic impression by the gradation to be established.

(2) As described above, the Registered Design does not correspond to the designs of Evidences A No. 2 and A No. 3, and the design which would have been able to be easily created based on forms, patterns, colors, or any combination thereof which are shown in

Evidence A No. 4 to A No. 11, and there is no reason for invalidation based on Article 48(1)(i) of the Design Act.

3. Closing

As described above, the Registered Design is not similar to the Publicly Know Designs described in Evidence A No. 4 to A No. 10 distributed prior to the filing of the application, and does not fall under the provision of Article 3(1)(iii) of the Design Act, and the reasons for invalidation of its registration do not exist.

Also, the Registered Design does not correspond to a design which would have been able to be easily created by a person who has ordinary skill in the field of "Handrails" based on "forms, patterns, or colors or any combination thereof" described in Evidence A No. 2, Evidence A No. 3, and Evidences A No. 4 to A No. 11 distributed prior to the filing of the application, does not falls under the provision of Article 3(2) of the Design Act, and the reasons for invalidation of its registration do not exist.

Therefore, we would like to have the trial decision as the object of the reply.

4. Means of evidence

(1) Evidence A No. 1 Evaluation Standard for Quality Housing Component Safety Handrails publicly announced/enforced on April 30, 2013 (copy)

No. 3 Oral proceeding

In the trial of the case, the body conducted the oral proceeding on December 19, 2014. (Oral Proceeding Record dated December 19, 2014)

1. Demandant

The demandant stated that the object and reason of the request are as per the written request for trial and the oral proceedings statement brief dated November 19, 2014.

Oral Proceeding Record dated November 19, 2014

I Reasons for invalidation of the Registered Design

The Registered Design, despite the demandee's allegation, is similar to Publicly Known Designs 4 to 10, falls under the Article 3(1)(iii) of the Design Act, would have been able to be easily created based on Publicly Known Design 11, and falls under the category of Article 3(2) of the Design Act, and its design registration should be invalidated.

(1) Applicability to Article 3(1)(iii) of the Design Act

1) The constitution and design essential part of Publicly Known Designs 4 to 10

The constitution common to Publicly Known Designs 4 to 10 is,

A. A framework is composed by including a horizontal handrail piece and vertical strut pieces.

B. A glass face plate material is installed in the framework.

C. The glass face plate material changes transparency to be high in an upper part and low in a lower part in a gradation manner.

The design essential part is in the constitution common to the whole; namely, the basic constitutions A and B, and exists in the point materializing the specific constitution C.

2) Constitution of the Registered Design

To the contrary, if the Registered Design follows the expression of the demandee,

while taking one step backward,

a. It is composed by aligning four slightly vertically long rectangular platy glass face plates in parallel,

b. On the glass face plate, gradation patterns which gradually change transparency by making the transparency high in an upper part and low in a lower part which is arranged at a center part in a thickness direction of the laminated glass are applied.

If those are expressed as compared with the constitutions common to Publicly Known Designs 4 to 10,

A'. It is composed by aligning four slightly vertical frameworks in parallel,

B'. A glass face plate material (glass face plate) is installed in the framework,

C'. On the glass face plate material, gradation patterns which gradually change transparency by making the transparency high in an upper part and low in a lower part are applied,

D'. The gradation patterns are arranged at a center part in a thickness direction of the laminated glass configuring the glass face plate material.

3) Comparison of the two designs

3-1) Common features of the two designs

The two designs are common in the point that a glass face plate material is installed in a handrail framework (the constitutions B-B') and on the glass face plate material, gradation patterns which gradually change transparency by making the transparency high in an upper part and low in a lower part are applied (the constitutions C-C').

3-2) Different features of the two designs

Although the two designs are common in a part of the point that a framework is

composed by including a horizontal handrail piece and vertical strut pieces (the constituents A and A'), the Registered Design differs in the point of aligning four frameworks in parallel (the constitution A'). In the Publicly Known Design, there is no special limitation in a technique of forming gradation patterns, whereas the Registered Design differs in the point that the gradation patterns are arranged at a center part in a thickness direction of the laminated glass (the constitution D').

4) Evaluation of common features and different features

4-1) Evaluation of common features

The common constitutions install a glass face plate material on a handrail frame body, apply the gradation patterns of high transparency in an upper part and low transparency in a lower part on the glass face plate material, and can be evaluated as the important constitutions on aesthetic impression that dominates the impression of observers as a design.

4-2) Evaluation of different features

To the contrary, concerning the different features A-A', for example, as shown in Publicly Known Design 2 (Evidence A No. 2) or Publicly Known Design 3 (Evidence A No. 3), the constitution aligning four or three handrail frame bodies in parallel is commonly used in this kind of article and extremely common, so that it does not create a new aesthetic impression on the observers and should be neglected.

Also, even if forming the gradation patterns at a center part in a thickness direction of the laminated glass configuring the glass face plate material (the constitution D') shows effects such as preventing degradation of the gradation patterns, it does not differ in essential and constant aesthetic impression to be concretely expressed on a design as compared with a case of forming the gradation patterns by

other means, and does not generate a new aesthetic impression, so that the constitution should be neglected in a design.

4-3) The design essential part of the Publicly Known Design

In a design, although the constitutions configuring the design essential part exist in the constitution determining aesthetic impression by observers, in the case, the design essential part of the Publicly Known Design which should dominate the aesthetic impression of the observers is evaluated that the constitution exists in the point that the constitution C is applied on the premise of the existence of the constitutions A and B.

5) Similarity Determination

In the Publicly Known Design, the design essential part exists in the point that the constitution C is applied in the constitutions A and B.

On other hand, in the Registered Design, the design essential part of the Publicly Known Design is equipped in the constitutions A', B', and C' as it is, and shows the aesthetic impression provided by the design essential part as it is.

Also, the point of aligning four handrail frame bodies in parallel (a part of the constitution A') or the point of forming the gradation patterns in association with the laminated glass (the constitution D') other than the essential part, does not create a new aesthetic impression surpassing the aesthetic impression provided by the constituents A, B, and C which are the essential part of the Publicly Known Design.

Therefore, it can be said that the Registered Design equipped with the design essential part of the Publicly Known Design as it is, is similar to the Publicly Known Design.

Incidentally, Evidence A No. 12 lists an excerpt of a product information pages on the website of Sanshiba Glass Material Co., Ltd.

Page 6 of the excerpt (Evidence A No. 12) is a side of a product made by Sanshiba Glass Material Co., Ltd., and is entitled "e-glass," and "print glass/screen ceramic printing" is indicated.

Then, as the "Sun Ceramic Configuration Diagram," there is disclosed an article applying a print figure on one inner surface side of a laminated glass (indicated as "reinforced") and joining the other side glass through an intermediate film, and "Hamamatsu-cho Pedestrian Deck" is shown as a construction result of an article directly printing patterns on the glass and configuring the laminated glass.

The "Hamamatsu-cho Pedestrian Deck," as shown in a photo enlarged on Page 7 of the excerpt, is a handrail composed by aligning handrail frame bodies composed of glass face plate materials in parallel, and is obviously an article in which "gradation patterns which gradually change transparency by making the transparency high in an upper part and low in a lower part" is applied "on the glass face plate material." Also, it is obvious that "the gradation patterns are arranged at a center part in a thickness direction of the laminated glass configuring the glass face plate material" from "directly printing patterns (in this case, gradation patterns) on the inner surface side of the glass configuring one side of the laminated glass."

Therefore, although it is obvious that the handrail relating to "Hamamatsu-cho Pedestrian Deck" is equipped with the constitution corresponding to the constituent D' alleged to be equipped in the Registered Design, the aesthetic impression (aesthetic impression which can be seen from Page 7 of the excerpt) provided by the constitution D' is not different from the aesthetic impression provided by the gradation patterns disclosed in Publicly Known Designs 4 to 10, and it is obvious that the constitution D' alleged by the demandee does not create an extraordinary new aesthetic impression.

Thus, the constitution D' supposed to exist in the Registered Design is not evaluated as the constitution which creates a new aesthetic impression surpassing the aesthetic impression provided by Publicly Known Designs 4 to 10, and even if the existence of the constituent D' is recognized, it is obvious that the Registered Design is similar to Publicly Known Designs 4 to 10.

Also, "Hamamatsu-cho Pedestrian Deck" shown in Evidence A No. 12 is posted in a magazine "KINDAI KENCHIKU September 2006" (Evidence A No. 13) accepted in the National Diet Library on September 12, 2006.

(2) Applicability to Article 3(2) of the Design Act

1) Creative easiness of the Registered Design

As described above, the constitution of the Registered Design is,

A' It is composed by aligning four slightly vertical frameworks in parallel,

B' A glass face plate material (glass face plate) is installed in the framework,

C' On the glass face plate material, gradation patterns which gradually change transparency by making the transparency high in an upper part and low in a lower part are applied,

D' The gradation patterns are arranged at a center part in a thickness direction of the laminated glass configuring the glass face plate material.

In the publicly known constitutions A', B', and C' shown in Publicly Known Designs 2 and 3, and Publicly Known Designs 4 to 10, for example, it could be easily conceived by a person skilled in the art to apply the gradation patterns described in Evidence A No. 11.

Therefore, the Registered Design would have been able to be easily created by a person skilled in the art based on "forms, patterns, or colors or any combination thereof"

described in Evidences A No. 2 and A No. 3, Evidences A No. 4 to A No. 10, and Evidence A No. 11, and falls under the category of Article 3(2) of the Design Act.

However, the demandee alleges the sufficiency of creative difficulty, since there is no specific matter about applying the gradation patterns on the fitting surface of the laminated glass in Evidence A No. 11.

The demandant alleges that although in Evidence A No. 11, the constitution "the gradation patterns are applied at a center part in a thickness direction of the laminated glass" and a means therefor are not directly described, it is indicated that there are various means for applying the gradation patterns on the glass face plate material, and of the large number of the means, by adopting a means for forming the gradation patterns relating the existing laminated glass alleged by the demandee, the constitution of the Registered Design could be easily adopted, and to that extent, would have been able to be easily created based on the descriptions of Evidence A No. 2 and A No. 3, Evidence A No. 4 to A No. 10, and Evidence A No. 11.

However, the demandee alleges that the constitution "D'"; namely, the constitution "the gradation patterns of the glass face plate material are arranged at a center part in a thickness direction of the laminated glass" is not directly described in Evidence A No. 11, and denies the creative easiness of the Registered Design.

Then, the demandant indicates Evidences A No. 14-1 and A No. 14-2 to complement the description of Evidence A No. 11, and mentions that the Registered Design would have been able to be easily created.

2) Evidence A No. 14-1 and A No. 14-2

Evidence A No. 14-1 indicated by the demandant relates to the title of the invention "METHOD OF MANUFACTURING LAMINATED GLASS

DECORATING INTERMEDIATE FILM" which is Publication relating to "Japanese Patent Application (Application No.: Japanese Patent Application No. S63-502466) internationally published based on the Patent Cooperation Treaty" issued by the Japan Patent Office on March 1, 1989 prior to the filing of the application for the Registered Design.

In a lower right column of Page 6, there is a description about the invention that "the method of forming gradation patterns, especially exerting an excellent effect when forming gradation patterns on a windshield of an automobile. The gradation patterns are made from shading patterns in which coloring density gradually decreases with a uniform concentration gradient from the top toward the bottom of the windshield. Conventionally, in order to form such gradation patterns on an intermediate film, for example, a method is performed, in which a light shielding plate is placed on a photosensitive film that is an original form and the light shielding plate is gradually moved to expose. However, in such a method, in order to obtain the desired gradation, it is necessary to strictly control the moving speed and the exposure amount and the like of the light shielding plate, and a skilled technique is required. Furthermore, in a conventional method, in the conventional method, it is impossible to obtain patterns in which the concentration gradient changes so as to correspond to the shape of the windshield, and only an unnatural one can be obtained at present. In this invention, gradation patterns corresponding to any shape can be formed by a method described later," it is indicated that a means for "forming gradation patterns on an intermediate film (of a laminated glass)" has been carried out in a windshield and the like of an automobile, from before, and it is obvious that the means existed as one of the gradation forming means described in Evidence A No. 11.

Also, Evidence A No. 14-2 relates to the title of the invention "MULTI-COLORED LAMINATED GLASS HAVING HIGH DESIGN CHARACTERISTICS" which is Publication of Unexamined Patent Application (A) (Japanese Unexamined Patent Application Publication No. 2006-1807) published on January 5, 2006, prior to the filing of the application of the Registered Design.

On Page 1 "Problems," there are descriptions that "the invention is based on a unique machining method of resin laminated glass" and "a boundary gradation and streamline patterns can be expressed" on the laminated glass, a means for forming a gradation on a fitting surface of the laminated glasses (in this case, not limited to two), and it is obvious that the means existed as one of the various gradation forming methods described in Evidence A No. 11.

Thus, since a means for forming the gradation patterns in the thickness direction (namely, the fitting surface) of the laminated glass existed prior to the filing of the application of the Registered Design and the gradation patterns applied by the means (not limited to Evidence A No. 14-1 and A No. 14-2) was naturally publicly known, it is extremely easy for a person skilled in the art to apply the gradation patterns based on "forms, patterns, colors or any combination thereof" described in Evidence A No. 2 and A No. 3, and Evidence A No. 4 to No. 10, and the Registered Design falls under the category of Article 3(2) of the Design Act without awaiting the description of Evidence A No. 11.

(3) Summary

As described above, the demandee's allegation that there is no reason for invalidation in the Registered Design was made by misunderstanding what "a design" and "design drawings" are and misunderstanding the specification of "the constitutions"

and the recognition of "the essential part," without correctly grasping a concept of "similarities of designs," and it is obvious that the allegation is improper.

Then, the Registered Design, even if the constitution relating to a laminated glass is recognized, does not create a new aesthetic impression surpassing the aesthetic impression provided by the design essential parts of Publicly Known Designs 4 to 10 by the constitution relating to the laminated glass, and it can be said that the Registered Design equipped with the design essential parts of Publicly Known Designs 4 to 10 as they are is similar to Publicly Known Designs 4 to 10.

Also, the Registered Design would have been able to be easily created by a person skilled in the art based on forms, patterns, or colors or any combination thereof which are described in Evidence A No. 2 and A No. 3, Evidence A No. 4 to A No. 10, Evidence A No. 11, and Evidence A No. 14 complementarily shown.

The Registered Design falls under the provision of Article 3(1)(iii) of the Design Act and the provision of Article 3(2) of the Design Act, and thus its registration should be invalidated.

II Means of evidence

(1) Evidence A No. 12: An excerpt of the website of Sanshiba Glass Material Co., Ltd. (printed out on November 11, 2014) the top page of the website→the top page of product information→the top page of e-glass→the e-glass product list page→a screen ceramic printed page→the enlarged view of Hamamatsu-cho Pedestrian Deck indicating that the appearance (aesthetic impression) applying a gradation on a fitting surface of laminated glasses does not differ from that of Publicly Known Designs 4 to 10.

(2) Evidence A No. 13: A magazine "KINDAI KENCHIKU " an excerpt (issued in September, 2006) indicating that Hamamatsu-cho Pedestrian Deck existed as of 2006.

(3) Evidence A No. 14

Evidence A No. 14-1: Japanese Patent Application (Japanese Patent Application No. S63-502466) internationally published based on the Patent Cooperation Treaty

Evidence A No. 14-2: Publication of Unexamined Patent Application (Japanese Unexamined Patent Application Publication No. 2006-1807) indicating that one applying the gradation on the fitting surface of the laminated glass was publicly known.

2. Demandee

The demandee stated that the purport of reply and the reasons therefor are as per the written reply for trial dated July 30, 2014 and the oral proceedings statement brief dated December 9, 2014.

In the oral proceeding, the demandee made arguments against the demandant's oral proceedings statement brief, alleged that the Registered Design and the designs of Evidences A No. 2 to A No. 10 are not similar, and alleged that the Registered Design does not correspond to a design which would have been able to be easily created from the designs of Evidences A No. 2 to A No. 10.

Oral Proceeding Record dated December 9, 2014

I Constitutions of the Registered Design

The constitutions of the Registered Design are

a It is composed by aligning four slightly vertically long rectangular platy glass face plates in parallel (hereinafter, referred to as the "glass face plates").

b On the glass face plate, gradation patterns (hereinafter, referred to as the "gradation patterns") which gradually change transparency by making the transparency high in an

upper part and low in a lower part which is arranged at a center part in a thickness direction of the laminated glass are applied.

c The gradation patterns arranged at the center part in the thickness direction of the laminated glass of the glass face plate, can be seen through a transparent wall thickness part on a front surface when viewed from either a front side or a rear side of the glass face plate; the gradation patterns express gloss having a depth depending on the wall thickness of the glass; an optical image by reflection of the outer surface on the front side and the rear side of the glass face plate is superimposed on the gradation patterns to change the gradation patterns by ambient brightness; and

d the change in transparency of the gradation patterns is composed of three band-shaped parts of upper and lower three stages which have a fixed width in a front view and extend in a horizontal direction, in which the band-shaped part on the lower side has the lowest transparency, the band-shaped part in the intermediate part has intermediate transparency, and the band-shaped part on the upper side has the highest transparency, each band-shaped part gradually increasing transmittance from a lower side toward an upper side and the transparency gradually changing between the band-shaped parts, the gradation patterns being formed as a whole on the glass face plate due to changes in transmittance in the height direction.

II Regarding the combination of the laminated glass and the gradation patterns

(1) Although the Registered Design is equipped with each constitution of items a to d as essential constituent components, it is made especially to be a laminated glass, and gradation patterns are arranged at a center part in the thickness direction of the glass. With such a feature, the Registered Design has an excellent design effect.

In the Registered Design, by the constitution forming the gradation patterns of

high transparency in an upper part and low transparency in a lower part with a film and the like sandwiched between the glass plates on both sides (Evidence A No. 1, refer to "reference view explaining transmittance," "reference view showing a use state," and "C-C' reference cross-sectional detail view"), a high visual effect is provided, in which the gradation patterns express depth and gloss through a thick transparent coating layer because the gradation patterns can be seen through the transparent glass wall thickness part on the front surface when viewed from either the front side or the rear side of the glass face plate.

(2) Comparing the Registered Design with the design of a handrail joining a film applied with gradation patterns while exposing that to an outer surface of a glass face plate of the handrail, the characteristics of the Registered Design becomes obvious from the following different features. In the case of the comparison design, although the thickness of the glass plate can be observed from the other surface on a film joint side, the thickness of the glass plate such as the transparent coating layer cannot be observed from the joint surface side, and the patterns of the film are directly observed, so that it differs in the point that the patterns are strongly impressed. Complementarily, due to the use environment and aged deterioration of the handrail, although the possibility of peeling, breakage, wrinkling, staining, and the like can be recognized, and it is informed to consumers that the constitution of the Registered Design does not have such a risk.

(3) The constitution of the gradation patterns of high transparency in an upper part and low transparency in a lower part is for blocking the line of sight from a lower side and expanding a view field from an upper side, and configures the design essential part as the handrail.

III The constitution of item d

(1) As described above, the design in the application is equipped with the constitution of item d, together with items a, b, and c.

The constitution of item d is that "the change in transparency of the gradation patterns is composed of three band-shaped parts of upper and lower three stages which have a fixed width in a front view and extend in a horizontal direction, in which the band-shaped part on the lower side has the lowest transparency, the band-shaped part in the intermediate part has intermediate transparency, and the band-shaped part on the upper side has the highest transparency, each band-shaped part gradually increasing transmittance from a lower side toward an upper side and the transparency gradually changing between the band-shaped parts, the gradation patterns being formed as a whole on the glass face plate due to changes in transmittance in the height direction."

(2) Such a constitution of item d is a constitution which is properly extracted in light of all of the article to the Registered Design, description of the article to the design, explanations of the design, and drawings.

(3) About the constitution of item d above, there was no evidence submitted at all, which proves that the Registered Design falls under Article 3(1) or 3(2) of the Design Act. This clearly tells us that the demandant's allegation of invalidation of the case lacks the grounds thereof.

IV Regarding Evidences A No. 12 and A No. 13

(1) Evidence A No. 12, according to an oral proceedings statement brief, is an excerpt of the website of Sanshiba Glass Material Co., Ltd., and it is described that it was printed on November 11, 2014.

Against this, the condition which Article (3)(1)(ii) requires about Publication is that the Publication was distributed in Japan or a foreign country, prior to the filing of

the application for design registration. In Evidence A No. 12, there is no description that it was distributed before the filing of the application for the Registered Design, so that it does not correspond to Publication mentioned in Article 3(1)(ii) of the Design Act.

In addition, on a page entitled as "e-glass" on Page 6 of Evidence A No. 12, the pattern which is ""Sun Ceramic Configuration Diagram" is disclosed, a structure in which glass is arranged on a front surface and a rear surface, and an intermediate film is sandwiched therebetween is disassembled to be shown. However, the intermediate film does not show gradation patterns.

Also, Evidence A No. 13 submitted by the demandant seems to be one in KINDAI KENCHIKU September, 2006, and the demandant "indicates that Hamamatsu-cho Pedestrian Deck existed as of 2006." However, it is unknown which part of this evidence the demandant alleges that it is similar to the Registered Design. Namely, it is unknown which part of Evidence A No. 13 is extracted for denying the novelty creative easiness of the Registered Design.

(2) The demandant seems to prove that the laminated glass was used for Hamamatsu-cho Pedestrian Deck by using the facts that the constitution relating to the laminated glass (e-glass) is disclosed in Evidence A No. 12 and Hamamatsu-cho Pedestrian Deck is posted on the same page as a construction result, through Evidence A No. 13. However, it is obviously illegal and is not permissible to combine contents described in a Publication (Evidence A No. 12) which was not distributed prior to the filing of the application for design registration, with Evidence A No. 13. Namely, Evidence A No. 12 lacks requirements as the evidence. Therefore, it is not permissible to allege that the Registered Design should be invalidated by combining the description of Evidence

A No. 12 which is not sufficient as an evidence with Evidence A No. 13.

(3) Also, the demandant, in Page 11, Line 26 to Page 12, Line 24 of the statement brief, concludes that the aesthetic impression provided by the constitution D' forming the gradation patterns in associated with the laminated glass is not different from the aesthetic impression providing the gradation patterns disclosed in Publicly Known Documents 4 to 10, from the fact that the e-glass described in the website of Sanshiba Glass Material Co., Ltd. shown in Evidence A No. 12 is a combination of the laminated glass and the intermediate film and Hamamatsu-cho Pedestrian Deck is shown as a construction example in that page, and thereby alleges that the Registered Design does not create an extraordinary new aesthetic impression. Then, on the basis of such an allegation, the conclusion that the constitution D' is not evaluated as the constitution which creates new aesthetic impression is guided. However, it is unknown that Evidence A No. 12 is evidence having what kind of a legal status, and it does not at least correspond to Publication prescribed in Article 3(1)(ii). If Evidence A No. 12 is submitted as the evidence, please clarify the legal basis for under what kind of position this evidence was submitted. It is unknown why it is not different from the aesthetic impression provided by the gradation patterns of Publicly Known Documents 4 to 10, since Hamamatsu-cho Pedestrian Deck is equipped with the constitution corresponding to constitution D'. It is demanded to properly explain under what kind of argument the conclusion was led out about this point.

V The designs of Evidence A No. 12 and Evidence A No. 13 are not gradations due to changes in transparency.

(1) Regarding Evidence A No. 2 (a photo)

Shooting Place: Overpass of Hamamatsu-cho World Trade Center Building

Shooting date & time: December 8, 2014 14:00 p.m.

Photographer: HIDAKA Kazuki

(2) The constitution of the design of a part corresponding to the Registered Design of the design shown in a photo of Evidence B No. 2, which is provided on the overpass of Hamamatsu-cho World Trade Center Building, consists of

1) Patterns are provided on a glass joint surface of a laminated glass by a film,

2) the patterns make 1/6 from a lower end side in a height direction to be generally opaque white, and generally opaque white circular patterns are gradually made small toward an upper end portion and provided to the vicinity of the upper end portion.

3) In the specific constitutions of the circular patterns, small dot-shaped transparent portions are formed between circular shapes in an upper part above 1/6 of a lower end part, then generally rhombic transparent portions having arc-shaped sides are formed upward, and as gradually increasing the distance between the circular shapes, the circular shapes are recognized and a range of the transparent portions is enlarged. Also, the circular shapes are linearly provided from the upper part above 1/6 on the lower end side to the vicinity of the upper end portion while gradually shortening diameters.

4) If observing the gradation patterns of Evidence B No. 2 as the whole design, pseudo gradation patterns are formed by making the lower end portion opaque and gradually reducing opaque circular shapes linearly arranged vertically and horizontally toward the upper end portion into dot-shapes.

(3) Concerning the design of Evidence B No. 2, a lower side 1/6 part is made to be a uniform opaque part, and a gradation is not formed on that part.

In the upper part above 1/6 of the lower end portion, only two kinds of

transparency of a part with low transparency the same as on the 1/6 part on the lower end side and a transparent part exist. The pseudo gradation is formed by the density of dot-shapes which increases an area of an opaque part in the upper part above 1/6 on the lower end side, and against that, gradually decreases the area of the opaque part to the vicinity of the upper end portion to increase a rate of a transparent part.

Therefore, the gradation patterns of Evidence B No. 2 and the patterns of the Registered Design are quite different in the specific constitutions, and the Registered Design is not similar to the design of Evidence B No. 2.

VI Regarding Evidence A No. 14-1 and Evidence A No. 14-2

(1) The demandant submitted international publication WO88/07027 as Evidence A No. 14-1, and alleges the existence of a prior art relating to the laminated glass and the intermediate film. The evidence shows the gradation patterns of the intermediate film in FIG. 16 of the drawings. As is clear from FIG. 16, the gradation is formed by a plurality of broken lines formed in parallel to each other, and intervals between the broken lines become shorter toward an upper side, and become wider toward a lower side. That is, here, by the density of the intervals between the broken lines formed on the film, the gradation is formed. Such a configuration is completely different from the gradation due to shading in the Registered Design. The configuration shown in FIG. 16 is a gradation in which transmittance is low on an upper side and is gradually increased toward a lower side. Such a configuration is vertically opposite to the gradation of the Registered Design in the combination of the transmission of the light beam.

Therefore, even if such gradation patterns shown in FIG. 16 are combined with, for example, Evidence A No. 2 or Evidence A No. 3, the Registered Design cannot be

conceived. The combination of publicly known shapes and the like in Article 3(2) of the Design Act indicates that the publicly known shapes are merely combined or replaced as they are, and does not include adding special creativity. In view of this point, FIG. 16 of Evidence A No. 14-1 does not correspond to the publicly known shape of the gradation patterns in a relationship with the Registered Design.

(2) Evidence A No. 14-1 describes "this invention relates to improvements in a method of manufacturing a decorating intermediate film for manufacturing a laminated glass used for a windshield of an automobile" on Page 3, upper left column, Lines 4 to 6. That is, Evidence A No. 14-1 relates to a windshield of an automobile which is a component of an automobile that is a kind of transport machine. Against this, the Registered Design relates to a handrail, especially a handrail mounted to a front edge of a balcony of an apartment house. Therefore, Evidence A No. 14-1 and the Registered Design are quite different in the field to which those pertain, and a person who has ordinary skill in the field of the Registered Design does not normally search a design relating to a component of a transport machine, and there is no motivation and cause to combine that.

(3) Next, Evidence A No. 14-2 is the official gazette of Japanese Unexamined Patent Application Publication No. 2006-1807. Contents thereof, especially a configuration relating to a gradation, are obviously different from the Registered Design.

That is, resins colored in different colors are injected at the same time or in time series from a plurality of injection ports provided at a joint portion of end faces of two laminated glasses, so that a boundary gradation between island-shaped parts made of liquid resins different in color from each other is naturally generated between the resins. Such a configuration does not form a gradation of high transmittance in an upper part

and low transmittance in a lower part, like the gradation of the Registered Design. That is, the gradation of the Registered Design is quite different from that of Evidence A No. 14-2.

(4) Also, the design shown in Evidence A No. 14-2, as disclosed in Paragraph 0001 of the evidence, is used for exterior materials, walls of interior materials, windows, screens, lighting fixtures, shaping works, and the like. That is, this design is used for a purpose which is quite different from that of a handrail, especially a glass face plate of a handrail in a balcony of an apartment house, and the easiness of transfer does not exist.

(5) Also, the boundary gradation of Evidence A No. 14-2 is formed by mixing of the resin on both sides, at the boundary portion of the island-shaped parts formed in a clearance of the laminated glasses by the liquid resin injected from separate injection ports, and is different from the uniform gradation in which transmittance is gradually increased from a lower side to an upper side. Even if such a gradation of Evidence A No. 2 is combined with the glass face plates of Evidence A No. 2 and A No. 3, the design in the application is not configured.

VII Means of evidence

(1) Evidence B No. 2-1 to Evidence B No. 2-6: A photo of Hamamatsu-cho Pedestrian Deck

3. Chief administrative judge

In the oral proceeding, the chief administrative judge notified the demandant and demandee that the trial was concluded.

4. Demandee's written statement

However, after the oral proceeding, the demandee submitted a written statement dated May 21, 2015, so that the trial of the case was resumed, and the chief administrative judge informed that the trial will be conducted by documentary proceedings henceforth.

Furthermore, in response to a written statement dated July 2, 2015 of the demandant, the demandee submitted a written statement dated August 7, 2015 and gave an opinion.

I Written statement dated May 21, 2015

(1) Addition of the constitution of the item e

Regarding the constitutions of the Registered Design (addition)

e The optical image of the gradation patterns arranged at the center part in the thickness direction of the laminated glass of the glass face plate, when an incident angle incident on an air layer from a glass located outside is smaller than a critical angle, is emitted to the outside through the glass, and when the incident angle incident on the air layer from the glass located outside is larger than the critical angle, is fully reflected on an outer surface of the glass not to be emitted to the outside, so that there appear a state in which the gradation patterns can be seen and a state in which it cannot be seen, depending on a position viewed from the outside.

(2) According to the constitution of item e, when the part of the handrail relating to the Registered Design is viewed outside from a front side, the gradation patterns arranged at the center part in the thickness direction of the laminated glass are visually recognized through the glass face plate on the outer side. Against that, when viewed from a

direction oblique to the glass face plate of the handrail, for example, when viewed from the left side or the right side, and when observed at an angle larger than the critical angle, the gradation patterns arranged at the center part in the thickness direction of the laminated glass are fully reflected on the outer surface of the glass face plate to return to the inside, and cannot be seen from the outside. Namely, depending on a viewing position, a state in which the gradation patterns can be seen and a state in which it cannot be seen appear, and a characteristic aesthetic impression is generated.

Such a phenomenon is the same, for example, when observing carp in a pond. Water in the pond corresponds to one of the laminated glasses, and the carp in the bottom of the pond corresponds to the gradation patterns. When peeking in the pond from the top of the pond, one can see the carp in the bottom of the pond through a transparent water medium. On the other hand, when looking at the surface of the pond from a diagonal direction at a low position, one cannot see an optical image of the carp in the pond. This is because the optical image of the carp in the diagonal direction exceeding the critical angle is fully reflected at the interface between the water and the air and returned to the pond and the image light of the carp is not emitted outside. Namely, for the carp in the pond, there appear the state in which the optical image can be seen and the state in which it cannot be seen.

(3) The constitution of the item e above, is based on the constitution in which the gradation patterns are arranged at the center part in the thickness direction of the laminated glass of the glass face plate, the optical image of the gradation patterns is emitted to the air layer side through the laminated glass on the outer side, and observers are enabled to see the gradation patterns by visually recognizing that.

In the constitution in which a gradation pattern film is stuck on the outer surface

of the glass face plate merely to see the gradation pattern formed on this film, the optical mage of the gradation patterns directly radiates an image outside without passing through the glass face plate. Therefore, in that case, the gradation patterns do not return to the inside due to the full reflection, and the state in which the gradation patterns can be seen and the state in which it cannot be seen do not appear. Also, in the constitution of item e of the Registered Design, the gradation patterns are arranged at the center part, and laminated glasses are arranged on both sides thereof. Therefore, the phenomenon that the optical image cannot be seen due to the returning of the optical image to the inside due to the full reflection respectively occurs in the glass plates on both sides.

II Written statement dated August 7, 2015

(1) Correction of the constitution of item e

The constitution of item e is corrected as follows.

e The optical image of the gradation patterns arranged at the center part in the thickness direction of the laminated glass of the glass face plate, when an incident angle incident on an air layer from a glass located outside is larger than a critical angle, is fully reflected on an outer surface of the glass not to be emitted to the outside, and when the incident angle incident on the air layer from the glass located outside is smaller than the critical angle, is emitted to the outside through the glass.

(2) Refutation against the allegation that it is a technical effect

The constitution of item e defines a functional constitution brought by the combination of the glass plates fitted with each other and the gradation patterns interposed between these glass plates, and defines a functional constitution of the

generation of Image light directly linked to aesthetic impression, and does not describe a mere technical effect.

(3) The D-D' cross-sectional detailed view about the application of the case clearly shows the constitution that the gradation patterns are "arranged at the center part in the thickness direction of the laminated glass." The damandant, in the oral proceedings statement brief dated November 19, 2016, as Evidence A No. 14-1 and Evidence A No. 14-2, presented a prior art document that discloses a configuration relating to a medium having patterns between laminated glasses. The configuration indicates that the medium having the patterns at the center part in the thickness direction of the laminated glass exists, and is similar to the constitution that the gradation patterns are "arranged at the center part in the thickness direction of the laminated glass" in the case of the Registered Design. This means that the demandant recognizes that the design in the application is a configuration in which the gradation patterns are arranged at the center part in the thickness direction of the laminated glass.

(4) In the Registered Design, an optical image of gradation patterns, when an incident angle incident on an air layer from a glass located outside is larger than a critical angle, is not emitted to the outside due to full reflection and the gradation patterns cannot be seen, while emitted to the outside through the glass when the incident angle is smaller than the critical angle to enable the optical image of the gradation pattern to be seen, and it does not insist that it creates the state in which the gradation patterns cannot be seen.

5. Demandant's written statement

Also, the demandant gave an opinion about the demandee's written statement

dated May 21, 2015, by the written demandant dated July 2, 2015.

Written statement dated July 2, 2015

"he gradation patterns arranged at the center part in the thickness direction of the laminated glass of the glass face plate" which is as the basis of the claim of the claim by the claimant "composition of the e term" as grounds for the allegation of "the constitution of the item e" by the demandee, is not described in any of the initial application and drawings of the case (Evidence A No. 15), the written amendment submitted on August 6, 2010 (Evidence A No. 16), and the written amendment submitted on May 20, 2011 (Evidence A No. 17), and cannot be grounds for various allegations.

If "item e" "Depending on a viewing position, a state in which the gradation patterns can be seen and a state in which it cannot be seen appear, and characteristic aesthetic impression is generated" alleged by the demandee, is nothing but a technical effect of some configuration, and it is the technical effect provided by the Registered Design, the Registered Design must be the one which "changes transparency to be high in an upper part and low in a lower part, and transparency therebetween in a gradation manner," so that it is inconsistency itself to allege that bringing out a state in which the gradation patterns cannot be seen as one of "effects," and it is obvious that the addition of "the constitution of the item e" is improper also from that point.

Means of evidence

(1) Evidence A No. 15: A copy of the request for design registration and drawings of the Registered Design

(2) Evidence A No. 16: A copy of the written amendment submitted on August 6, 2010

(3) Evidence A No. 17: A copy of the written amendment submitted on May 20, 2011

No. 4 Judgment by the body

(Reason for invalidation 1)

The body determines that the Registered Design is not recognized as a design similar to any of the design described in Evidence A No. 4 which is Publication distributed in Japan prior to the filing of the application of the Registered Design (Reason for invalidation 1-1) (hereinafter, referred to as "Cited Design 1-1") and the design described in Evidence A No. 8 (Reason for invalidation 1-1) (hereinafter, referred to as "Cited Design 1-2"), the design described in Evidence A No. 5 (Reason for invalidation 1-2) (hereinafter, referred to as "Cited Design 2"), the design described in Evidence A No. 6 (Reason for invalidation 1-3) (hereinafter, referred to as "Cited Design 3-1") and the design described in Evidence A No. 7 (Reason for invalidation 1-3) (hereinafter, referred to as "Cited Design 3-2"), the design described in Evidence A No. 9 (Reason for invalidation 1-4) (hereinafter, referred to as "Cited Design 4-1"), and the design described in Evidence A No. 10 (Reason for invalidation 1-4) (hereinafter, referred to as "Cited Design 4-2"), and does not fall under Article 3(1)(iii) of the Design Act.

(Reason for invalidation 2)

However, the Registered Design is recognized as a design which would have been able to be easily created by a person skilled in the art based on the design described in Evidence A No. 2 which is a Publication distributed in Japan prior to the filing of the application of the Registered Design (hereinafter, referred to as "Cited Design 5"), the design described in Evidence A No. 3 (hereinafter, referred to as "Cited

Design 6"), and Cited Designs 1-1 to 4-2 which are the designs described in Evidences A No. 4 to A No. 10 and the design described in Evidence A No. 11 (hereinafter, referred to as "Cited Design 7"), and it is determined that it falls under the provision of Article 3(2) of the Design Act, and thus should not be registered.

1. Registered Design (refer to Appendix 1)

The application of the Registered Design (the design of The Design Registration No. 1423705) was filed on May 28, 2010 (Heisei 22) and an establishment of the design right was registered on August 26, 2011 (Heisei 23), the Article to the Registered Design is a "Handrail," and the form is as described in the application and drawings attached to the application, and "a part represented by a solid line is the part for which the design registration is requested as a partial design." (Hereinafter, in the Registered Design, the part for which the design registration is requested as a partial design referred to as "the part of the case") (Evidence A No. 1 submitted by the demandant: refer to Appendix 1)

That is, the Registered Design is a handrail used for a balcony and the like of a building.

In the form, as a whole, a face plate glass portion of a generally laterally long rectangular shape in a front view is surrounded by a frame consisting of an upper rail, right and left struts, and a lower rail, and tree struts in an intermediate part are provided on a rear side. The part of the case is each glass face plate (hereinafter, referred to as the "glass face plate") of four generally laterally long rectangular glass portions. In the form of the part, the glass face plate is a laminated glass of the same shape on a front side and a rear side, and the glass face plate is formed in a rectangular shape slightly

vertically long in a front and back view. The glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner. The aspect ratio of the glass face plate is set to about 9 : 8, and the glass face plates are provided so that right and left sides in a front view are in contact with each other. The part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/2 of the vertical height in a front view of the glass face plate.

2. Regarding Reason for invalidation 1 (Article 3(1)(iii) of the Design Act)

Since there are a plurality of Cited Designs, Reason for invalidation 1 is divided into Reasons for invalidation 1-1 to 1-4 about each Cited Design, and parts corresponding to the part of the case in Cited Designs 1-1 to 4-2 are referred to as Cited Parts 1-1 to 4-2, and are compared below as aligned to an orientation of a front view of the part of the case.

Cited Design

(1) Reason for invalidation 1-1

(1-1) Cited Design 1-1 (the design described in Evidence A No. 4) (refer to Appendix 2)

Evidence A No. 4 was posted on Pages 26, 27, and 29 of a magazine "NIKKEI ARCHITECTURE 2005.12-12" (accepted in the National Diet Library on December 20, 2005), and represents a photo of a "Handrail" installed in "Kyushu National Museum" opened on October 16, 2005 on each page.

Cited Design 1-1 relates to a handrail of a partition plate also functioning as a falling-down preventive plate which is disposed along a peripheral edge portion of a

stairwell of a floor facing a stairwell part in "Kyushu National Museum." The glass portion of the handrail of Cited Design 1-1 is a plurality of glass face plates continuously provided at the same height, which forms an upper rail in a columnar shape, is surrounded by a frame consisting of right and left vertical struts, and a lower frame, and is equipped with a strut in a horizontal direction at a position of about 1/3 of an upward position. In the form of the glass face plate corresponding to the part of the case (hereinafter, referred to as "Cited Part 1-1"), the glass face plate is formed in a laterally long rectangular shape in a front view, the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner, the aspect ratio of the glass face plate in a front view is set to about 2 :3, the glass face plates are provided so that right and left sides in a front view are in contact with each other, and the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/3 of the vertical height in a front view of each glass face plate.

(1-2) Cited Design 1-2 (the design described in Evidence A No. 8) (refer to Appendix 3)

Evidence A No. 8 was posted on Pages 66, 67, and 71 of a magazine "SHINKENCHIKU/2006/2" (accepted in the National Diet Library on February 3, 2006), and represents the photo of the "Handrail" installed in "Kyushu National Museum" opened on October 16, 2005 on each page.

Also, although on Page 71, the photo taken from a lower floor of a "Handrail" used for a stair landing is posted, as Cited Design 1-2, those on Pages 66 and 67 are adopted.

Cited Design 1-2 relates to the handrail of the partition plate also functioning as the falling-down preventive plate which is disposed along the peripheral edge portion of

the stairwell on the floor facing the stairwell part in "Kyushu National Museum," as in the case of Cited Design 1-1. The glass portion of the handrail of Cited Design 1-2 is a plurality of glass face plates continuously provided at the same height, which forms an upper rail in a columnar shape, and is surrounded by a frame consisting of right and left vertical struts, and a lower frame, and is equipped with a strut in a horizontal direction at a position of about 1/3 of an upward position. In the form of the glass face plate corresponding to the part of the case (hereinafter, referred to as "Cited Part 1-2"), as in the case of Cited Part 1-1, the glass face plate is formed in a laterally long rectangular shape in a front view, the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner, the aspect ratio of the glass face plate in a front view is set to about 2 : 3, the glass face plates are provided so that right and left sides in a front view are in contact with each other, and the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/3 of the vertical height in a front view of each glass face plate.

(2) Reason for invalidation 1-2

Cited Design 2 (the design described in Evidence A No. 5) (refer to Appendix 4)

Evidence A No. 5 was posted on Pages 160 and 161 of a magazine "KINDAI KENCHIKU 7, Vol. 60 July 2006," and represents a photo of a "Handrail" installed in "Ibaraki City Lifelong Learning Center KIRAMEKI."

Cited Design 2 relates a handrail of a partition plate also functioning as a falling-down preventive plate which is disposed along a peripheral edge portion of a stairwell of a floor facing a stairwell part of Ibaraki City Lifelong Learning Center KIRAMEKI. The glass portion of the handrail of Cited Design 2 is a plurality of glass face plates

continuously provided at the same height, which is not provided with an upper rail, but is provided with a frame consisting of a lower rail, and is equipped with circular metal fittings connected to struts on a rear side close to right and left sides at a position of about 1/9 upward and about 1/9 downward of each glass face plate. In the form of the glass face plate corresponding to the part of the case (hereinafter, referred to as "Cited Part 2"), the glass face plate is formed in a vertically long rectangular shape in a front view, the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner, the aspect ratio of the glass face plate in a front view is set to about 5 : 4, the glass face plates are provided so that right and left sides in a front view are in contact with each other, and the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/3 to about 1/2 of the vertical height in a front view of each glass face plate.

(3) Reason for invalidation 1-3

(3-1) Cited Design 3-1 (the design described in Evidence No. 6) (refer to Appendix 5)

Evidence A No. 6 was posted on Pages 109, 114, and 115 of a magazine "SHINKENCHIKU 2003.11" (issued on November 1, 2003, and accepted in the Construction Industry Library), and represents a photo of a "Handrail" installed in "Tamagawa Takashimaya S. C. New South Bldg." on each page.

Also, the handrail posed on the upper right of Page 115 is for stairs, as Cited Design 3-1, the handrails posted on Pages 109 and 114 are adopted.

Cited Design 3-1 is a handrail equipped with a falling-down preventive partition plate which is disposed along a peripheral edge portion of a stairwell of a floor facing a stairwell part of Tamagawa Takashimaya S. C. New South Bldg. The glass portion of

the handrail of Cited Design 3-1 is a plurality of the glass face plates continuously provided at the same height, which is not provided with an upper rail, but is provided with a frame consisting of a lower rail, is provided with a rail on a rear side of a position of about 1/5 upward of the glass portion, and is equipped with small-sized square-shaped metal fittings connected to struts on the rear side close to right and left sides at a position of about 1/5 upward and about 1/5 downward of each glass face plate. In the form of the glass face plate corresponding to the part of the case (hereinafter, referred to as "Cited Part 3-1"), the glass face plate is formed in a slightly vertically long rectangular shape in a front view, the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner, the aspect ratio of the glass face plate in a front view is set to about 5 : 4, the glass face plates are provided so that right and left sides in a front view are in contact with each other, and the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/3 to about 1/2 of the vertical height in a front view of each glass face plate.

(3-2) Cited Design 3-2 (the design described in Evidence A No. 7) (refer to Appendix 6)

Evidence A No. 7 was posted on Pages 8 and 12 of a magazine "NIKKEI ARCHITECTURE 2003.11-10," and is represents the photo of the "Handrail" installed in "Tamagawa Takashimaya S. C. New South Bldg." on each page.

Cited Design 3-2 is the handrail equipped with the falling-down preventive partition plate which is disposed along the peripheral edge portion of the stairwell on the floor facing the stairwell part of Tamagawa Takashimaya S. C. New South Bldg. The glass portion of the handrail of Cited Design 3-2 is a plurality of the glass face plates continuously provided at the same height, which is not provided with an upper

rail, but is provided with a frame consisting of a lower rail, is provided with a rail on a rear side of a position of about 1/5 upward of the glass portion, and is equipped with small-sized square-shaped metal fittings connected to struts on the rear side close to right and left sides at a position of about 1/5 upward and about 1/5 downward of each glass face plate. In the form of the glass face plate corresponding to the part of the case (hereinafter, referred to as "Cited Part 3-2"), as in the case of Cited Part 3-1, the glass face plate is formed in a slightly vertically long rectangular shape in a front view, the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner, the aspect ratio of the glass face plate in a front view is set to about 5 : 4, the glass face plates are provided so that right and left sides in a front view are in contact with each other, and the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/3 to about 1/2 of the vertical height in a front view of each glass face plate.

(4) Reason for invalidation 1-4

(4-1) Cited Design 4-1 (the design described in Evidence A No. 9) (refer to Appendix 7)

Evidence A No. 9 was posted in a magazine "SHINKENCHIKU 2006.11" (issued on November 1, 2006, and accepted in the Construction Industry Library) (Vol. 81, No. 12), and represents a photo of a "Handrail" installed in "Seikei University Information Library" on each page.

Cited Design 4-1 is a handrail equipped with a partition plate also functioning as a falling-down preventive plate which is disposed along a peripheral edge portion of a stairwell of a floor facing a stairwell part in Seikei University Information Library. The glass portion of the handrail of Cited Design 4-1 is a plurality of the glass face

plates continuously provided at the same height, which is not provided with an upper rail, but is provided with a frame consisting of a lower rail, is provided with a rail on a rear side of a position of about 1/3 and about 2/5 upward of the glass portion, and is equipped with small-sized square-shaped metal fittings connected to struts on the rear side close to right and left sides at a position of about 1/4 upward of each glass face plate. In the form of the glass face plate corresponding to the part of the case (hereinafter, referred to as "Cited Part 4-1"), the glass face plate is formed in a vertically long rectangular shape in a front view, the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner, the aspect ratio of the glass face plate in a front view is set to about 4 : 3, the glass face plates are provided so that right and left sides in a front view are in contact with each other, and the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/4 to about 1/3 of the vertical height in a front view of each glass face plate.

(4-2) Cited Design 4-2 (the design described in Evidence A No. 10) (refer to Appendix 8)

Evidence A No. 10 was posted on Pages 8, 9, and 11 of a magazine "NIKKEI ARCHITECTURE 2006.11-27" (issued on November 27, 2006, and accepted in the Construction Industry Library), and represents a photo of the "Handrail" installed in "Seikei University Information Library" on each page.

Cited Design 4-2 is the handrail equipped with the partition plate also functioning as the falling-down preventive plate which is disposed along the peripheral edge portion of the stairwell of the floor facing the stairwell part in Seikei University Information Library. The glass portion of the handrail of Cited Design 4-2 is a

plurality of the glass face plates continuously provided at the same height, which is not provided with an upper rail, but is provided with a frame consisting of a lower rail, is provided with a rail on a rear side of a position of about 1/3 and about 2/5 upward of the glass portion, and is equipped with small-sized square-shaped metal fittings connected to struts on the rear side close to right and left sides at a position of about 1/4 upward of each glass face plate. In the form of the glass face plate corresponding to the part of the case (hereinafter, referred to as "Cited Part 4-2"), as in the case of Cited Part 4-1, the glass face plate is formed in a slightly vertically long rectangular shape in a front view, the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner, the aspect ratio of the glass face plate in a front view is set to about 4 : 3, the glass face plates are provided so that right and left sides in a front view are in contact with each other, and the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/4 to about 1/3 of the vertical height in a front view of each glass face plate.

3. Comparison between the Registered Design and each Cited Design

(1) Article to the design

First, regarding the article to which the designs are respectively applied, since the Registered Design is a "Handrail" and Cited Design 1-1 to 4-2 are also a "Handrail," and each of the handrails is a handrail used for a building, articles to which the designs are respectively applied are common.

(2) The usage and the function as well as the position, the size, and the scope of the two parts of the part of the case and respective Cited Parts

The whole part including the part of the case is one which surrounds a face plate glass portion of a generally laterally long rectangular shape in a front view by a frame consisting of an upper rail, right and left struts, and a lower rail, and is provided with three struts in an intermediate part on a rear side, and the part of the case is each of four glass face plates of a generally laterally long rectangular shape surrounded by the frame.

On the other hand, Cited Part 1-1 and Cited Part 1-2 are a plurality of glass face plates of a laterally long rectangular shape in a front view, which are surrounded by a frame, an upper columnar rail, right and left struts, and a lower rail, are equipped with struts in a horizontal direction at a position of about 1/3 upward thereof, and are the plurality of the glass face plates of a laterally long rectangular shape in a front view continuously provided. The usage and the function as well as the position, the size, and the scope of the two parts are common.

Cited Part 2 is not provided with the upper rail, but is provided with the frame consisting of the lower rail, is equipped with circular metal fittings connected to struts on a rear side close to right and left sides at a position of about 1/9 upward and about 1/9 downward thereof, and is the plurality of glass face plates of a laterally long rectangular shape in a front view continuously provided. The usage and the function as well as the position, the size, and the scope of the two parts are common.

Cited Part 3-1 and Cited Part 3-2 are not provided with the upper rail, but is provided with the frame consisting of the lower rail, are provided with a rail on a rear side of a position of about 1/5 upward thereof, are equipped with small-sized square-shaped metal fittings connected to struts on the rear side close to right and left sides at a position of about 1/5 upward and about 1/5 downward of each glass face plate, and are the plurality of the glass face plates of a slightly vertically long rectangular shape in a

front view continuously provided. The usage and the function as well as the position, the size, and the scope of the two parts are common.

Cited Part 4-1 and Cited Part 4-2, are not provided with the upper rail, but are provided with the frame consisting of the lower rail, are provided with a rail on a rear side of a position of about 1/3 and about 2/5 upward thereof, are equipped with small-sized square-shaped metal fittings connected to struts on the rear side close to right and left sides at a position of about 1/4 upward of each glass face plate, and are the plurality of the glass face plates of a generally vertically long rectangular shape in a front view continuously provided. The usage and the function as well as the position, the size, and the scope of the two parts are common.

(3) Common features and different features in the forms of the two parts of the part of the case and respective Cited Parts

(3-1) Comparison between the part of the case and Cited Part 1-1 and Citer Part 1-2

The two parts have the following common features.

(3-1-a) The plurality of glass face plates are continuously provided, (3-1-b) The glass face plates are provided so that right and left sides in a front view are in contact with each other, and (3-1-c) The glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner.

On the other hand, the two parts have the following different features.

(3-1-A) The part of the case is a laminated glass of the same shape on a front side and a rear side, whereas, in Cited Part 1-1 and Cited Part 1-2, it is unknown whether or not the glass face plate is a laminated glass, (3-1-B) The part of the case forms the glass face plate in a slightly vertically long rectangular shape in a front view,

and the aspect ratio of the glass face plate in a front and back view is set to about 9 : 8, whereas Cited Part 1-1 and Cited Part 1-2 form the glass face plate in a laterally long rectangular shape in a front view, and the aspect ratio of the glass face plate in a front view is set to about 2 : 3, and (3-1-C) In the part of the case, the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/2 of the vertical height in a front view of the glass face plate, whereas, in Cited Part 1-1 and Cited Part 1-2, the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/3 of the vertical height in a front view of each glass face plate.

(3-2) Comparison between the part of the case and Cited Part 2

The two parts have the following common features.

(3-2-a) The plurality of glass face plates are continuously provided, and each glass face plate is formed in a vertically long rectangular shape in a front and back view, (3-2-b) The glass face plates are provided so that right and left sides in a front view are in contact with each other, and (3-2-c) The glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner.

On the other hand, the two parts have the following different features.

(3-2-A) The part of the case is a laminated glass of the same shape on a front side and a rear side, whereas, in Cited Part 2, it is unknown whether or not the glass face plate is a laminated glass, (3-2-B) In the part of the case, the aspect ratio of the glass face plate in a front view is set to about 9 : 8, whereas in Cited Part 2, the aspect ratio of the glass face plate in a front view is set to about 5 : 4, and (3-2-C) In the part of the case, the part where the transparency is changed to a low level in a gradation manner is provided in a

part of about 1/2 of the vertical height in a front view of the glass face plate, whereas, in Cited Part 2, the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/3 to about 1/2 of the vertical height in a front view of each glass face plate.

(3-3) Comparison between the part of the case and Cited Part 3-1 and Cited Part 3-2

The two parts have the following common features.

(3-3-a) The plurality of glass face plates are continuously provided, and each glass face plate is formed in a vertically long rectangular shape in a front and back view, (3-3-b) The glass face plates are provided so that right and left sides in a front view are in contact with each other, and (3-3-c) The glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner.

On the other hand, the two parts have the following different features.

(3-3-A) The part of the case is a laminated glass of the same shape on a front side and a rear side, whereas, in Cited Part 3-1 and Cited Part 3-2, it is unknown whether or not the glass face plate is a laminated glass, (3-3-B) In the part of the case, the aspect ratio of the glass face plate in a front view is set to about 9 : 8, whereas in Cited Part 3-1 and Cited Part 3-2, the aspect ratio of the glass face plate in a front view is set to about 5 : 4, and (3-3-C) In the part of the case, the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/2 of the vertical height in a front view of the glass face plate, whereas, in Cited Part 3-1 and Cited Part 3-2, the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/3 to about 1/2 upward of the vertical height in a front view of each glass face plate.

(3-4) Comparison between the part of the case and Cited Part 4-1 and Cited Part 4-2

The two parts have the following common features.

(3-4-a) The plurality of glass face plates are continuously provided, and each glass face plate is formed in a vertically long rectangular shape in a front and back view, (3-4-b) The glass face plates are provided so that right and left sides in a front view are in contact with each other, and (3-4-c) The glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner.

On the other hand, the two parts have the following different features.

(3-4-A) The part of the case is a laminated glass of the same shape on a front side and a rear side, whereas, in Cited Part 4-1 and Cited Part 4-2, it is unknown whether or not the glass face plate is a laminated glass, (3-4-B) In the part of the case, the aspect ratio of the glass face plate in a front view is set to about 9 : 8, whereas in Cited Part 4-1 and Cited Part 4-2, the aspect ratio of the glass face plate in a front view is set to about 4 : 3, and (3-4-C) In the part of the case, the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/2 of the vertical height in a front view of the glass face plate, whereas, in Cited Part 4-1 and Cited Part 4-2, the part where the transparency is changed to a low level in a gradation manner is provided in a part of about 1/4 to about 1/3 upward of the vertical height in a front view of each glass face plate.

4. Determination of similarity

(1) The articles to the design of the Registered Design and Cited Designs 1-1 to 4-2 are common, and the usage and the function as well as the position, the size, and the scope

of the part of the case and Cited Parts 1-1 to 4-2 are also common.

(2) The forms of the two parts

As a whole of the common features, considering an influence on the determination of similarity between the forms of the part of the case and Cited Parts 1-1 to 4-2, it cannot be said that the common features are strong enough to lead to the determination of their similarity in the forms of the two parts.

On the other hand, the design effect generated synergistically by the respective forms relating to the different features between the two parts, defines the determination of similarity in the forms between the part of the case and Cited Parts 1-1 to 4-2.

Considering that, although the common feature (3-1-a), the common feature (3-2-a), the common feature (3-3-a), and the common feature (3-4-a) relate to the basic constitution of the whole part, the form continuously provided with the plurality of glass face plates, is normally found in the field of this type of article, and an influence of this on the determination of similarity between the two parts of the part of the case and Cited Parts 1-1 to 4-2 is feeble. Also, concerning the common feature (3-1-b), the common feature (3-2-b), the common feature (3-3-b), and the common feature (3-4-b), it can be said that the form in which the glass face plates are provided so that right and left sides in a front view are in contact with each other is already ordinary also in other than the two parts in the field of this type of article, and it cannot be said that it is especially characteristic recognized only in the two parts, and thus an influence of this point on the determination of similarity between the two parts is feeble. Then, concerning the common feature (3-1-c), the common feature (3-2-c), the common feature (3-3-c), and the common feature (3-4-c), the form in which the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes

transparency in an intermediate part in a gradation manner, is already seen in other than the two parts in the field of this type of article, so that it cannot be said to be a remarkable characteristic, and the effect of this point on the determination of similarity between the two parts stays at a certain degree.

Also, (A) concerning the difference whether or not it is a laminated glass, about the point that the part of the case is a laminated glass of the same shape on a front side and a rear side, whereas, in Cited Part 1-1 and Cited Part 4-2, it is unknown whether or not the glass face plate is a laminated glass, since whether or not it is a laminated glass when observed from the outside cannot be regarded as an outstanding form, influences respectively exerted by the different feature (3-1-A), the different feature (3-2-A), the different feature (3-3-A), and the different feature (3-4-A) on determination of similarity between the two parts cannot be recognized.

On the other hand, (B) concerning the aspect ratio, about the part of the case and Cited Part 1-1, Cited Part 1-2, and Cited Part 2 of the different feature (3-1-B) and the different feature (3-2-B), the aspect ratios in a front view of each glass face plate are greatly different. The form of the part of the case which is vertically long, and the forms of Cited Part 1-1, Cited Part 1-2, and Cited Part 2 which are laterally long, give different impressions to consumers, and it can be said that the difference gives an influence on the determination of similarity between the two parts. Also, concerning the part of the case and Cited Part 3-1, Cited Part 3-2, Cited Part 4-1, and Cited Part 4-2 of the different feature (3-3-B) and the different feature (3-4-B), the aspect ratio in a front view of each glass face plate does not match with the part of the case. The difference thereof cannot be ignored, and it can be said that these differences give an influence on the determination of similarity between the two parts.

Furthermore, (C) concerning a position of a gradation, about the part of the case and Cited Parts 1-1 to 4-2 of the different feature (3-1-C), the different feature (3-2-C), the different feature (3-3-C), and the different feature (3-4-C), it cannot be said that the position of the gradation also matches. The difference cannot be ignored, and it can be said that the differences in this point give an influence on the determination of similarity between the two parts to a certain degree.

All of these differences affect the impression of the glass face plate when the two parts are viewed from the outside, so that it can be said that these differences give an influence on the determination of similarity between the two parts to a certain degree.

(3) Summary

As described above, although the articles to the design of the Registered Design and Cited Designs 1-1 to 4-2 are common, and the usage and the function as well as the position, the size, and the scope of the part of the case and Cited Parts 1-1 to 4-2 are also common, in the forms of the two parts of the part of the case and Cited Parts 1-1 to 4-2, the different features are far stronger than the common features, and the different features cause different aesthetic impression of consumers as the whole design, so that it is recognized that the two designs are not similar to each other.

(4) Closing

Therefore, the Registered Design is a design which is not similar to any one of Cited Designs 1-1 to 4-2 described in Evidence A No. 4 to A No. 10 (Reason for invalidation 1-1 to Reason for invalidation 1-4) posed in Publications distributed in Japan prior to the filing of the application of the Registered Design, does not fall under Article 3(1)(iii) of the Design Act, and has no reason for invalidation. It is recognized that the Registered Design does not fall under Article 48(1)(i) of the Design Act.

5. Reason for invalidation 2 (Article 3(2) of the Design Act)

It is recognized that The Registered Design would have been able to be easily created by a person skilled in the art based on the designs described in Evidence A No. 2 (Cited Design 5), Evidence A No. 3 (Cited Design 6), Evidence A No. 4 to A No. 10 (Cited Designs 1-1 to 4-2 of Reason for invalidation 1), and Evidence A No. 11 (Cited Design 7) which were distributed in Japan prior to the filing of the application of the Registered Design, and it is determined that it falls under the provision of Article 3(2) of the Design Act, and thus should not be registered.

(1) Cited Design

(A) Cited Designs 1-1 to 4-2

Cited Designs 1-1 to 4-2 are identical to Cited Designs 1-1 to 4-2 of Reason for invalidation 1. (refer to Appendixes 2 to 5)

(B) Cited Design 5 (Evidence A No. 2 submitted by the demandant: refer to Appendix 9)

Cited Design 5 (the design of Design Registration No. 1260850) was filed on April 18, 2005 (Heisei 17) described in the design bulletin of Evidence A No. 2; an establishment of the design right was registered on December 2, 2005 (Heisei 17); and the design bulletin was published on January 23, 2006 (Heisei 18). The article to the design is "Handrail" and its form is as described in the application and the drawings attached to the application. (Hereinafter, a part corresponding to the part for which the design registration is requested as a partial design in the Registered Design is referred to as "Cited Part 5".)

That is, Cited Design 5 is a handrail used for a balcony or a corridor of an apartment house.

In its form, as a whole, a face plate glass portion of a generally laterally long rectangular shape in a front view is surrounded by a frame consisting of an upper rail and a lower rail, tree struts in an intermediate part are provided on a rear side, and C-shaped connecting portions (hereinafter, referred to as the "C-shaped connecting portions") sandwiching the glass face plate on the right and left on a front side of each strut are provided at a slightly upward part of the strut. The upper rail and an upper part of the strut are connected by providing a generally trapezoid connector in a side view, and the lower frame is laterally bridged at a position at about 1/6 of the height of the whole strut from the bottom of the strut. Cited Part 5 is each of four glass face plates of a generally laterally long rectangular glass portion. In the form of the part, the glass face plate is a glass of the same shape on a front side and a rear side, the glass face plate is formed in a slightly vertically long rectangular shape in a front and back view, the glass face plate is transparent, the aspect ratio of the glass face plate is set to about 9 : 8, and right and left sides in a front view of the glass face plate are provided so as to be contacted with the C-shaped connecting portion.

(C) Cited Design 6 (Evidence A No. 3 submitted by the demandant: refer to Appendix 10)

Cited Design 6 (the design of Design Registration No. 1318894) was filed on March 8, 2007 (Heisei 19) described in the design bulletin of Evidence A No. 3; an establishment of the design right was registered on December 7, 2007 (Heisei 19); and the design bulletin was published on January 15, 2008 (Heisei 20). The article to the design is "Handrail" and its form is as described in the application and the drawings

attached to the application. (Hereinafter, a part corresponding to the part for which the design registration is requested as a partial design in the Registered Design is referred to as "Cited Part 6".)

That is, Cited Design 6 is a handrail used for a balcony and the like.

In its form, as a whole, a face plate glass portion of a generally laterally long rectangular shape in a front view is surrounded by a frame consisting of an upper rail and a lower rail, and two struts in an intermediate part are provided on a rear side. Cited Part 6 is each of three glass face plates of a generally laterally long rectangular glass portion. In the form of the part, the glass face plate is a tempered glass or a laminated glass of the same shape on a front side and a rear side, the glass face plate is formed in a slightly vertically long rectangular shape in a front and back view, the glass face plate has translucency as a whole, the aspect ratio of the glass face plate is set to about 8 : 7, and the glass face plates are provided so that right and left sides in a front view are in contact with each other.

(D) Cited Design 7 (Evidence A No. 11 submitted by the demandant: refer to Appendix 11)

Cited Design 7 is described in a catalog of "3M/Fasara/Fasara Glass Shade/2008-2009" issued by Sumitomo 3M Limited which is Evidence A No. 11, and there is posted a design which sticks a screen expressing sand eyes or dots on a glass to express a gradation.

On Page 5 of Evidence A No. 11, there is posted an article installed in a stair as a "Handrail" (Hand Rail) which is shown by a photo, and the form in which the gradation patterns of a glass face plate is formed to have high transparency in an upper part and low transparency in a lower part.

Also, on Page 9, there is posted a description that "walls and windows expressing a smooth gradation from soft milky white to transparent, by gradually changing the density of consecutive white spots in the glass shade"; in each case, the form which is formed to have high transparency in an upper part and low transparency in a lower part and is actually constructed.

(2) Determination of creative easiness of the Registered Design

(A) In the field of handrails installed in balconies and the like of this type of building, a glass of a form in which a laterally long rectangular glass portion is arranged on a front side, and a strut is hidden on a rear side, for example, as shown in Cited Design 5 (refer to Appendix 9) and Cited Design 6 (refer to Appendix 10), was already publicly known prior to the filing of the registered design.

(B) Also, it can be said that in the field of handrails of this type, as shown in Cited Design 5 (refer to Appendix 9), making the number of glass face plates four is also an ordinary form with no special characteristics. The form in which the glass face plates are provided so that right and left sides are contacted with each other to make a laminated glass, as shown in Cited Design 6 (refer to Appendix 10), can be said to be a form already publicly known prior to the filing of the Registered Design. Each of forms is a form which is adopted in the field of handrails of this type prior to the filing of the Registered Design and it is impossible to find the original creation of the Registered Design on its outer shape or the form itself as a laminated glass.

(C) Then, it can be said that the form in which the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner was a form already commonly known prior to

the filing of the application of the Registered Design (for example, Cited Designs 1-1 to 4-2 (refer to Appendixes 2 to 10), Cited Design 7 (refer to Appendix 8)).

(D) The aspect ratio of the glass face plate should be appropriately changed according to an installation place and the like, and it can be said that setting the aspect ratio of the glass face plate to about 9 : 8 which is a slightly vertically long rectangular shape, for example, as shown in Cited Design 5 (refer to Appendix 6), is a form already publicly known prior to the filing of the application of the Registered Design. Therefore, it is impossible to find the special characteristics of the Registered Design.

Furthermore, although the demandee alleges that the Registered Design has a feature in the gradation patterns arranged at the center part in the thickness direction of the laminated glass of the glass face plate, in the field of glass used for buildings, the coloring of glasses such as windows for light shielding and the provision of parts which are difficult to see by lowering the transmittance as necessary can be said to be a means already commonly known prior to the filing of the application of the Registered Design, so that it can be said that they do not have novel features. Where the method of applying gradation patterns on the glass face plate is not only sticking a screen but various possible methods, considering that the one in which a gradation pattern is provided at the center part in the thickness direction of the laminated glass (Reference Design; Evidence A No. 14-2: Japanese Unexamined Patent Application Publication No. 2006-1807 (refer to Appendix 12)) has already been publicly known, as well as the Registered Design, it is impossible to say that the form of the Registered Design is unique, in the point that the glass face plate of the handrail is made to be the laminated glass and the gradation patterns are arranged at the center part in the thickness direction

thereof, and the demandee's allegation cannot be adopted.

Also, although it is stated that regarding Cited Design 7 of Evidence A No. 11, the date or the number of circulation issues are unknown and the publicity thereof is doutful, "3M/Fasara/Fasara Glass Shade/2008-2009" issued by Sumitomo 3M Limited can be browsed also on the Internet even now as "Fasara Glass Film", and the indication of 2015-2016 is made as "It is a sample book in 2015," so that the indication of 2008-2009 can be normally inferred to be a catalog from 2008 (Heisei 20) to 2009 (Heisei 21) according to usual commercial practice, so that it can be said that it was highly probable that it was publicly known before 2010 (Heisei 22) which is the filing date of the Registered Design. A number of the handrails with the gradation patterns, as shown in Cited Designs 1-1 to 4-2, are more likely to be recognized prior to the filing of the application for the Registered Design, and the form in which the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner can be said as an ordinary form, and thus it cannot be said that it is a unique characteristics of the Registered Design, and no particular creativeness is recognized in that.

The demandee's allegation about these points are absolutely irrational.

Then, the Registered Design is a handrail surrounding a face plate glass portion of a generally laterally long rectangular shape in a front view with a frame consisting of an upper rail, right and left struts, and a lower rail, provided with three struts of an intermediate portion on a rear side, and used for a balcony of a building, as a whole. The part of the case which is the part for which the design registration is requested as a partial design is each of four glass face plates of a generally laterally long rectangular

glass portion as shown in Cited Design 5 and Cited Design 6, the glass face plates are provided so that right and left sides in a front view are in contact with each other as shown in Cited Design 6, the glass face plate is a laminated glass of the same shape on a front side and a rear side, the glass face plate is formed in a slightly vertically long rectangular shape in a front and back view as in Cited Design 5, and the glass face plate has high transparency in an upper part, low transparency in a lower part, and changes transparency in an intermediate part in a gradation manner, which is a widely known form as shown in Cited Designs 1-1 to 4-2 or Cited Design 7. It is merely to set the aspect ratio of the glass face place to about 9 : 8, the same as in Cited Design 5, and to provide the part where the transparency is changed to a low level in a gradation manner in a part of about 1/2 of the vertical height in a front view of the glass face plate, so that it cannot be recognized that an particular creativeness of a person skilled in the art is required, and it is recognized that the design would have been able to be easily created.

(3) Summary

As described above, the Registered Design would have been able to be easily created by a person who has ordinary skill in the field of the design based on shapes that were publicly known in Japan or a foreign country prior to the filing of the application, and therefore, the Registered Design was granted design registration in spite of falling under the category of Article 3(2) of the Design Act, and has reasons for invalidation.

6. Closing

As described above, the Registered Design was granted design registration in spite of falling under the provision of Article 3(2) of the Design Act, with the designs shown in Cited Designs 1-1 to 7, and falls under the provision of Article 48(1)(i) of the

Design Act, so that its registration should be invalidated.

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

January 22, 2016

Chief administrative judge: HONDA, Seiichi
Administrative judge: SAITO, Takae
Administrative judge: EZUKA, Naohiro

Appendix 1 Registered Design

Appendix 2　Cited Design 1-1

Appendix 3　Cited Design 1-2

Appendix 4　Cited Design 2

Appendix 5　Cited Design 3-1

Appendix 6　Cited Design 3-2

Appendix 7　Cited Design 4-1

Appendix 8　Cited Design 4-2

Appendix 9　Cited Design 5

Appendix 10 Cited Design 6

Appendix 11 Cited Design 7

Appendix 12　Reference Design　Evidence A No. 14-2