

Trial decision

Invalidation No. 2016-880020

Tokyo, Japan

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The case of trial regarding the invalidation of design registration for Design Registration No. 1537464, entitled "Coat" between the parties above has resulted in the following trial decision.

Conclusion

Design registration No. 1537464 is invalidated.

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

Reason

No. 1 History of the procedures

Design Registration No. 1537464 (hereinafter referred to as the "Registered Design") was filed on January 30, 2015 (Design Application No. 2015-1810) for seeking application of the provision of Article 4(2) of the Design Act; establishment of the design right was registered on October 9, 2015 after examination; the design bulletin was published on November 9, 2015; and then in summary, the following procedures were conducted by the body.

Request for trial of the case

October 18, 2016

Submission of a written reply	December 26, 2016	
Submission of a written refutation of the trial case		March 1, 2017
Submission of a written reply to the inquiry (Demandant)		April 3, 2017
Submission of a written reply to the inquiry (Demandee)		April 28, 2017
Submission of a written reply (2)	April 28, 2017	
Submission of an oral proceedings statement brief (Demandant)		June 28, 2017
Submission of an oral proceedings statement brief (Demandee)		July 12, 2017
Submission of an oral proceedings statement brief (2) (Demandant)		July 14, 2017
Oral proceeding	July 26, 2017	

No. 2 Reasons for invalidation

1. Reasons for Invalidation 1

The demandant alleges that, as Reasons for Invalidation 1, the Registered Design is similar to a design (a design published in Evidence A No. 3-1 to No. 3-3) that was publicly known before the application for the Registered Design was filed and thus should not be registered under Article 3(1)(iii) of the Design Act, and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

2. Reasons for Invalidation 2

The demandant alleges that, as Reasons for Invalidation 2, the Registered Design is similar to a design (a design published in Evidence A No. 11) that had become available to the public through electric communication lines before the application for the Registered Design was filed and thus should not be registered under Article 3(1)(iii) of the Design Act, and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

3. Reasons for Invalidation 3

The demandant alleges that, as Reasons for Invalidation 3, that the Registered Design is similar to a design that was publicly known, a design described in a distributed publication, or a design (a design published in Evidence A No. 13) that had become available to the public through electric communication lines before the application for the Registered Design was filed and thus should not be registered under Article 3(1)(iii) of the Design Act, and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

4. Reasons for Invalidation 4

The demandant alleges that, as Reasons for Invalidation 4, that the Registered Design is a design that could be easily created by a person of ordinary skilled in the art based on one or more designs that were publicly known (a design published in Evidence A No. 3-1 to No. 3-3, a design published in Evidence A No. 4, a design published in Evidence A No. 7, a design published in Evidence A No. 10, a design published in Evidence A No. 11, a design published in Evidence A No. 13, and a design published in Evidence A No. 14) before the application for the Registered Design was filed and thus should not be registered under Article 3(2) of the Design Act, and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

No. 3 Outline of the demandant's allegation

1. Gist of Registered Design

The article to the Registered Design, as described in the Design Bulletin (Evidence A No. 1) of Design Registration No. 1537464, is "Coat", and as for its form, the basic constitutions are as follows. Further, in the explanation of the constitutions, so as to make a name of each part clear, Reference Material 1 to Reference Material 3 (Evidence A No. 1-2) are attached. Also, for the sake of convenience, left and right directions are based on the state of being viewed facing a front surface of the coat.

(a) The article is a long sleeve coat with a hood composed of a generally bag-shaped body portion which has armhole portions formed on both side surface upper parts, and a neckline opening portion at the center portion of a front surface upper side to wrap a body, and is formed with a front alignment portion for aligning left and right front body parts in the vertical direction at the front surface center; a hood-shaped hood portion which is attached to the neckline opening portion to appropriately cover a neck and a head; and two generally cylindrical sleeve portions which are attached to the armhole portions to respectively cover right and left arms.

(b) The body portion has a body main portion which is wrapping human body, and two generally rectangular cloth members arranged such that their longitudinal direction is perpendicular to a center line of the body portion, on right and left sides of a front surface waist portion, and the cloth members are sewn on the body main portion at upper edge portions thereof to have a flap shape.

(c) The body portion has a band-shaped thick decorative belt arranged so that its longitudinal direction is substantially perpendicular to the center line of the body portion, on a back surface waist portion, and the decorative belt is sewn on both sides (back side switching lines described later) of the body main portion at respective end portions thereof, and has length such that the central part is slacked downward.

- (d) The hood portion has a thick string-shaped fur around an upper edge of the hood main portion (hereinafter, referred to as the hood periphery)
- (e) The sleeve portion has a generally horizontally rectangular fur in front view around a cuff of a sleeve main portion.
- (f) The body portion has a chest portion positioned at a bust part of a wearer, a torso portion positioned at a waist part, and a waist portion positioned at a hip part and a thigh part, and an outline (silhouette) is a design that squeezes the torso portion while keeping the chest portion and waist portion bulging. Also, the waist portion, in front view, has a shape (so-called cocoon type) in which the central portion in the vertical direction positioned at the hip portion swells to the left and right sides and gradually narrows toward a hem direction (downward).

Then, the specific constitutions are as follows.

- (g) In the body portion, at the generally center of the front surface, an edge part of the front alignment portion appears as a straight line extending in the vertical direction, and one straight stitch parallel to this is made on the left side in front view.
- (h) In the body portion, there are front switching lines extending in the vertical direction on both sides of the front surface, and they are divided by the flap-shaped cloth members at the waist portion. Also, on the right and left sides of the front surface of the chest portion, a short straight dart line that obliquely extends downward to the front switching line appears.
- (i) In the body portion, there is a back center switching line that is a straight line extending in the vertical direction at the center of the back surface, and there are back side switching lines that extend in the vertical direction on both sides of the back surface.
- (j) The neckline opening portion of the body portion is a generally elliptical opening portion (round neck).
- (k) The hood portion has lateral width that does not reach shoulders in rear view, and is compact with little swelling in side view.
- (l) The fur of the hood portion is attached to the hood so as to be generally annular.
- (m) The fur of the sleeve portion is attached around the cuff so as to be generally annular.
- (n) The length of the sleeve portion is about 75% of the length of the body portion.
- (o) The cloth members and the decorative belt of the body portions are arranged so as to be positioned at generally the same height in the waist portion in side view.
- (p) In an aspect in which the hood portion is removed from the neckline opening portion, the fur is removed from both sleeve portions, and then the removed fur on both sleeve

portions are connected and attached to a neckline (neck), it is assumed that the fur on both sleeve portions is connected in a band-shape at one end portions, and is attached as a false collar (hereinafter, referred to as the tippet) in a generally annular shape so that the other end becomes a collar on the throat side (Evidence A No. 1-1).

(q) The fur around the hood and the cuff has a different color scheme from the navy coat main (the hood portion, the sleeve main portion, and the body main portion, the flap-shaped cloth member, and the decorative belt) (so-called two-tone color).

2. Reasons for invalidation of the Registered Design

(1) Regarding Reasons for Invalidation 1

(A) Description of the fact and evidence of presence of prior design

(A1) Regarding Prior Publicly Known Design A (Evidence A No. 3-1 to No. 3-3)

Prior Publicly Known Design A is a design of a product of "Double Face Melton No-collar Coat with Hood" (Item No. 13020900390040) sold by BAYCREW'S CO., LTD. under its brand "IENA" (hereinafter, referred to as the "IENA product").

(A2) Description of the evidence (Prior Publicly Known Design A)

*Evidence A No. 3-1

Evidence A No. 3-1 is the website of Style Cruise that is a mail order site of BAYCREW'S GROUP, to which BAYCREW'S CO., LTD. belongs, and the IENA product is listed.

*Evidence A No. 3-2

Evidence A No. 3-2 is the one enlarging and printing each image (a part of what is listed in the part described as "Color" and the part described as "Other images" on the center left side on Page 1 of Evidence A No. 3-1). Further, the IENA product is a product that is developed in three colors that differ only in color.

*Evidence A No. 3-3

Evidence A No. 3-3 is the website that is introduced on the Style Cruise website as "Blog introducing this product" (in the lower part on Page 1 of Evidence A No. 3-1).

(A3) Description of the evidence (prior peripheral designs of Prior Publicly Known Design A)

(B) Relationship between the filing date of the Registered Design and the publication date of Design A

The IENA product had started being sold on December 18, 2013 at the latest (Evidence A No. 3-1 to No. 3-3), and the design filing date of the Registered Design is January 30, 2015. Therefore, Design A of the IENA product is a prior publicly known design.

(C1) Gist of Prior Publicly Known Design A

The article to The Prior Publicly Known Design A is "Coat, and as for its form, the basic constitutions are as follows. Further, in accordance with the Registered Design, it is certified while the left and right front body parts (front alignment portion) are closed.

(A-a) The article is a long sleeve coat with a hood composed of a generally bag-shaped body portion which has armhole portions formed on both side surface upper parts, and a neckline opening portion at the center portion of a front surface upper side to wrap a body, and is formed with a front alignment portion for aligning left and right front body parts in the vertical direction at the front surface center; a hood-shaped hood portion which is attached to the neckline opening portion to appropriately cover a neck and a head; and two generally cylindrical sleeve portions which are attached to the armhole portions to respectively cover right and left arms.

(A-b) The body portion has a body main portion which is wrapping a human body, and two generally rectangular cloth members arranged such that their longitudinal direction is perpendicular to a center line of the body portion, on right and left sides of a front surface waist portion, and the cloth members are sewn on the body main portion at upper edge portions thereof to have a flap shape.

(A-c) The body portion has a band-shaped thick decorative belt arranged so that its longitudinal direction is substantially perpendicular to the center line of the body portion, on a back surface waist portion, and the decorative belt is sewn in both sides (back side switching lines described later) of the body main portion at both end portions thereof, and has length such that the central part is slacked downward.

(A-f) The body portion has a chest portion positioned at a bust part of a wearer, a torso portion positioned at a waist part, and a waist portion positioned at a hip part and a thigh part, and an outline (silhouette) is a design that squeezes the torso portion while keeping the chest portion and waist portion bulging. Also, the waist portion, in front view, has a shape (so-called cocoon type) in which the central portion in the vertical direction positioned at the hip portion swells to the left and right sides and gradually narrows toward a hem direction (downward).

Then, the specific constitutions are as follows.

(A-g) In the body portion, at the generally center of the front surface, an edge part of the front alignment portion appears as a straight line extending in the vertical direction, and one straight stitch parallel to this is made on the left side in front view.

(A-h) In the body portion, there are front switching lines extending in the vertical direction on both sides of the front surface, and they are divided by the flap-shaped

cloth members at the waist portion. Also, on the right and left sides of the front surface of the chest portion, a short straight dart line that obliquely extends downward to the front switching line appears.

(A-i) In the body portion, there is a back center switching line that is a straight line extending in the vertical direction at the center of the back surface, and there are back side switching lines that extend in the vertical direction on both sides of the back surface.

(A-j) The neckline opening portion of the body portion is a generally elliptical opening portion (round neck).

(A-k) The hood portion has lateral width that does not reach shoulders in rear view, and is compact with little swelling in side view.

(A-n) The length of the sleeve portion is about 75% of the length of the body portion.

(A-o) The cloth members and the decorative belt of the body portions are arranged so as to be positioned at generally the same height in the waist portion in side view.

(A-s) There is a cuff switching line in a circumferential direction around the cuff of the sleeve portion.

Further, it is also described that the hood portion has a removable structure, and the coat can be worn without collar (Evidence A No. 3-2).

(C2) Comparison of the article to the design of Registered Design and Prior Publicly Known Design A

The two designs relate to "Coat" and the articles to the design of the two designs are the same.

(C3) Regarding common features and different features in form between Registered Design and Prior Publicly Known Design A

Unlike the Registered Design, Prior Publicly Known Design A (IENA product) does not have fur around a hood and cuffs, and thus the different feature of the constitutions of Prior Publicly Known Design A and the constitutions of the Registered Design is the presence or absence of the constitutions related to the fur around the hood and the cuffs described above. However, the two designs are common in the constitutions of the coat body (the hood portion, the sleeve main portion, and the body main portion, the flap-shaped cloth member, and the decorative belt) other than the presence or absence of the cuff switching line.

Specifically, the common features of the two designs are the constitutions shown in a, b, c, f, g, h, I, j, k, n, and o of "1. Gist of Registered Design" mentioned above, and the constitutions shown in A-a, A-b, A-c, A-f, A-g, A-h, A-i, A-j, A-k, A-n, and A-o of "(C1) Gist of Prior Publicly Known Design A" described above. The different features

of the two designs are the presence or absence of the constitutions shown in d, e, l, m, p and q of "1. Gist of Registered Design" mentioned above, and the presence or absence of A-s of "(C1) Gist of Prior Publicly Known Design A."

(C4) Evaluation of common features and different features in form between Registered Design and Prior Publicly Known Design A

As described above, the Registered Design and Prior Publicly Known Design A are common in the constitutions such as the shape or layout of the hood main portion, the sleeve main portion, the body main portion, the cloth members, the decorative belt, the front alignment portion, the neckline opening portion, the switching line, and the dart line. In particular, in the outline of the coat (silhouette), the feature that the torso portion of the body main portion is the so-called cocoon type is common between the two designs. That is, the constitutions of the coat body (the hood portion, the sleeve main portion, and the body main portion, the flap-shaped cloth member, and the decorative belt) of the two designs are exactly the same except for the slight difference of the presence or absence of the cuff switching line.

The different feature of Prior Publicly Known Design A the Registered Design is the constitution related to the fur around the hood or the cuffs. However, at the time of filing the Registered Design, as described above, there had been many coats (Prior Publicly Known Designs) having fur around a hood and cuffs of such a constitution, and like, for example, Prior Peripheral Designs Da, Db, Dc, Dd, and De, those were introduced in magazines published in 2013 (Evidence A No. 4), blogs updated in 2010 (Evidence A No. 5 and Evidence A No. 6), and blogs updated in 2013 (Evidence A No. 7) before the application for the Design was filed. Namely, the form of the coat having fur around the hood or the cuffs and the form of the hood or the cuffs with the fur removed from the coat were publicly known. In this way, the configuration having the fur around the hood and around the cuffs, and the fact that the fur can be removed were the constitutions adopted in various coats before the application of the Registered Design was filed and are common to consumers, and thus cannot be the main part of the design or the registered design.

Therefore, the two designs cause the same or common esthetic impression of consumers as the whole design, and Prior Publicly Known Design A and the Registered Design are similar to each other.

(C5) Conclusion about the similarity based on evaluation of common features and different features in form in article and form related to the designs of Registered Design and Prior Publicly Known Design A

Thus, the articles to the design of the two designs are the same, and the forms

thereof are similar, so that the two designs are similar to each other as a whole.

(D) Summary

Therefore, the Registered Design, based on the existence of Prior Publicly Known Design A, cannot be granted under the provisions of Article 3(1)(iii) of the Design Act and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

(2) Regarding Reasons for Invalidation 2

(A) Regarding Prior Publicly Known Design B (Evidence A No. 11)

Prior Publicly Known Design B is a design that shows a state in which a product of "5-WAY Cocoon Coat" (Item No. 24421971) sold by ARPEGE Co., Ltd., who is the demandee, under its brand "Apuweiser-riche" (hereinafter, referred to as the "demandee product A") is viewed from generally the front side without a bijou brooch.

(B) Gist of Prior Publicly Known Design B

The article to The Prior Publicly Known Design B is "a coat, and as for its form, the basic constitutions are as follows. Further, the form of Prior Publicly Known Design B is recognized only from an image taken from one direction which is generally the front side. Therefore, the design recognized only from images (enlarged and displayed with increased brightness) displayed by Internet Archive WayBack Machine is certified while the left and right front body parts (front alignment portion) are closed, in accordance with the Registered Design.

(B-a) The article is a long sleeve coat with a hood composed of a generally bag-shaped body portion which has armhole portions formed on both side surface upper parts, and a neckline opening portion at the center portion of a front surface upper side to wrap a body, and is formed with a front alignment portion for aligning left and right front body parts in the vertical direction at the front surface center; a hood-shaped hood portion which is attached to the neckline opening portion to appropriately cover a neck and a head; and two generally cylindrical sleeve portions which are attached to the armhole portions to respectively cover right and left arms.

Further, it is unknown whether or not the hood portion is removable.

(B-b) The body portion has a body main portion which is wrapping a human body, and two generally rectangular cloth members arranged such that their longitudinal direction is perpendicular to a center line of the body portion, on right and left sides of a front surface waist portion, and the cloth members are sewn on the body main portion at upper edge portions thereof to have a flap shape. (the flap-shaped cloth member also appears on the right side of the front surface waist portion.)

(B-e) The sleeve portion has a generally horizontally rectangular fur in front view around a cuff of a sleeve main portion. Further, it is unknown whether or not the fur is removable.

Then, the specific constitutions are as follows.

(B-g) In the body portion, at the generally center of the front surface, an edge part of the front alignment portion appears as a straight line extending in the vertical direction, and one straight stitch parallel to this is made on the left side in front view. (The stitch partially appears on the lower left side of the edge part of the front alignment portion.)

(B-h) In the body portion, there are front switching lines extending in the vertical direction on both sides of the front surface, and they are divided by the flap-shaped cloth members at the waist portion. (It is presumed that there is also the switching line similar to that of the right side of the front surface on the left side of the front surface.) Also, on the right and left sides of the front surface of the chest portion, a short straight dart line that obliquely extends downward to the front switching line cannot be confirmed.

(B-m) The fur of the sleeve portion is attached around the cuff so as to be generally annular.

(B-n) The length of the sleeve portion is about 75% of the length of the body portion.

(B1) Comparison of the article to the design of Registered Design and Prior Publicly Known Design B

The two designs relate to "Coat" and the articles to the design of the two designs are the same.

(B2) Regarding common features and different features in form between Registered Design and Prior Publicly Known Design B

Unlike the Registered Design, Prior Publicly Known Design B does not have fur of a hood, and thus Prior Publicly Known Design B is mainly different in the constitutions of the Registered Design described above which are related to the fur around the hood and the neckline opening portion. Also, Prior Publicly Known Design B is a design recognized only by the image from one direction, so that its constitution on the back surface side is unknown. However, as the demandee alleges that the demandee product A has the same as an implemented product of the Registered Design except for the different feature that the fur around the hood does not exist (Evidence A No. 12), the constitutions of Prior Publicly Known Design B are common with the main constitutions when the Registered Design is viewed from the front side.

(B3) Evaluation of common features and different features in form between Registered Design and Prior Publicly Known Design B

As described above, Prior Publicly Known Design B and the Registered Design are common in the constitutions such as the shape or layout of the hood main portion, the sleeve main portion, the body main portion, the cloth members, the front alignment portion, and the switching line. That is, the form of Prior Publicly Known Design B and the form in which the design removing the fur around the hood from the Registered Design is viewed from the front side are the same in the main constitutions, although there are partially unknown constitutions.

The main different feature of Prior Publicly Known Design B and the Registered Design is the constitution related to the fur around the hood. However, as described above, at the time of filing the application of the Registered Design, the coat having the fur around the hood of the constitution mentioned above was common for consumers and cannot be the main part of the design.

Therefore, the two designs cause the same or common esthetic impression of consumers as the whole design, and Prior Publicly Known Design B and the Registered Design are similar to each other.

(B4) Conclusion about the similarity based on evaluation of common features and different features in form in article and form related to the designs of Registered Design and Prior Publicly Known Design A

Thus, the articles to the design of the two designs are the same, and the forms thereof are similar, so that it can be said that the two designs are similar to each other as a whole.

(C) Summary

Therefore, the Registered Design, based on the existence of Prior Publicly Known Design B, cannot be granted under the provisions of Article 3(1)(iii) of the Design Act and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

(3) Regarding Reasons for Invalidation 3

(A) Regarding Prior Publicly Known Design C (Evidence A No. 13-1 and Evidence A No. 13-2)

Design C is a design of a product of "Cocoon Coat" (Item No. 24422350) sold by ARPEGE Co., Ltd. under its brand "Apuweiser-riche" (hereinafter, referred to as the "demandee product B").

(B) Relationship between the filing date and the like of the Registered Design and the publication date of Prior Publicly Known Design C

The demandee submitted a proving document for seeking the application of the

provision of exception to lack of novelty of design (Evidence A No. 2), regarding Design C (Evidence A No. 9 and Evidence A No. 10) related to the demandee product A ("5-WAY Cocoon Coat" (Item No. 24421971), when the application of the Registered Design was filed. Further, the demandee product B ("Cocoon Coat" (Item No. 24422350) has been sold by the demandee since August 1, 2014, which is prior to the filing date of the application of the Registered Design (January 30, 2015) (Evidence A No. 8 and Evidence A No. 12), and Design C (Evidence A No. 13) is a publicly known design (Article 3(1)(ii) of the Design Act) resulting from the action of the demandee. Here, since Design C related to the demandee product B and Design B related to the demandee product A have the different feature that is the presence or absence of the fur around the hood, as the demandee recognizes (Evidence A No. 12), it is obvious that the forms are not the same.

Then, Article 4 of the Design Act regulating exceptions to lack of novelty was amended in 1999, and for "a document for proving" of the filing of the application for design registration in which the application of the provision of Article 4(2) of the Design Act is sought (a proving document for seeking the application of provision of exceptions to lack of novelty), it is necessary to describe all published designs seeking the application of the provision. However, when the application of the Registered Design was filed, Design C of the demandee product B that was a published design before the filing of the application is not described in the proving document for seeking the application of provision of exceptions to lack of novelty. Therefore, Design C of the demandee product B cannot receive the application of provision of exceptions to lack of novelty, and is a prior publicly known design.

(B1) Gist of Prior Publicly Known Design C

The article to the demandee product B is "Coat". As the demandee himself/herself alleges that it is an implemented product of the Registered Design (Evidence A No. 12), it is the one in which a bijou broach is attached to the coat according to the Registered Design. Therefore, the constitutions of the form of Prior Publicly Known Design C in which the bijou broach is removed are the same as the constitutions (a) to (q) of the form of the Registered Design. Also, the constitution of the bijou broach is as follows.

(C-r) The body portion has a bijou broach at an upper end of the front alignment portion.

(B2) Comparison of the article to the design of Registered Design and Prior Publicly Known Design C

The two designs relate to "Coat" and the articles to the design of the two designs are the same.

(B3) Regarding common features and different features in form between Registered Design and Prior Publicly Known Design C

Unlike the Registered Design, Prior Publicly Known Design C is equipped with a bijou broach, so that the constitutions of Prior Publicly Known Design B and the constitutions of the Registered Design differ only in the constitution of (C-r) described above, and all the other constitutions described above are common.

(B4) Evaluation of common features and different features in form between Registered Design and Prior Publicly Known Design C

As described above, the design in which the bijou broach is removed from Prior Publicly Known Design C and the Registered Design are the same in the constitutions of the form and have no different feature.

Further, in Prior Publicly Known Design C, the bijou broach has a removable structure.

Therefore, the two designs cause the same or common esthetic impression of consumers as the whole design, and Prior Publicly Known Design C and the Registered Design are similar to each other.

(B5) Conclusion about the similarity based on evaluation of common features and different features in form in article and form related to the designs of Registered Design and Prior Publicly Known Design C

Thus, the articles to the design of the two designs are the same, and the forms thereof are similar, so that it can be said that the two designs are similar to each other as a whole.

(C) Summary

Therefore, the Registered Design, based on the existence of Prior Publicly Known Design C, cannot be granted under the provisions of Article 3(1)(iii) of the Design Act and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

(D) Refutation against the demandee's allegation

(D1) Regarding the application of provision of exceptions to lack of novelty

(A) The demandee's allegation

The demandee alleges, regarding the demandee product A and the demandee product B, that "the designs of the two products are substantially the same design, and can receive the application of exceptions to lack of novelty."

(B) Regarding substantially the same design

However, considering that the demandee emphasizes the feature (limited point) in which the demandee product B is different from the demandee product A and has the

fur on both the sleeves and the hood in the advertisement and the like of the demandee product B, it is obvious that it is impossible to recognize the two designs as substantially the same.

Therefore, there is no reasons for the demandee's allegation "the designs of the two products are substantially the same design." Although the difference between the demandee product A and the demandee product B is only the fur around the hood, it can be guessed that the purpose of using the advertising phrase "has fur on both the sleeve and the hood" is that it is conscious of other products that have no fur on the sleeve and the hood (for example, the IENA product).

(D2) Regarding requirements for the application of exceptions to lack of novelty

Further, precedent cited by the demandee (Evidence B No. 9) merely indicates the gist of provision of exceptions to lack of novelty, and although there is no objection, precedent cited for indicating the requirements for specific application (Evidence B No. 10) relates to the design filed before the application of Design Act of 1999, and it cannot be used as a ground for the determination on the requirements for the application provision of exceptions to lack of novelty of the Registered Design.

In the (Explanation) of Examination Manual for Design 42.44 (Japan Patent Office Website "Examination Manual for Design"), it is described that "Article 4(2) of the Design Act amended in 1999, regardless of whether the published design before the filing of the application for design registration is the same as or similar to the design of the application for design registration of the Registered Design, explicitly stipulates so as not to be rejected by the provisions of Article 3(1) or 3(2) of the Design Act, when the published design described in 'the document for proving' satisfies the appropriate requirements. Thus, it became necessary to describe all published designs for seeking the application of the provisions of Article 4(2) of the Design Act in 'the document for proving' as a reflex effect of this provision."

The Registered Design was filed on January 30, 2015, and thus it is necessary to also describe the design of the demandee product B in "the document for proving" so as to receive the application of the provisions of Article 4(2) of the Design Act for both the design of the demandee product A and the design of the demandee product B (Prior Publicly Known Design C) published before the filing of the application.

However, there is no description about the design of the demandee product B in "the document for proving." Therefore, the demandee's allegation is unreasonable.

(D3) Refutation against the demandee's allegation that the coat having the fur around both the sleeves and hood similar to the embodiment of the Registered Design (Design Registration No. 1537464) is included in the coat attached to the proving document for

receiving the application of the provisions of Article 4(2) of the Design Act

(D3-1) Regarding the matter that "identicalness of design" and "ease of creation" are different concepts

As "the identicalness, similarity, and non-similarity of design" and "the ease of creation" are stipulated in different articles ("Article 3(1)" and "Article 3(2)"), those are quite different concepts. Even though the demandee product B is "easy to create" from the demandee product A, it does not become a ground for the fact that the demandee product A and the demandee product B are "the same design."

(D3-2) The application of the provision of exception to lack of novelty

The demandee alleges that the published design of the demandee product B can receive the application of the provisions of Article 4(2) of the Design Act, since the product development of the demandee product B had been completed on August 1, 2014, which is the first publication date of the demandee product A described in "the document for proving" (Evidence A No. 2), and since it had been ordered to a supplier before the first publication date of the demandee product A.

However, in the application of the provision of exception to lack of novelty, the completion period of product development is not a requirement for application judgment, and it is absolutely irrational.

(D3-3) Revision Act of 1999 and Gist thereof

The demandee uses the history of product development as the ground for the application of the provision of exception to lack of novelty. However, regarding the Revision Act of 1999 of Article 4 of the Design Act, in "1.2 Problems in Old law (2)" of "1. Gist of Revision" of "Standards for Design Examination of Design Revision Act of 1999" (Evidence A No. 39), it is described that "looking at the actual state of product development in industry, for products released at the same time, although there are many cases of simultaneously creating several similar designs, their publication periods may not always be at the same time," Article 4 of the Design Revision Act of 1999 was amended to properly protect the designs of variations created with the same design concept. The requirements have been eased so that when the published designs satisfy the predetermined requirements regardless of the identicalness, similarity, and non-similarity to the design of the application for design registration, by performing the predetermined procedures, the provisions of Article 4 (2) of the Revision Act can be applied to all published designs that have undergone the procedures. This revision will save "a person who is entitled to be granted design registration" and avoids imposing unnecessary burdens on "third parties".

Here, in the Registered Design, "the demandee product A" and "the demandee

product B" were developed as products to be sold at the same time (2014 fall/winter products), and "the design according to the demandee product A," "the published design according to the demandee product B," and "the Registered Design" are variations of designs created under the same design concept that are not "the same design." The sales of "the demandee product A" and "the demandee product B" were started in different periods.

Then, this case falls under the case of "1.2 Problems in Old law (2)," and it is considered that it is contrary to the gist of the law revision to permit the application of the provisions of Article 4(2) of the Design Act for the published design of the demandee product B for which the predetermined procedure has not been made.

(E) Regarding the written reply (2)

The demandee alleges, about the design (Publicly Known Design C) of the demandee product B (Product B) "[Arpege story Limited] Cocoon Coat" (Item No. 24422350), that the demandee product A (Product A) "5-WAY Cocoon Coat" (Item No. 24421971) is described in "the document for proving," and since the demandee product B is the same product as the demandee product A and has substantially the same form, the demandee product B can also receive the application of the provisions of Article 4(2) of the Design Act.

(E1) Regarding Evidentiary Fact G

Here, against the demandee's allegation "Product A and Product B are the same product" described above, it is proved and alleged by objective evidence (Evidence A No. 45) that the demandee product A and the demandee product B are different products (Evidentiary Fact G).

Evidence A No. 45 proves the fact that the demandee product A and the demandee product B were sold as different products (Evidentiary Fact G).

(E2) Regarding Evidence A No. 45

Evidence A No. 45 is online store records (Page 1) of 2014 of the brand "Apuweiser-riche" linked to "Apuweiser-riche" of the top menu under the header "Arpege story" of the homepage of the online store "Arpege Story" of the demandee, and excerpts (Pages 2 to 4) of what is recorded and provided on this website as it was published on October 25, 2014.

In the center on Page 3, "Ranking popular ranking items" are introduced, the demandee product A "5-WAY Cocoon Coat" (Item No. 2421971) is in 3rd place, the demandee product B "[Arpege story limited] Cocoon Coat" is in 2nd place. The demandee product A and the demandee product B are simultaneously ranked as different products.

(E3) Summary

In this way, the demandee product A "5-WAY Cocoon Coat" (Item No. 2421971) and the demandee product B "[Arpege story limited] Cocoon Coat" (Item No. 24422350) are not the same product, but different products. Also, the designs of the two products A and B differ in the presence or absence of the fur about the hood, and are not the same. Therefore, the design of the demandee product B (Prior Publicly Known Design C) is not "the same design" as the demandee product A described in "the document for proving," and thus cannot receive the application of Article 4(2) of the Design Act.

(F) Regarding new allegation based on additional evidence

As described in Statement Brief (1), the demandee alleges that the reason why an image attaching the fur to around both the sleeves and the hood is not published in the Internet image of the side of "5-WAY Cocoon Coat" (the demandee product X (Item No. 24421970)) that is a published design described in "the proving document for seeking the application of the provision of exception to lack of novelty of design" is that the sale of this product began in midsummer, August 1, 2014, and it was too early to advertise the product with fur on the hood, so that the image of the state in which the fur was attached around both the sleeve and the hood was merely not published (introduced) in business (the written reply).

However, the demandee product X without the fur around the hood was simultaneously pre-ordered as the "Fake Mouton Coat" with the fur around both the cuffs and the hood (Evidence A No. 47-3).

(G) Refutation to the written reply

Regarding recognition as "a design in a combination form"

Although the design is recognized by "article to the design" and "the form of the article according to the design," it is considered that the demandee recognizes the Registered Design while confusing "article to the design" and "the form of the article according to the design." The "five ways of wearing" alleged by the demandee do not indicate the form of the design, but the use/function of the article (how to use the coat). In the Design Act, the design, under the principle of one application for one design, is specified in the form of one design by the lines and colors constituting the design shown in a set of drawings and other necessary drawings. The number of combinations that is the total five ways alleged by the demandee is not protected, and the form of each combination (each method of using) is not individually protected.

Therefore, the demandee's allegation is unreasonable.

(4) Regarding Reasons for invalidation 4

(A) Regarding Prior Publicly Known Designs A, B, C, Da, De, Ea, and Eb (Evidence A No. 3-1 to No. 3-3, Evidence A No. 11, Evidence A No. 13-1 and Evidence A No. 13-2, Evidence A No. 4, and Evidence A No. 7)

(A1) Explanation of evidence

*Evidence A No. 4

Evidence A No. 4 is a copy of the cover and the page of the magazine "AneCan" issued in December, 2013, the design of "Hood Coat of Laisse Passe" (hereinafter, referred to as "Prior Peripheral Design Da") and the design of "A-line Coat of BANNER BARRETT" (hereinafter, referred to as "Prior Peripheral Design Db") are published in "the collar & sleeve change coat section" on the right side of the second piece. "Hood Coat of Laisse Passe" (Prior Peripheral Design Da) has a coat having a hood, and fur around the hood and cuffs. The hood, and the fur around the hood and the cuffs are removable, and the form while they are removed is published. "A-line Coat of BANNER BARRETT" (Prior Peripheral Design Db) is a coat having fur around a neckline (neck) and cuffs. The fur of the neckline portion, and the fur around the cuffs are removable, and the form while they are removed is published. Further, on the pages of the magazine (Pages 2 to 4 of Evidence A No. 4), in addition to these coats, there are published many coats with fur around the hood and coats with fur around the neckline (neck).

*Evidence A No. 7

Evidence A No. 7 is an article titled "Bit Duffle Coat" on the blog "eponge," and the design of "Bit Duffle Coat" having removable fur around a hood and cuffs (hereinafter, referred to as "Prior Peripheral Design De") is introduced. Further, the "Bit Duffle Coat" (Prior Peripheral Design De) is a product sold by ARPEGE Co., Ltd., who is the demandee, under its brand "JUSGRITTY" (hereinafter, referred to as the "demandee product D").

*Evidence A No. 14

Evidence A No. 14 is the website of "Feroux" of ONWARD KASHIYAMA Co., Ltd., and an ONWARD product (Prior Publicly Known Design Ea) (hereinafter, referred to as the "ONWARD product") is introduced in the article titled "Super popular 5-Way Dolly Coat." Prior Publicly Known Design Ea is the design of "5-Way Dolly Coat" sold by ONWARD KASHIYAMA Co., Ltd., under its brand "Feroux."

*Evidence A No. 10

Evidence A No. 10 is "Catalog of fall/winter edition in 2014 of the plaintiff" attached to "Description of evidence (1)" submitted by the demandee on March 18,

2016, and the demandee product C (hereinafter, referred to as the "demandee product C") is published on the upper side of Page 4 (Page 26 of the catalog). Prior Publicly Known Design Eb is the design of a product "2-Way Tweed Switch Down Coat with Bijou" sold by the demandee under its brand "Apuweiser-riche."

(B) Relationship between the filing date of the Registered Design and the publication dates of Design Da, Design De, Design Ea, and Design Eb

*Design Da

The magazine "AneCan" issued in December, 2013 in which Design Da was published was issued by Shogakukan Inc. on November 7, 2013 (Evidence A No. 4), and the filing date of the application of the Registered Design is January 30, 2015, so that Design Da "Hood Coat" of the product of Laisse Passe is a prior publicly known design.

*Regarding Prior Publicly Known Design De

The article titled "Bit Duffle Coat" on the blog "eponge" in which Design De was introduced was updated on September 19, 2013 (Evidence A No. 7), and the filing date of the application of the Registered Design is January 30, 2015, so that Design De of the product "Bit Duffle Coat" is a prior publicly known design.

*Regarding Prior Publicly Known Ea

The ONWARD product was introduced in the article titled "Super popular 5-Way Dolly Coat" updated on November 12, 2010, the filing date of the application of the Registered Design is January 30, 2015, so that Design Ea of the ONWARD product is a prior publicly known design.

*Regarding Prior Publicly Known Eb

It is estimated that the sale of the demandee product C, like the demandee product A, was started from August 1, 2014 (Facts to be proved column on Page 4 of Evidence A No. 8 "Description of evidence (1)"), and it was distributed before the catalog fair from August 22, 2014 (Evidence A No. 14), and the filing date of the application of the Registered Design is January 30, 2015, so that Design Db of the demandee product C is a prior publicly known design.

(C) Gist of Prior Publicly Known Designs Da and Db and Prior Publicly Known Design Ea and Eb

*Regarding Prior Publicly Known Designs Da and De

The articles to Prior Publicly Known Designs Da and De are "Coat" the coat having fur at a hood portion and sleeve portions (fur around a hood and cuffs), and the forms about the fur are as follows.

(Da and De-d) The hood portion has a thick string-shaped fur around an upper edge of

the hood main portion.

(Da and De-e) The sleeve portion has a generally horizontally rectangular fur in front view around a cuff of a sleeve main portion.

(Da and De-l) The fur of the hood portion is attached to the hood so as to be generally annular.

(Da and De-m) It is presumed that the fur of the sleeve portion is attached around the cuff so as to be generally annular.

(Da-q) The fur around the hood and the cuff has a white color scheme that is different from the body part of the off-white coat (so-called two-tone color).

(De-q) The fur around the hood and the cuffs has a darker color scheme than the body part of the thin camel coat (so-called tow-tone color).

Further, the fur around the cuffs is removable, and the form in which the fur is removed is also publicly known.

*Regarding Prior Publicly Known Designs Ea and Eb

The articles to Prior Publicly Known Designs Ea and Eb are "Coat" the coat having fur at sleeve portions (fur around cuffs), and the forms about the fur are as follows.

(Ea and Eb-e) The sleeve portion has a generally horizontally rectangular fur in front view around a cuff of a sleeve main portion.

(Ea and Eb-m) It is presumed that the fur of the sleeve portion is attached around the cuff so as to be generally annular.

(Ea and Eb-p) In an aspect in which the fur is removed from both sleeve portions, and then the removed fur on both sleeve portions are connected and attached to a neckline (neck), it is assumed that the fur on both sleeve portions is connected in a band-shape at one end portions, and is attached as a tippet in a generally annular shape so that the other end becomes a collar on the throat side.

(Ea and Eb-q) The fur around the cuff has a different color scheme from that is different from the body part of the coat (so-called two-tone color).

*Others

Also, using the fur around the cuffs as a tippet is also described in the article (Evidence A No. 5) titled "Fox Fur Coat of PEYTON PLACE" of the blog "Sweet Happy Life" mentioned above, and was an ordinary technique for a person skilled in the art as of November 20, 2010.

(C1) Ease of Creation-1

The Registered Design is merely attached with the fur around the cuffs and the hood, with respect to Prior Publicly Known Design A, and as described above, the

design attached with the fur around the cuffs and the hood is an ordinary technique in coats for ladies, so that it is obvious that the Registered Design could have been easily created based on Prior Publicly Known Design A at the time of filing the application of the Registered Design.

Specifically, the Registered Design is constituted by combining the design of the fur around the hood of either one of Prior Publicly Known Design Da and Prior Publicly Known Design De (the demandee product D) and the design of the fur around the cuffs of either one of Prior Publicly Known Design Ea and Prior Publicly Known Design Eb with Prior Publicly Known Design A, and is nothing more than a design collecting Prior Publicly Known Design A, Prior Publicly Known Design Da (or Prior Publicly Known Design De), and Prior Publicly Known Design Ea (or Prior Publicly Known Design Eb) by an ordinary a technique for a person skilled in the art.

Especially, Prior Publicly Known Design A has a cuff switching line in a circumferential direction around the cuff of the sleeve portion (A-s), and it is an ordinary technique (common technique) for a person skilled in the art to make the constitution (Prior Publicly Known Design B of the defendant) having the fur around the cuff instead of the cuff switching line and the constitution (the Registered Design) attached with the fur around the hood. Therefore, the Registered Design is a design that could have been easily created based on Prior Publicly Known Design A and the like.

(C2) Ease of Creation-2

The Registered Design is constituted by combining the design of the decorative belt of Prior Publicly Known Design A, the design of the fur around the hood of either one of Prior Publicly Known Design Da and Prior Publicly Known Design De (the demandee product D), and the design of the fur around the cuffs of either one of Prior Publicly Known Design Ea and Prior Publicly Known Design Eb with Prior Publicly Known Design B, and is nothing more than a design collecting Prior Publicly Known Design A, Prior Publicly Known Design Da (or Prior Publicly Known Design De), and Prior Publicly Known Design Ea (or Prior Publicly Known Design Eb) by an ordinary technique for a person skilled in the art. Therefore, the Registered Design could have been easily created based on Prior Publicly Known Design B and the like.

(C3) Ease of Creation-3

The Registered Design has the same form as the design in which the bijou broach that is the component of Prior Publicly Known Design C is removed from Prior Publicly Known Design C. Needless to say, it is a common technique for a person skilled in the art to make the constitution that reduces the number of components (bijou

broach) from Prior Publicly Known Design C. Therefore, the Registered Design could have been easily created based on Prior Publicly Known Design C.

(D) Summary

The Registered Design could have been easily created by a person skilled in the art based on the publicly known designs (Prior Publicly Known Designs A, B, C, Da, De, Ea, Eb and the like) before the filing of the application thereof, and even if it does not fall under the provisions of Article 3(1)(iii) of the Design Act, it cannot be granted under the provisions of Article 3(2) of the Design Act and should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

3. Evidence submitted by the demandant

The demandant submitted Evidence A No. 1 to No. 51, as the attached documents of the written request for trial, the written refutation, the written reply, the oral proceedings statement brief, and the oral proceedings statement brief (2). (See Appendix No. 4)

No. 4 Outline of the demandee's allegation

1. Regarding the reasons for invalidation

(1) Reasons for Invalidation 1 (Prior Publicly Known Design A) (Evidence A No. 3-1 to No. 3-3)

"Prior Publicly Known Design A" is a design in a use state in which all fur, the hood, and the fur of the cuff fur are removed from the basic form of the Registered Design, and in the Registered Design, the design corresponding to the form is a design of "Changing Form 3." Reasons for Invalidation 1 of the demandant (Prior Publicly Known Design A) merely alleges its similarity about one constitution of the changing form configuring the Registered Design; that is, "Changing Form 3," and is inappropriate as the technique for the determination of similarity of the changing design.

Also, the demandant, regarding the difference shown in the Registered Design and Prior Publicly Known Design, alleges that "the different feature between Prior Publicly Known Design A and the Registered Design is the constitution related to the fur around the hood and the cuffs. However, at the time of filing of the application of the Registered Design, as described above, there had been many coats (Prior Publicly Known Designs) having fur around a hood and cuffs of such a constitution, and like, for example, Prior Peripheral Designs Da, Db, Dc, Dd, and De, those were introduced in magazines published in 2013 (Evidence A No. 4), blogs updated in 2010 (Evidence A

No. 5 and Evidence A No. 6), and blogs updated in 2013 (Evidence A No. 7) before the application for the Design was filed. Namely, the form of the coat having fur around the hood or the cuffs or the form of the hood or the cuffs with the fur removed from the coat were publicly known. In this way, the configuration having the fur around the hood and around the cuffs, and the fact that the furs can be removed were constitutions adopted in various coats before the application of the Registered Design was filed and were common to consumers, and thus cannot be the main part of the design (the written request for trial)."

However, considering a judicial opinion "whether or not those designs are similar should be judged by whether or not the two designs give different aesthetic impression to observers based on overall observation, and even if a general shape to the article is included in the configuration common to the two designs, this does not naturally mean that when observing a design, the general shape should be excluded or discarded to judge the similarity of the design. Since the design referred to the Design Act means a unity as a whole form that is ordered as a creation of a design, even if it is a general shape for the article, when the whole including that part forms a unit as a design, the determination of the similarity should be made by comparing the constitutions of the two designs as a whole including the part (2001, (Gyo-Ke) No. 275 'Electric Guitar' Rendition of Decision on November 13, 2001 at Tokyo High Court, Evidence B No. 7)," the demandant's allegation that "the configuration having the fur around the hood and around the cuffs, and the fact that the furs can be removed were constitutions adopted in various coats before the application of the Registered Design was filed and were common to consumers, and thus cannot be the main part of the design" is unreasonable. That is, it is considered that the difference of "the constitution related to the fur around the hood and the cuffs" that is also recognized by the demandant is a large difference related to the basic constitutions of the two designs, and the impacts on the determination of similarity are large.

"Prior Peripheral Designs Da, Db, Dc, Dd, and De" indicated by the demandant are examples of which the images are small and unclear, and the overall shape and the specific shape thereof cannot be compared with the Registered Design.

(2) Reasons for Invalidation 2 (Evidence A No. 11)

The demandant mentions, as Reasons for Invalidation 2 of the Registered Design, that "Prior Publicly Known Design B is a design that shows a state in which a product of '5-WAY Cocoon Coat' (Item No. 24421971) sold by ARPEGE Co., Ltd., who is the demandee, under its brand 'Apuweiser-riche' (hereinafter, referred to as the

'demandee product A') is viewed from generally the front side without a bijou brooch." (the written request for trial), and alleges about the difference between the Registered Design and Design B that "the main different feature of Prior Publicly Known Design B and the Registered Design is the constitution related to the fur around the hood. However, at the time of filing the application of the Registered Design, the coat having the fur around the hood of the constitution mentioned above was common for consumers and cannot be the main part of the design. Therefore, the two designs cause the same or common esthetic impression of consumers as the whole design, and Prior Publicly Known Design B and the Registered Design are similar to each other." (the written request for trial).

However, Design B is a design attached with fur at sleeves of a coat with a hood, and a design that does not fall under the form of any one of Changing Forms 1 to 4 of the Registered Design, and is not a design similar to the Registered Design.

In "the proving document for seeking the application of the provision of exception to lack of novelty," the design and address of "5-WAY Cocoon Coat" are listed as the published design, and "5-WAY Cocoon Coat" that is the published design for which the Registered Design receives the application of exception to lack of novelty is listed (Evidence B No. 2).

Further, Prior Publicly Known Design B is used simply as an eye catcher of "Apuweiser-riche" that is a brand of the demandee, and the whole form of "5-WAY Cocoon Coat" of the demandee; namely, the basic constitutions (a use state in which the hood, the fur of the hood, and the fur of the cuffs are attached), Changing Form 1 (a use state only with the hood and the fur of the hood), Changing Form 2 (a use state in which only the fur of the cuffs is attached), Changing Form 3 (a use state only with the hood), and Changing Form 4 (a use state in which all the fur of the hood, the hood, and the fur of the cuffs are removed) are not published. Also, Prior Publicly Known Design B is a design that does not fall under any form of the Registered Design, and a prior publicly known design that does not become a reason for invalidation of the Registered Design.

Also, even if Prior Publicly Known Design B was published on July 18, 2014 before August 1, 2014 that is the publication date described in the proving document for seeking the application of the provision of exception to lack of novelty, considering that it is held as "in the first place, so as to be said as Design A became publicly known by unspecified persons, it is not enough to visually recognize only a part of it, and the whole of the design should be visually recognized. Even if it is understood that it is sufficient if the most characteristic part of the design is visually recognized as the plaintiff alleged, according to the form of the Registered Design recognized above, in

the Registered Design, not only the form of the front surface, but also a projection piece projecting upward from the reflection hood upper part on the back surface should be a shape that cannot be ignored in shaping the aesthetic impression of the Registered Design, so that it should not be considered that it is the most characteristic part of the Registered Design with only the front shape," (2011, (Gyo-Ke) No. 10129 "Reflector for Lighting Equipment" Rendition of Decision on November 21, 2011 at Intellectual Property High Court, Evidence B No. 8), even if Prior Publicly Known Design B was published on the Internet site of the demandee as of July 18, 2014, it is considered that this is the form of a part of the Registered Design and does not mean that the Registered Design has become publicly known to unspecified persons.

(3) Reasons for Invalidation 3 (Evidence A No. 13-1 and Evidence A No. 13-2)

The demandant mentions "Design C is a design of a product of 'Cocoon Coat' (Item No. 24422350) sold by ARPEGE Co., Ltd. under its brand 'Apuweiser-riche' (hereinafter, referred to as the demandee product B)." (the written request for trial).

The demandant mentions "the demandee product B ('Cocoon Coat' (Item No. 24422350) has been sold by the demandee since August 1, 2014 prior to the filing date of the application of the Registered Design (January 30, 2015) (Evidence A No. 8 and Evidence A No. 12), and Design C (Evidence A No. 13) is a publicly known design (Article 3(1)(ii) of the Design Act) resulting from the action of the demandee. Here, since Design C related to the demandee product B and Design B related to the demandee product A have the different feature that is the presence or absence of the fur around the hood, as the demandee recognizes (Evidence A No. 12), it is obvious that the forms are not the same." (the written request for trial), and further mentions "Article 4 of the Design Act regulating exceptions to lack of novelty was amended in 1999, and for 'a document for proving' of the filing of the application for design registration in which the application of the provision of Article 4(2) of the Design Act is sought (a proving document for seeking the application of provision of exceptions to lack of novelty), it is necessary to describe all published designs seeking the application of the provision. However, when the application of the Registered Design was filed, Design C of the demandee product B that was a published design before the filing of the application was not described in the proving document for seeking the application of provision of exceptions to lack of novelty. Therefore, Design C of the demandee product B cannot receive the application of provision of exceptions to lack of novelty, and is a prior publicly known design." (the written request for trial).

However, the demandee product A and the demandee product B are both part of

a series of products for which the demandee started advertising, publicity, and sales since August 1, 2014 as the Arpege story "5-WAY Cocoon Coat," and the designs of the products are substantially the same design, and cannot be prior publicly known designs.

Also, the demandant mentions, so as to receive the application of the provision of exception to lack of novelty, "Article 4 of the Design Act regulating exceptions to lack of novelty was amended in 1999, and for 'a document for proving' of the filing of the application for design registration in which the application of the provision of Article 4(2) of the Design Act is sought (a proving document for seeking the application of provision of exceptions to lack of novelty), it is necessary to describe all published designs seeking the application of the provision."

However, "Since Article 4(2) of the Design Act is an exception provision provided to remedy the severe case for the applicant when the judgment of novelty is strictly applied on the basis of the time of filing, its application range should be interpreted in a limited way according to the spirit of the law. According to the evidences and arguments, it is recognized that Article 4(2) of the Design Act regards a case of 'resulting from an action of a person who has a right to obtain as an exception for loss of novelty. Because those who devised the design do not always apply for design registration, and usually apply for design registration about that in demand after examining the sales by selling, exhibiting, distributing samples, etc., and confirming the existence of general demand for a while, it is not suiting the actual condition of a design, and is harsh to the creator of a design to regard such actions as sales, exhibitions, and distribution of samples to cause a lack of novelty. Therefore, in such a case, it is recognized that the novelty will not be lost." (2000, (Gyo-Ke) No. 331 "Grater" Rendition of Decision on November 28, 2000 at Tokyo High Court, Evidence B No. 9).

When it elaborates, although the demandant alleges that "in 'the document for proving' of the filing of the application for design registration in which the application of the provision of Article 4(2) of the Design Act is sought (the proving document for seeking the application of provision of exceptions to lack of novelty), it is necessary to describe all published designs seeking the application of the provision," the demandee product A and the demandee product B are both part of a series of products for which the demandee started advertising, publicity, and sales since August 1, 2014 as "5-WAY Cocoon Coat," and the designs of the products are substantially the same design, and the designs that can receive the application of exceptions to lack of novelty.

This is clear also from being held as "after disclosing a design, by the time it makes the design into the exception of lack of novelty and carries out application

according to the provisions of Article 4(2) of the Design Act, when a design that is understood to have the same scope as this design is repeatedly disclosed on its own, for example, after disclosing a design by manufacturing and selling a terminal board as in this case, before the application for registration, even if the design of the same scope is published in the catalog and the like of the product and distributed, it is considerable to understand it is sufficient to submit the document (the document and certificate for seeking the application of provision of same Article 4(2)) specified in Article 4(3) of the Design Act for the design disclosed. (1995, (Gyo-Ke) No. 159 "Terminal Board" Rendition of Decision on February 28, 1996 at Intellectual Property High Court, Evidence B No. 10)".

Also, the court decision held with respect to the substantial similarity between the disclosed design applied for design registration as "under the principle that requires novelty for registration, although it has lost its novelty and cannot be registered after it has been exhibited or sold once, if adhering to this principle, even if the applied design is the same as the published design for the design according to the application, there may be cases where it is too harsh for the applicant, such as being unable to register due to the existence of a publicly-designed design, and there may be aspects that do not match the actual situation of a trading society. Then, it is understood that Article 4(2) of the Design Act recognizes exceptions to lack of novelty under certain conditions as described above, as well as Article 4(1) of the Design Act. In light of the spirit of the law with exceptions to lack of novelty, even assuming that 'identical' and 'similar' design are separate concepts, it is reasonable to understand that 'the same' on the form in a trial refers to not only those whose physical form perfectly match, as a legal concept, but also those understood as the same scope as design representation, as a general rule, to the extent appropriate for the legislative purpose of the same Article, even if there is a slight difference in form, among the requirements of similarity of 'a design that is publicly known before the application for the Registered Design' or 'a design that is described in a publication distributed before the application of the Registered Design. "' (1995, (Gyo-Ke) No. 159 "Terminal Board" Rendition of Decision on February 28, 1996 at Intellectual Property High Court, Evidence B No. 10).

(I) The matter that fur is detachable and it is normal to have fur on both sleeves and hood (response to the inquiry)

The demandee receives the application of provision of exceptions to lack of novelty when filing of the application for design registration of the Registered Design. The published design thereof is a published design described in "the proving document

for seeking the application of provision of exceptions to lack of novelty," and in "5-WAY Cocoon Coat" that is the published design for which the Registered Design published on the site receives the application of exceptions to lack of novelty, although the form attached with the fur around both the sleeves and the hood is not published, regarding the developed product as 5-WAY Cocoon Coat of the Registered Design, the product development of the Registered Design had been already completed as of August 1, 2014 that is the publication period.

Although the coat attached with the fur around both the sleeves and the hood is not published on the Internet image of the published design described in "the proving document for seeking the application of provision of exceptions to lack of novelty," the sale of this product started in midsummer, August 1, 2014, and it was too early to advertise the product with fur on the hood, so that the image of the state in which the fur was attached around both the sleeve and the hood was merely not introduced. Then, at the beginning of autumn, products with the fur on the hood were sold.

In this type of article, i.e., a coat with fur, it is common knowledge for a person skilled in the art to also attach fur to the hood when fur is attached to the sleeves. As evidentially facts thereof, for example, as shown in "Coat with fur" (Evidentially Fact 1) described on the upper left side of Page 68 and "Down Coat with fur" (Evidentially Fact 2) published on Page 230 of "AneCan" issued in December, 2013 (Evidence B No. 18), "Coat with fur" (Evidentially Fact 3) published in "BIJINHYAKKA" issued in September, 2011 by Kadokawa Haruki Corporation 'Evidence B No. 19 and "Coat with fur" (Evidentially Fact 4) published in "BIJINHYAKKA" issued in February, 2012 (Evidence B No. 20), and "Hood Coat" (Evidentially Fact 5) published in Evidence A No. 4-2 submitted by the demandant (the enlarged copy of the magazine "AneCan" issued in December, 2013), the design of the coat attached with the fur around both the sleeves and the hood is common, and it is common-sense creation technique for a person skilled in the art to attach fur also to a hood as a set when the fur is attached to sleeves, in a coat with fur.

Also, although the demandant acknowledges that it is normal for the coat to have a replaceable fur, and as an example of its prior peripheral design, submitted Evidence A No. 7, it can be inferred from the fact that these "Coats with fur" are the coats attached with the fur around both the sleeves and the hood.

(II) Regarding published design described in "the proving document for seeking the application of provision of exceptions to lack of novelty"

Regarding published design described in "the proving document for seeking the

application of provision of exceptions to lack of novelty," although the Internet image of the coat attached with the fur on the hood is not published, the sale of this product was started in midsummer, August 1, 2014, and was is too early to advertise the product with fur on the hood, so that the image of the state in which the fur was attached was merely not introduced. Then, at the beginning of autumn, it was sold as a product with fur on the hood.

When it elaborates, although the use mode related to Usage Method 6 "Coat body + Hood + Fur around Cuffs + Fur around Hood", Usage Method 7 "Coat body + Hood + Fur around Hood" that the demandant uses as the usage method of the Registered Design is not published in the design published on the site of the demandant receiving the application of provision of exceptions to lack of novelty, in detail (item details), as described above, the sale of this product was started in midsummer, August 1, 2014, and it was too early to advertise the product with fur on the hood, so that the image of the state in which the fur was attached on the hood was merely not introduced in business.

That is, the product development of the Registered Design had been completed on August 1, 2014. "5-WAY Cocoon Coat" related to the Registered Design was scheduled for sale to the general public in the fall, but it was transferred to specific customers. The demandee (the holder of a design right) ARPEGE Co., Ltd ordered the "Arpegestory Limited Cocoon Coat" with the supplier "NIPPON STEEL TRADING CORPORATION" on July 1, 2014 (2014AW, July 1) (Evidentiary Fact 6, Evidence B No. 21)

Incidentally, regarding the development process of the Registered Design, the young women in their teens and 20s have a need to wear both a casual coat and an elegant coat in a single coat, against the backdrop of such markets and consumer purchasing motivations, the demandee tried to develop a coat that can correspond to casual styles while keeping the elegance element that is the basic concept of the Registered Design.

Specifically, with reference to coats that match casual styles such as duffel coats, the demandee incorporated designs that were not normally used in traditional elegance style coats, and on the other hand, planned the creation of a coat that would not compromise elegance style elements. Therefore, the Registered Design has a design feature where it can be worn elegantly or casually with a single coat by replacement of fur.

When describing about the fur of the sleeve and the hood, in general, fur strengthens the elements of elegance style, but it can be removed to accommodate

casual style. About the hood, since the simple hood to which a fur is not attached strengthened the casual element generally, the fur was made the design dismountable so that it could respond also to a casual style.

In the design of such product development, it is impossible to attach fur only to the sleeve of the coat and not fur to the hood.

(III) Regarding authorization of a design, and the technique of determination of similarity (Written Reply (2))

The demandant alleges, in the refutation against the written reply "2 Statement of the reply," that "In the Design Act, the design, under the principle of one application for one design, is specified in the form of one design by the lines and colors constituting the design shown in a set of drawings and other necessary drawings. The number of combinations that is the total five ways alleged by the demendee is not protected, and the form of each combination (each method of using) is not individually protected. Therefore, the demandee's allegation is unreasonable." (the written refutation).

However, the demandee has never alleged that the "number of combinations" of a total of five kinds was protected, or that the form in each combination (each method of use) is "individually protected."

When it elaborates, it is obvious that the so-called dynamic design (changing design) of Article 6(4) of the Design Act is considered as one design including all of its changing forms and design rights are not generated individually for each changing form. The changing form is the design with which the changing shape, patterns, or color are integrated, and therefore design rights are not individually generated in one form that constitutes a changing form, and even if the identical or similar publicly known design exists in the individual one form, its registration is not invalidated by the publicly known design. The design as a whole, including other changing forms, is subjected to the determination of similarity with a known design as a changing form of design (hereinafter also referred to as "changing design"), and the scope of a registered design right is defined as a whole of the changing form (Article 24(1) of the Design Act).

(IV) Regarding use mode

The demandant alleges "although the demandee lists the use mode of an article in 'Basic constitution' (B) of the Registered Design, it shows a usage method of the article, not the form, so it cannot be a basic constitution" (the written refutation).

However, the demandee does not use the usage method of the Registered Design as a basic constitution, but uses the form itself that changes based on the use mode as

the basic constitution of the Registered Design, so that the demandant's allegation is unreasonable.

When it elaborates, since the basic constitution is an aspect that forms the overall skeleton of the design, and the design is inseparable from the article, movement based on the use and function of the article; that is, its aspect is inevitably a basic constitution, and thus the demandant's allegation that "a usage method cannot be a basic constitution" is unreasonable.

(V) Regarding the form (use mode) that changes in 5 ways

The demandee recognizes the demandant's allegation, since regarding the demandant's allegation, although the drawing showing the use mode of "Coat body + Hood + Fur around Cuffs" that the demandant listed as "Usage Method 1" is not described in the drawing (photographs in lieu of drawings) attached to the application of the Registered Design, it is published on the design of "5-WAY Cocoon Coat" attached to the "proving document for seeking the application of the provision of exception to lack of novelty" of the Registered Design that the customer makes such wearing (use), and it is within the scope of the use mode of the Registered Design.

Also, although the demandant mentions "the fur around the cuffs can be also used as a tippet," in "Description of the article to the design" of the Registered Design, it is described that " 'a perspective view with fur attached to neck' shows the one in which the fur of both sleeves are connected and attached around the neckline (neck)," and it is within the scope of the use mode of the Registered Design to use the fur on the cuffs a tippet (Tippet: collar or shoulder cape made of fur or lace). Therefore, the demandant's allegation is accepted.

However, the demandee, in the column of Description of the article to the design, attached the 5-way use mode including the basic form of the Registered Design to the application by photographs in lieu of drawings, and explained the basic form and Changing Forms 1 to 4 as main use modes. Therefore, the use mode of the Registered Design is not a design feature of the Registered Design that the use mode of the Registered Design is "5-way" (limited to five-way).

(VI) Regarding drawings of the application for design registration

The demandant mentions "since the Registered Design is a design that can be separated into components, it should be created based on part 3 1. in the case of one having a part to be separated of the same article No. 6 remarks 18 "the Guide for making Applications and Drawings for Design Registrations"" (the written refutation).

However, the design of the present application is "a changing design" and not "a separating design". Of course, the design of the part related to the fur to be separated and the design of the part related to the hood should not be registered. Submitting a drawing as alleged by the demandant may result in a misconception that a design right has been generated for components such as fur and hood; it is inappropriate to create the Registered Design (Article to the design "Coat") as if "the case of what has a portion to be separated" in a case where it has a part to be separated (Evidence B No. 16).

(VII) The similarity of the Reasons for Invalidation 3 (the Registered Design and Publicly Known Design C)

The Registered Design, as described in "the proving document for seeking the application of exceptions to lack of novelty" submitted on February 26, 2015, legitimately receives the application of exceptions to lack of novelty. Hereinafter, reasons thereof will be mentioned.

(A) Regarding the sale time of Product B of the demandee

The demandant alleges that "in the explanation of Evidence A No. 7-2 (Evidence A No. 13) of the evidence which the demandee submitted in the lawsuit, there is a description that 'fur is attached to both the sleeve and the hood of Apu's popular 5-WAY Coat' under 'Limited Point' of red characters. Thereby, it is presumed that the demandee product B was sold after the 5-WAY Coat (5-WAY Cocoon Coat of the demandee product A) became popular." (the written refutation).

However, Product A and Product B did not have a hood fur at the time of sale of Product A, but Product B is the one to which the fur of the hood is attached and is substantially the same product (5-WAY Cocoon Coat).

(B) Regarding the substantial similarity between the designs related to Product A and the design related to Product B

The demandee receives the application of provision of exceptions to lack of novelty at the time of the application of design registration of the Registered Design. The publicly known design is a publicly known device (Evidence B No. 2) described in "the proving document for seeking the application of provision of exceptions to lack of novelty," and although in the "5-WAY Cocoon Coat" that is the publicly known design with which the Registered Design published on the site receives the application of exceptions to lack of novelty, the aspect attached with fur on the hood is not published, concerning the development product (Product A) as the 5-WAY Cocoon Coat of the Registered Design, the product development (creation of the design) of the Registered Design had been completed as of August 1, 2014.

The demandee, in its product "5-WAY Cocoon Coat". tried to develop a coat that can correspond to casual styles while keeping the elegance element that is the basic concept of the Registered Design, and (b) when describing the fur of the sleeve and the hood, in general, fur strengthens the elements of elegance style, but it can be removed to accommodate casual style. About the hood, since the simple hood to which a fur is not attached strengthened the casual element generally, the fur was made dismountable so that it could respond also to a casual style.

In this kind of article; namely, a coat with fur, it is common knowledge for a person skilled in the art to also attach fur to the hood when fur is attached to the sleeves, and Product A without fur on the hood and Product B attached with fur on the hood are the same product, and substantially the same design in form.

(C) Fur is detachable, and it is normal to have fur on both the sleeve and hood

As shown in the designs of "Coat with fur" described on the upper left side of Page 68 and "Down Coat with fur" described on Page 230 of "AneCan" issued in December, 2013, "Coat with fur" described in "BIJINHYAKKA" issued in September, 2011 by Kadokawa Haruki Corporation (Evidence B No. 19) and in "BIJINHYAKKA" issued in February, 2012 (Evidence B No. 20), and "Coat with a hood" that can replace the fur described on Evidence A No. 4-2 submitted by the demandant, it is common-sense creation for a person skilled in the art to attach fur also to a hood as a set when the fur is attached to sleeves, in a coat with fur.

(D) Regarding the publicly known design described in "the proving document for seeking the application of provision of exceptions to lack of novelty"

Regarding the published design described in "the proving document for seeking the application of provision of exceptions to lack of novelty," although the Internet image of the coat attached with the fur on the hood is not published, the sale of Product A was started in midsummer, August 1, 2014, and it was too early to advertise the product with fur on the hood, so that the image of the state in which the fur was attached was merely not introduced. Then, at the beginning of autumn, it was sold as Product B with fur on the hood of Product A. Product A and Product B are substantially the same product, and in the proving document for seeking the application of provision of exceptions to lack of novelty, since Product A and Product B are substantially the same product, the design of Product A that is a first published design receives the application of lack of novelty. Therefore, the demandant's allegation that "it is necessary to also describe the design of the demandee product B in 'the document for proving'" is groundless.

(E) Although it was mentioned that the product development (creation) of Coat body +

Hood + Fur around Cuffs + Fur around Hood had been completed at the time of publication of the Registered Design, the sale of this product was started in midsummer, August 1, 2014, although the image of the coat attached with the fur on the hood of the Registered Design is not published, the sale of Product A was started in midsummer, August 1, 2014, so that the image of the state in which the fur was attached on the hood was merely not introduced in business. However, the product development of the Registered Design had been completed as of August 1, 2014. "5-WAY Cocoon Coat" related to the Registered Design was scheduled for sale to the general public in the fall, but it was transferred to specific customers. The demandee (the holder of a design right) ARPEGE Co., Ltd ordered the "Arpege Limited Cocoon Coat" with the supplier "NIPPON STEEL TRADING CORPORATION" on July 1, 2014 (2014AW, July 1) (Evidence B No. 21).

(F) Regarding requirements for the application of exceptions to lack of novelty

The demandant alleges that "precedent cited by the demandee (Evidence B No. 9) merely indicates the gist of provision of exceptions to lack of novelty, and although there is no objection, precedent cited for indicating the requirements for specific application (Evidence B No. 10) relates to the design filed before the application of Design Act of 1999, and it cannot be used as a ground for the determination on the requirements for the application provision of exceptions to lack of novelty of the Registered Design." (the written refutation).

However, regarding the substantial similarity between the disclosed design applied for design registration, the doctrine of the ruling of Evidence B No. 10 (1995, (Gyo-Ke) No. 159 "Terminal Board" Rendition of Decision on February 28, 1996 at Intellectual Property High Court) held as "under the principle that requires novelty for registration, although it has lost its novelty and cannot be registered after it has been exhibited or sold once, if adhering to this principle, even if the applied design is the same as the published design for the design according to the application, there may be cases where it is too harsh for the applicant, such as being unable to register due to the existence of a publicly-opened design, and there may be aspects that do not match the actual situation of a trading society. (Omitted)" In light of the spirit of the law with exceptions to lack of novelty, even assuming that "identical" and "similar" in design are separate concepts, it is reasonable to understand that "the same" on the form in a trial refers to not only those whose physical form perfectly match, as a legal concept, but also those understood as the same scope as design representation, as a general rule, to the extent appropriate for the legislative purpose of the same Article, even if there is a slight difference in form, among the requirements of similarity of "a design that is

publicly known before the application for the Registered Design" or "a design that is described in a publication distributed before the application of the Registered Design," and after the amendment of the Design Act of 1998 (raising of requirements for ease of creation (Article 3(2) of the Design Act)), it is due to the fact that shape, patterns, or color that were publicly known in Japan or a foreign country became the subject of determination of creative difficulty (cited reference design), the gist of the system was not changed with respect to the requirements for the application of provision of exceptions to lack of novelty.

Further, it is clear also from being held as "after disclosing a design, by the time it makes the design into the exception of lack of novelty and carries out application according to the provisions of Article 4(2) of the Design Act, when a design that is understood to have the same scope as this design is repeatedly disclosed on its own, for example, after disclosing a design by manufacturing and selling a terminal board as in this case, before the application for registration, even if the design of the same scope is published in the catalog and the like of the product and distributed, it is considerable to understand it is sufficient to submit the document (the document and certificate for seeking the application of provision of same Article 4(2)) specified in Article 4(3) of the Design Act for the design disclosed. (1995, (Gyo-Ke) No. 159 'Terminal Board' Rendition of Decision on February 28, 1996 at Intellectual Property High Court, Evidence B No. 10)".

As described above, although there is no reason in Reasons for Invalidation 3 of the demandant, even if Prior Known Design C could become a prior publicly known design of any one of the basic form, and Changing Forms 1 to 4 constituting the Registered Design, since the main part of the Registered Design is the part of the Registered Design that draws the attention of traders and consumers strongly from the viewpoint of the properties of articles, use mode, and the like and a design may be created by the combination of publicly known designs or the combination of publicly known designs and new designs, it is thought that there is no reason not to be a main part of a Registered Design only because it is a well-known design.

The demandee's allegation described above is clear also from being held in (2004 (Wa) No. 24626 "Ladle Incident" Rendition on March 23, 2007 at Tokyo-District-Court, Evidence B No. 11).

(VIII) The opinion on the refutation described on a demandant's oral proceedings statement brief (an oral proceedings statement brief)

(A) The design of Product A and the design of Product B are "substantially the same

design"

"The demandee product B "[Arpege story Limited] Cocoon Coat" (Item No. 24422350)] is a limited-edition product sold at only one store of the demandee brand "Apuweiser-riche" and two stores for a limited time (specifically, LUMINE Shinjuku that is a real shop of the Arpege story, and two stores of the Arpege story that collaborated with AneCan, which were opened only from November 12 (Wednesday) to November 18 (Tuesday) at Yurakucho Marui, and JR Nagoya Takashimaya), unlike the demandee product A "5-WAY Cocoon Coat" (Item No. 2421971) that was sold to the general public at each store of the demandee brand "Apuweiser-riche."

This fact is supported by the evidence (Page 4 of Evidence A No. 46) mentioned below.

(The oral proceedings statement brief dated June 28)

As mentioned above, the demandee product A "5-WAY Cocoon Coat" (Item No. 2421971) that is a product of the brand "Apuweiser-riche" was sold to the general public at each store of the demandee brand "Apuweiser-riche," whereas, the demandee product B "[Arpege story Limited] Cocoon Coat" (Item No. 24422350)] was a limited-edition product sold only at the stores of the brand "Apuweiser-riche".

"Apuweiser-riche" is the brand of the stores of the demandee, and "Arpegestory Limited Cocoon Coat" is the brand of the product to be developed (product name brand). The difference in the purpose of use and the method of use in selling products is normal for brand development in product sales, and it cannot be grounds for denying that the design of Product A and the design of Product B are "substantially the same design."

The Registered Design, in the proving document for seeking the application of provision of exceptions to lack of novelty of its file record (Evidence B No. 2), describes Arpege story "5-WAY Cocoon Coat" published on an appendix (attachment) as "1. Published design," and there is a description Apuweiser-riche "Arpege story" on the uppermost stage of the appendix. It is clear that Product A is "5-WAY Cocoon Coat" with the product name "Arpege story" was sold at stores of "Apuweiser-riche" and the product was sold while indicating its details, as of August 1, 2014, and therefore the demandant's allegation is unreasonable.

Further, in the purchase order of "Arpegestory Limited Cocoon Coat" (Evidence B No. 21), the coat with the fur on the hood was ordered on July 1, 2014 as the product name "Arpegestory Limited Cocoon Coat," and the product name brand of the Registered Design is Arpegestory, so that the design of Product A and the design of Product B are the same product and "substantially the same design."

(B) Regarding the provision of exceptions to lack of novelty accompanying the

amendment of the Design Act of 1999

The design of Product A and the design of Product B are "substantially the same design," and in Evidence A No. 43 submitted by the demandant, there is a description "Q1-11. I have published my design several times. Do I need to prove each one? A1-11. Each published design must be certified. However, if a person who has the right of receiving design registration publishes the same design several times, it is sufficient to prove the public fact that the novelty has been lost for the earliest publication." Design B is substantially the same design as Design V, and Design A is declared that it is "a design for seeking the application of provisions of Article 4(2) of the Design Act" in [Remarks] of the application for design registration related to the Registered Design, and "the proving document for seeking the application of provision of exceptions to lack of novelty" is attached as an appendix. The published design, namely, "Arpege story 5-WAY Cocoon Coat" receives the application of provision of exceptions to lack of novelty.

Regarding the design described in "the document for proving" of the Registered Design

The demandee product A and the demandee product B are substantially the same design, and a product with fur around the hood is "product development" from the beginning of autumn to winter. Stores that sell products, catch phrases when selling, sales methods, etc. do not directly affect the substantial similarity of public designs subject to the application of provision of exceptions to lack of novelty. The substantial similarity of the designs is based on the commonality of the value of the form by the creation of the design. Hereinafter, that is described below.

(C) Fur is detachable, and it is normal to have fur on both the sleeves and hood

The demandee receives the application of provision of exceptions to lack of novelty at the time of the filing of the application for design registration of the Registered Design. The published design thereof is a published design (Evidence B No. 2) described in "the proving document for seeking the application of provision of exceptions to lack of novelty," and in "5-WAY Cocoon Coat" that is the published design for which the Registered Design published on the site receives the application of exceptions to lack of novelty, although the aspect attached with fur on the hood is not published, concerning the development product (Product A) as the 5-WAY Cocoon Coat of the Registered Design, the product development (creation of the design) of the Registered Design had been completed as of August 1, 2014.

The demandee tried to develop a coat that can correspond to casual styles while keeping the elegance element that is the basic concept of the Registered Design. About the fur of the sleeve and the hood, in general, fur strengthens the elements of

elegance style, but it can be removed to accommodate casual style. Also, about the hood, since the simple hood to which a fur is not attached strengthened the casual element generally, the fur was made the design dismountable so that it could respond also to a casual style.

In this kind of article; namely, a coat with fur, it is common knowledge for a person skilled in the art to also attach fur to the hood when fur is attached to the sleeves, and Product A without fur on the hood and Product B attached with fur on the hood are the same product, and substantially the same design in form.

For example, as shown in the designs of "Coat with fur" described on the upper left side of Page 68 and "Down Coat with fur" described on Page 230 of "AneCan" issued in December, 2013, "Coat with fur" described in "BIJINHYAKKA" issued in September, 2011 by Kadokawa Haruki Corporation (Evidence B No. 19) and in "BIJINHYAKKA" issued in February, 2012 (Evidence B No. 20), and "Coat with a hood" that can replace the fur described on Evidence A No. 4-2 submitted by the demandant, it is common-sense creation for a person skilled in the art to attach fur also to a hood as a set when the fur is attached to sleeves, in a coat with fur.

Regarding this point, the demandant mentions that "it is thought that the fact 'the design of the coat attached with the fur around both the sleeves and the hood is common' alleged by the demandee based on Evidentiary Facts 1 to 5 and Evidence A No. 7 (the written reply of the demandee) and 'the matter that fur is detachable and it is normal to have fur on both sleeve and hood' (response to the inquiry) are the same contents as the demandant's allegation in the written request for trial that 'the configuration having the fur around the hood and around the cuffs, and the fact that the furs can be removed are the constitutions adopted in various coats before the application of the Registered Design was filed and are common to consumers' (the written request for trial) and the demandant agrees with that."

On the other hand, the demandant alleges that "although it is alleged that 'it is common-sense creation for a person skilled in the art to attach fur also to a hood as a set when the fur is attached to sleeves based on Evidentiary Facts 1 to 5 and Evidence A No. 7, ' it is impossible to just agree with this allegation. Because, Evidentiary Facts 1 to 5 and Evidence A No. 7 cannot be said as objective evidences proving the demandee's allegation. That is, although there is no objection about that the coats of Evidentiary Facts 1 to 5 and Evidence A No. 7 are attached with fur around the sleeves and the hood as a set, this is because how these coats were created (whether the fur was attached to the hood as a set after assuming that the fur was attached to the sleeves first, whether the fur was attached to the sleeves after assuming that the fur was attached to the hood, or

whether the fur was attached to both the sleeves and the hood as a set) cannot be determined by looking at the finished products on the market. Therefore, the evidences shown by the demandee do not prove anything about the creation process that shows how each product was created." (The oral proceedings statement brief dated June 28).

However, regarding the fact that "it is common-sense creation for a person skilled in the art to attach fur also to a hood as a set when the fur is attached to sleeves" based on Evidentiary Facts 1 to 5 and Evidence A No. 7, 1) Attaching the fur to the hood after assuming that the fur is attached to the sleeves, 2) Attaching the fur to the sleeves after assuming that the fur is attached to the hood, or 3) Attaching it to both the sleeves and the hoods regardless of an order are a common sense creation technique in any case, and as a result of the creation, the coats of Evidentiary Facts 1 to 5 and Evidence A No. 7 are made. Difference in the design process of 1) to 3) does not affect the proof of "the matter that fur is detachable and it is normal to have fur on both sleeves and hood."

Also, although the demandant alleges as mentioned above, and on the other hand, mentions "the demandant agrees with the demandee's (allegation 7) (b) in the meaning of 'it is common-sense creation technique for a person skilled in the art to attach fur also to a hood as a set, in a coat with sleeve fur (with a hood)'. Also, the demandant's allegation about the easy of creation of a coat having fur will be described below." (The oral proceedings statement brief dated June 28), it is thought that determinations that contradict each other are not allowed, in the determination of novelty of Article 3(1)(iii) of the Design Act and the determination of creative difficulty of Article 3(2) of the Design Act.

(D) Regarding the published design described in "the proving document for seeking the application of provision of exceptions to lack of novelty"

Regarding the published design described in "the proving document for seeking the application of provision of exceptions to lack of novelty," although the Internet image of the coat attached with the fur on the hood is not published, the sale of Product A was started in midsummer, August 1, 2014, and it was too early to advertise the product with fur on the hood, so that the image of the state in which the fur was attached was merely not introduced. Then, at the beginning of autumn, it was sold as Product B with fur on the hood of Product A. Product A and Product B are substantially the same product, and in the proving document for seeking the application of provision of exceptions to lack of novelty, since Product A and Product B are substantially the same product, the design of Product A that is a first published design receives the application

of lack of novelty.

When it elaborates, the use mode related to Usage Method 6 "Coat body + Hood + Fur around Cuffs + Fur around Hood", Usage Method 7 "Coat body + Hood + Fur around Hood" that the demandant uses as the usage method of the Registered Design is not published in the design published on the site of the demandant receiving the application of provision of exceptions to lack of novelty, in detail (item details), as described above, the sale of Product A was started in midsummer, August 1, 2014, so that the image of the state in which the fur was attached on the hood was merely not introduced in business.

(E) The opinion on the refutation to the demandee's allegation

The demandant cannot agree that "the demandee product B" "[Arpege story Limited] Cocoon Coat" (Item No. 24422350) is "a developed product as a 5-WAY Cocoon Coat."

The demandant alleges that "the demandee product B" "[Arpege Story Limited] Cocoon Coat" (Item No. 24422350), as described above, has a total of 7 usage methods, and "(usage method) 5" alleged by the demandee differs in the demandee product A and the demandee product B. Also, since the official product name is not "5-WAY Cocoon Coat" on the actual product purchase side (such as Evidence A No. 13), it is obvious that it is not a product developed as "5-WAY Cocoon Coat." Further, also in the purchase order (Evidentiary Fact 6) to the supplier "NIPPON STEEL TRADING CORPORATION" indicated by the demandee, the product name is "Arpege story Limited Cocoon Coat" (Item No. 24422350), rather than "5-WAY Cocoon Coat." (Page 24, Line 18 to Page 25, Line 2 of the oral proceedings statement brief)

However, the demandant continues to mention that "there is no denying the possibility that it is a product developed with the same design concept," due to the fact that it is described that "Limited point fur is attached to both the sleeves and the hood of Apu's popular 5-WAY Coat" (Evidence A No. 13) in the product sales of the demandee product B "[Arpege Story Limited] Cocoon Coat" (Item No. 24422350), and the matter that in "Apuweiser-riche Official Blog" (Evidence A No. 31-2), while it is described as "ArpegeStory Limited point only the ArpegeStory has FOX fur attached to the hood," a link to "[ArpegeStory Limited] Cocoon Coat" (Item No. 24422350) is provided to "[ArpegeStory Limited 5] 5-WAY Cocoon Coat." (the oral proceedings statement brief)

That is, the demandee completely carried out the product exhibition of the coat attached with the fur around both the sleeves and the hood of the 5-WAY Cocoon Coat from the beginning of autumn, and the product development of the Registered Design had already been completed as of August 1, 2014; as shown by Evidentiary Fact 6

(Evidence B No. 21), the demandee indicates the purchase order of the coat attached with the fur around both the sleeves and the hood of the 5-WAY Coat with the supplier "NIPPON STEEL TRADING CORPORATION."

Although against the purchase order (Evidentiary Fact 6), the demandant alleges that "it is a document prepared by the demandee himself/herself and cannot be said to be objective evidence, and it cannot be said that these allegations have been proven" (the oral proceedings statement brief), in the purchase order, the name of a person in charge of the supplier "NIPPON STEEL TRADING CORPORATION," and the specification such as a product name, a product number, standards, a color, sewing, etc. of the ordered coat are specified concretely and in detail, and thus it can be a proof of the evidentiary fact.

(F) Regarding Reasons for invalidation 3 (the Registered Design and Publicly Known Design C)

The demandee tried to develop a coat that can correspond to casual styles while keeping the elegance element that is the basic concept of the Registered Design. About the fur of the sleeve and the hood, in general, fur strengthens the elements of elegance style, but it can be removed to accommodate casual style. Also, about the hood, since the simple hood to which a fur is not attached strengthened the casual element generally, the design was made such that the fur is dismountable so that it could respond also to a casual style.

In this kind of article; namely, a coat with fur, it is common knowledge for a person skilled in the art to also attach fur to the hood when fur is attached to the sleeves, and Product A without fur on the hood and Product B attached with fur on the hood are the same product, and substantially the same design in form.

(G) Evidentiary Fact G

Although the demandee mentions about Evidentiary Fact G as "Evidence A No. 45 proves the fact that the demandee product A and the demandee product B were sold as different products (Evidentiary Fact G)" (oral proceedings statement brief) and alleges that "Evidence A No. 45 is the archived record (Page 1) for 2014 of the official mail order site of the brand 'Apuweiser-riche' linked to the top menu 'Apuweiser-riche' under the header 'Arpege story' of the homepage of the mail order side 'Arpege story' of the demandee, and excerpts (Pages 2 to 4) recorded and provided on this website as published on October 25, 2014 (described in the 2/3 upper right of Evidence A No. 45: described by the demandee)" (the oral proceedings statement brief), those are the ones after August 1, 2014 when the Registered Design received the application of provision of exceptions to lack of novelty.

Also, the difference in the aspect of "sales mode, and sales method" alleged by the demandant does not become grounds for denying the substantial similarity of the design of Product A (Item No. 2421271) and the design of Product B (Item No. 24422350).

Further, in the proof of the publicly known fact, there is morally a doubt to evidence power thereof in the use of other people's archived records as evidence.

(H) Counterargument to the written reply of the demandant

The demandant indicates Evidence A No. 31 to Evidence A No. 36, and alleges that "it is proved that the coat attached with the fur around the hood (Item No. 24422350) of the demandee was available for pre-order sale by the demandee from October 24, 2011 (Note for the body: 2014) before the application of the Registered Design was filed (January 30, 2015), and was a full-fledged November-limited product from November 7, 2014" (the written reply).

However, the design of the coat attached with the fur around the hood (Design B: Item No. 24422350) had already been completed as of August 1, 2012, then advertising, publicity, and sales thereof were started, and thus the proof submitted by the demandant is a series of implemented products of the Registered Design; namely, substantially the same design.

Further, the proof submitted by the demandant is the archived record by Internet archive Wayback Machine, and this evidence has a doubt in evidence power thereof.

(IX) Summary

As described above, the Registered Design (Design registration No. 1537464, Evidence B No. 1) is not a design similar to a design (Evidence A No. 3-1 to No. 3-3) that was publicly known before the application for the Registered Design was filed, a design (a design published on Evidence A No. 11) that had become available to the public through electric communication lines before the application for the Registered Design was filed, or a design described in the distributed publication or a design (Evidence A No. 13) that had become available to the public through electric communication lines before the application for the Registered Design was filed, and thus does not fall under the provisions of Article 3(1)(iii) of the Design Act.

(4) Reasons for invalidation 4 (Evidence A No. 3-1 to No. 3-3), Evidence A No. 4, Evidence A No. 7, Evidence A No. 10, Evidence A No. 11, Evidence A No. 13, and Evidence A No. 14)

(4-1) Regarding Ease of Creation-1

The demandant alleges that "The Registered Design is merely attached with the fur around the cuffs and the hood, with respect to Prior Publicly Known Design A, and as described above, the design attached with the fur around the cuffs and the hood is an ordinary technique in coats for ladies, so that it is obvious that the Registered Design could have been easily created based on Prior Publicly Known Design A at the time of filing the application of the Registered Design. Specifically, the Registered Design is constituted by combining the design of the fur around the hood of either one of Prior Publicly Known Design Da and Prior Publicly Known Design De (the demandee product D) and the design of the fur around the cuffs of either one of Prior Publicly Known Design Ea and Prior Publicly Known Design Eb with Prior Publicly Known Design A, and is nothing more than a design collecting Prior Publicly Known Design A, Prior Publicly Known Design Da (or Prior Publicly Known Design De), and Prior Publicly Known Design Ea (or Prior Publicly Known Design Eb) by an ordinary technique for a person skilled in the art" (the written request for trial).

However, the Registered Design, as described below, is a design that has design characteristics in which "Changing Form 1" to "Changing Form 4" are combined with "the basic form," and "is not constituted by combining the design of the fur around the hood of either one of Prior Publicly Known Design Da or Prior Publicly Known Design De (the demandee product D) and the design of the fur around the cuffs of either one of Prior Publicly Known Design Ea and Prior Publicly Known Design Eb with Prior Publicly Known Design A, and is not nothing more than the design collecting Prior Publicly Known Design A, Prior Publicly Known Design Da (or Prior Publicly Known Design De), and Prior Publicly Known Design Ea (or Prior Publicly Known Design Eb) by an ordinary technique for a person skilled in the art," and therefore, Reasons for invalidation 4 of the demandant is unreasonable.

When it elaborates, "the aspect in which the fur of the hood, the hood, and the fur of the cuffs can be removed appropriately" constituting the design characteristics of the Registered Design are not seen in any design of "A-line Coat of BANNER BARRETT" of Prior Publicly Known Design Db, "Hood Coat of Laisse Passe" of Prior Publicly Known Design Da, and "5-WAY Coat" of Prior Publicly Known Design Ea, and "the changing aspects" of the Registered Design are not mentioned in any one of the prior publicly known designs.

Further, although "the design of collection" is a design that is nothing more than the design collecting a plurality of publicly known designs (Examination Guidelines for Design 23.5.2), it is unclear specifically which design and which design should be combined to easily create the basic form related to the Registered Design (a use state in

which the hood, the fur of the hood, and the fur of the cuffs are attached): Changing Form 1 (a use state only with the hood and the fur of the hood), Changing Form 2 (a use state in which only the fur of the cuffs is attached), Changing Form 3 (a use state only with the hood), and Changing Form 4 (a use state in which all the fur of the hood, the hood, and the fur of the cuffs are removed).

(4-2) Regarding Ease of Creation-2

The demandant alleges that "the Registered Design is constituted by combining the design of the decorative belt of Prior Publicly Known Design A, the design of the fur around the hood of either one of Prior Publicly Known Design Da and Prior Publicly Known Design De (the demandee product D), and the design of the fur around the cuffs of either one of Prior Publicly Known Design Ea and Prior Publicly Known Design Eb with Prior Publicly Known Design B, and is nothing more than a design collecting Prior Publicly Known Design A, Prior Publicly Known Design Da (or Prior Publicly Known Design De), and Prior Publicly Known Design Ea (or Prior Publicly Known Design Eb) by an ordinary technique for a person skilled in the art. Therefore, the Registered Design could have been easily created based on Prior Publicly Known Design B and the like" (the written request for trial).

However, the Registered Design, as described above, is a design having the design characteristics in which "Changing Form 1" to "Changing Form 4" are combined with "the basic form," and is not constituted by merely combining the design of the decorative belt of Prior Publicly Known Design A, the design of the fur around the hood of either one of Prior Publicly Known Design Da and Prior Publicly Known Design De (the demandee product D), and the design of the fur around the cuffs of either one of Prior Publicly Known Design Ea and Prior Publicly Known Design Eb with Prior Publicly Known Design B and is not a design collecting Prior Publicly Known Design A, Prior Publicly Known Design Da (or Prior Publicly Known Design De), and Prior Publicly Known Design Ea (or Prior Publicly Known Design Eb) by an ordinary technique for a person skilled in the art. Therefore, Reasons for invalidation 4 of the demandant (Ease of Creation-2) are unreasonable.

(4-3) Regarding Ease of Creation-3

Although the demandant alleges that "the Registered Design has the same form as the design in which the bijou broach that is the component of Prior Publicly Known Design C is removed from Prior Publicly Known Design C. Needless to say, it is a common technique for a person skilled in the art to make the constitution that reduces the number of components (bijou broach) from Prior Publicly Known Design C. Therefore, the Registered Design could have been easily created based on Prior Publicly

Known Design C" (the written request for trial), regarding Prior Publicly Known Design C, the application for design registration related to the Registered Design is the design of substantially the same product as the design receiving the application of lack of novelty, and is not the design that has a relationship to the determination of ease of creation. Therefore, Reasons for invalidation 4 of the demandant (Ease of creation-3) is unreasonable.

(4-4) Creativity of the Registered Design

Temporarily, even if a part of the constitutions of the Registered Design was a publicly known form before the application of the Registered Design was filed as alleged by the defendant, it is considered that the Registered Design has creativity also in the combination of the basic forms and other changing forms, and the creativity of the changing forms having the creativity is not excluded from the determination of the ease of creation.

Namely, the Registered Design has design characteristics in which the basic form (a use state in which the hood, the fur of the hood, and the fur of the cuffs are attached), Changing Form 1 (a use state only with the hood and the fur of the hood), Changing Form 2 (a use state in which only the fur of the cuffs is attached), Changing Form 3 (a use state only with the hood), and Changing Form 4 (a use state in which all the fur of the hood, the hood, and the fur of the cuffs are removed) are included, and the design having such a relationship is not seen in the prior publicly known design and the like having a relationship with the Registered Design presented by the demandant.

Further, although Prior Publicly Known Design Eb presented by the demandant is labeled "5-WAY Coat," the basic form thereof is a long-sleeved medium-length coat with four large buttons arranged vertically at the alignment portion of the coat, is a design of a changing form in which there is no hood and a collar is replaced, and is a design that clearly differs from the changing forms of the Registered Design.

(4-5) Summary

The Registered Design is not a design that could have been easily created by a person skilled in the art based on one or more publicly known designs (Evidence A No. 3-1 to No. 3-3, Evidence A No. 4, Evidence A No. 7, Evidence A No. 10, Evidence A No. 11, Evidence A No. 13, and Evidence A No. 14) before the application thereof was filed, and is a design that does not fall under the provisions of Article 3(2) of the Design Act. The Registered Design has no reasons for invalidation stipulated in Article 48(1)(i) of the Design Act, and thus the trial decision is requested as per the object of the reply.

2. Proof submitted by the demandee

The demandee submitted Evidence B No. 1 to No. 24 as appendixes of the written reply, the written reply, the written reply (2), and the oral proceedings statement brief. (see Appendix 4)

No. 5 Oral proceeding

In this case, the body conducted an oral proceeding on July 26, 2017.

(the oral proceedings record dated July 26, 2017) (In the Oral proceeding, the Chief administrative judge notified the demandant and demandee that the trial was concluded.)

No. 6 Judgment by the body

1. The registered Design (see Appendix 1)

The Registered Design (the design of Design Registration No. 1537464) was filed on January 30, 2015 for seeking the application of the provision of Article 4(2) of the Design Act, and an establishment of the design right was registered on October 9, 2015 after examination. The article to the Registered Design is "Coat" and its shape, pattern or color, or a combination thereof (hereinafter, also referred to as "a form") is as shown in the description of the application and the photographs in lieu of drawings attached to the application.

The Registered Design is a ladies "coat" having a hood or fur, and its form is as follows.

That is, the whole is composed of a coat body portion (hereinafter, "a coat body portion" is simply referred to as "a body portion"), a hood portion, and sleeve portions, and along peripheral edge portions of both tip ends of the sleeve portions and an opening portion of the hood, fur is provided.

The body portion is generally cylindrical, with a medium length up to the knee length, in which the left and right contours of the body portion are slightly narrowed toward the hem, the front side is overlapped, the wings are tailored so that the inside of the mating part is not visible from the outside, a generally horizontally long rectangular pocket flap (hereinafter, simply referred to as "a flap") is placed horizontally and symmetrically slightly below the waist on the front side, and a wide band-shaped decorative belt portion is arranged slightly below the back side; the sleeve portions are long sleeves with a generally narrow cylindrical shape as a whole, in which tip end portions including fur extend to below the belt portion on the back side, and cuffs are

provided with a volumetric fur that is about 1/6 of the length of the entire sleeve including the fur; a hood portion is provided in a generally triangular shape in a side view so as to protrude from the vicinity of the collar to the back side, in which a volumetric fur is provided along the periphery of the opening of the hood portion; and the hood portion, the fur of the hood portion, and the fur of the cuffs can be removed and used, and it can be used with all removed. Also, the fur of the cuffs can be removed and attached to the collar.

Then, the color of the body portion, the sleeve portions, and the hood portion is navy, and the color of the fur of the hood portion and the fur of the cuffs are both dark brown.

"A perspective view with the hood removed" and "a perspective view with the fur attached to the neck" are shown.

2. Regarding Reasons for Invalidation 1

According to the written request for trial, the Registered Design is similar to a design (a design which the demandant refers to as "Prior Publicly Known Design A") published on Evidence A No. 3-1 to No. 3-3 that was publicly known before the application for the Registered Design was filed and thus cannot be registered under Article 3(1)(iii) of the Design Act.

(1) Description of the evidence

Evidence A No. 3-1 is the website of "Style Cruise" that is a mail order site of BAYCREW'S GROUP, to which BAYCREW'S CO., LTD. belongs, and the "IENA" product is listed. Evidence A No. 3-2 is one enlarging and printing each image that can be displayed in the website of Evidence A No. 3-1. Further, the "IENA" product is a product that is developed in three colors (black, beige, and navy) that differ only in color. Evidence A No. 3-3 is the website that is introduced on the "Style Cruise" website as "Blog introducing this product."

In Evidence A No. 3-1 to No. 3-3, a product of "Double Face Melton No-collar Coat with Hood" (Item No. 13020900390040) sold by BAYCREW'S CO., LTD. under its brand "IENA" is presented.

According to Evidence A No. 15-2, in an excerpt recorded and provided as published on January 11, 2014 on the official blog "BAYCREW'S GROUP DAILY BLOG" of IENA that is recorded and provided by Internet Archive "Wayback Machine," since there is a description of "December 2013 (37)," it is recognized that the design of Evidence A No. 3-1 to No. 3-3 was published before the application of the Registered Design was filed.

(2) The design of Evidence A No. 3-1 to No. 3-3

The article to the design of Evidence A No. 3-1 to No. 3-3 is recognized as "Coat", and as for its form, the whole is composed of a body portion, a hood portion, and sleeve portions, and a switching line is provided near both tip ends of the sleeve portions.

The body portion is generally cylindrical, with a slightly short length up to the knee length, in which the left and right contours of the body portion are linear, the front side is overlapped, the wings are tailored so that the inside of the mating part is not visible from the outside, a generally horizontally long rectangular flap is placed horizontally and symmetrically slightly below the waist on the front side, and a wide band-shaped decorative belt portion is arranged slightly below the back side; the sleeve portions are long sleeves with a generally narrow cylindrical shape as a whole, in which tip end portions extend to below the belt portion on the back side; and a hood portion is provided in a generally triangular shape in a side view so as to protrude from the vicinity of the collar to the back side, and can be removed and used. The color thereof is black, beige, and navy.

(3) Comparison and determination of similarity between the Registered Design and the design of Evidence A No. 3-1 and No. 3-3

The two designs are different in the point that Evidence A No. 3-1 and No. 3-3 have a short length up to the knee length, in which the left and right contours of the body portion are linear, and fur is not provided on both the cuffs and the hood, whereas the Registered Design has a medium length up to the knee length, in which the left and right contours of the body portion are slightly narrowed toward the hem, and fur is provided on both the cuffs and the hood. The impression of the different features is far stronger than impression of the common features that a generally horizontally long rectangular flap is placed horizontally and symmetrically slightly below the waist on the front side, and a wide band-shaped decorative belt portion is arranged slightly below the back side, and makes viewers recognize that the two designs are different, and thus it is determined that the Registered Design and the design of Evidence A No. 3-1 and No. 3-3 are not similar to each other.

Therefore, Reasons for Invalidation 1 is groundless.

3. Regarding Reasons for Invalidation 2

According to the written request for trial, the Registered Design is similar to a design of Evidence A No. 11 that had become available to the public through electric communication lines before the application for the Registered Design was filed, and

thus cannot be registered under Article 3(1)(iii) of the Design Act.

(1) Description of the evidence

Evidence A No. 11 is the archived record for 2014 on the website of the official mail order site "Arpege story" of ARPEGE Co., Ltd that is recorded and provided by Internet Archive "Wayback Machine", and excerpts recorded and provided as published on July 18, 2014. Although it can be recognized that the product photo showing the product of the demandee viewed from generally the front side is published within the upper side black frame on the page of the website "Arpege story," since the only form shown is that viewed from the front side of the coat with a hood, the hood having no fur can be visually recognized from the photo, and it is impossible to visually recognize the aspect of the back surface of the coat and the shape of the hood portion from that, and it is not clear whether or not the fur at the cuff can be replaced to the collar.

(2) The design of Evidence A No. 11

As described in (1) above, according to Evidence A No. 11, the article to the design of Evidence A No. 11 is recognized as "Coat" and as for its form, it can be recognized as follows.

The whole is composed of a body portion, a hood portion, and sleeve portions, and although fur is provided at both tip end portions of the sleeve portions, the fur is not provided at the periphery of an opening portion of the hood portion.

The body portion is generally cylindrical, with a medium length up to the knee length, in which the front side is overlapped, a generally horizontally long rectangular flap is placed horizontally and symmetrically slightly below the waist on the front side; and the sleeve portions are long sleeves with a generally narrow cylindrical shape as a whole. It cannot be certified whether or not the hood portion is removable, and according to the visual recognition from the front side, the fur is not attached to the hood portion.

(3) Comparison and determination of similarity between the Registered Design and the design of Evidence A No. 11

As described above, the design of Evidence A No. 11 is common with the Registered Design in the point that a medium length up to the knee length, the front side is overlapped, a generally horizontally long rectangular flap is placed horizontally and symmetrically slightly below the waist on the front side, the sleeve portions are long sleeves with a generally narrow cylindrical shape as a whole, and volumetric fur is provided at both tip end portions of the sleeve portions. However, the two designs are different in the point that the Registered Design has the belt portion or the hood portion

on the back side in a rear view, whereas the design of Evidence A No. 11 is unclear about the presence or absence of the belt portion on the back side and the shape of the hood. Then, the effects on the determination of similarity by the different features are far stronger than those of the common features, and it should be said that the two designs have different visual impressions as an overall design. Hence, it cannot be said that the Registered Design is similar to the design of Evidence A No. 11.

Therefore, Reasons for Invalidation 2 are groundless.

4. Regarding Reasons for Invalidation 3

(1) Regarding whether or not the Registered Design is similar to the design of Evidence A No. 13

According to the written request for trial, the Registered Design is similar to a design of Evidence A No. 13 (the design that the demandant refers to as "Prior Publicly Known Design C"), and thus can not be registered under Article 3(1)(iii) of the Design Act.

(A) Description of the evidence

The demandant submitted Evidence A No. 13-2 which expands Evidence No. A No. 13 by the written reply dated April 3, 2017, and makes Evidence No. 13 become Evidence No. 13-1.

Evidence A No. 13-1 and Evidence A No. 13-2 are copies of a printed out screen of the page that published a photo of the product for sale on the Internet by the demandee ARPEGE Co., Ltd, and the product with the product name of "Cocoon Coat" (Maker Item No. 24422350) of the brand "Apuweiser-riche" of the same company is published there.

On the lower right part of Page 1 of Evidence A No. 13-1, there are descriptions of "the magazine publication information published in 'BIHINHYAKKA' issued in November, 2014" and "the magazine publication information published in 'AneCan' issued in November, 2014."

The demandant submitted Evidence A No. 36-1 and Evidence A No. 36-2 as the evidence for indicating the evidentiary fact that the designs of Evidence A No. 13-1 and Evidence A No. 13-2 were published before the application of the Registered Design was filed, by the written reply dated April 3, 2017.

Evidence A No. 36-1 is the archived record (Page 1) of the website of the product introduction of the demandee product "[Arpege story limited] Cocoon Coat" and an excerpt (Page 2) recorded and provided as published on November 29, 2014, by the Internet Archive Wayback Machine, and on Page 2 thereof, "Cocoon Coat" (Maker

Item No.: 24422350) that is the same as Evidence A No. 13-1 is published. Then, by clicking each image shown in "Detail Item details" on that page, an image published there can be enlarged and displayed instead of the image of the woman wearing the upper side coat, and it can be recognized that those images are the same as those of Evidence A No. 13-1.

Then, Evidence No. 36-2 is the enlarged part of Page 2 of Evidence A No. 36-1 (Pages 1 to 2), and 11 images excluding one image at the left end in the upper row and 3 images on the right side in the bottom row among 3 vertical and 5 horizontal images of "Detail Item details" on the lower part on Page 2 of Evidence A No. 36 are largely displayed.

Further, the demandant submitted Evidence A No. 46 while alleging that a navy one of the demandee product is introduced as Arpege story limited "5-WAY Cocoon Coat" in a lump of Arpege story limited products of "Apuweiser-riche," by the oral proceedings statement brief dated June 28, 2017.

Evidence A No. 46 is the cover (Page 1 of Evidence A No. 46), the magazine Pages 02 and 05 (Pages 2 and 3 of Evidence A No. 46), the back cover (Page 4 of Evidence A No. 46), and enlarged Page 05 of the magazine (Page 5 of Evidence A No. 46) of spare volume appendix issued in December, 2014 of the magazine "AneCan" issued by Shogakukan Inc. on November 7, 2014.

On the upper part on Page 2 of Evidence A No. 46, there is a description "winter rich coordinates 8 made with limited items of Apuweiser-riche," and on Pages 3 and 5 of Evidence A No. 46-3, in a lump of Arpege story limited produces, a navy one of the demandee product is introduced as Arpege story limited "5-WAY Cocoon Coat."

Then, on the upper right part on Page 1 of Evidence A No. 46, it is described that the issue and release date of the magazine "AneCan" December 2014 issued by Shogakukan Inc. is November 7, 2014. The description matches with the description of "the magazine publication information published in 'AneCan' issued in November, 2014" on the lower right part on Page 1 of Evidence A No. 13-1. Also, on Page 5 of Evidence A No. 46 that enlarged Page 5 of the magazine, there is a description "5-WAY Cocoon Cat" on the upper right part, and it is described that "fur was attached also to the hood of the big hit coat!."

As recognized above, since the contents of the website in which "Cocoon Coat" (Maker Item No.: 24422350) shown by Evidence A No. 36-2 matches the contents of Evidence A No. 13-1 and No. 13-2, the body recognized that the design presented in Evidence A No. 13-1 and No. 13-2 was published on the Internet before the application of the Registered Design was filed, according to Evidence A No. 36-1 and Evidence A

No. 36-2, by the fact (evidentiary fact) that the website posting "Cocoon Coat" (Maker Item No.: 24422350) was published before the application of the Registered Design was filed.

Then, among the designs of Evidence A No. 13-1 and Evidence A No. 13-2 and the design related to the product of "Cocoon Coat" (Maker Item No.: 24422350) of Evidence A No. 36-1 and Evidence A No. 36-2, since "white" and "navy" have one aspect from the front side, the design related to an off-white product described as "off-white" of "Detail Item details" displaying also changing aspects is recognized as Cited Design (hereinafter, referred to as "Cited Design") of Reasons for Invalidation 3, and hereinafter, is compared with the Registered Design to determine similarity.

(B) Cited Design (Evidence A No. 13-1 and Evidence A No. 13-2, Evidence A No. 36-1 and Evidence A No. 36-2: see Appendix 2)

It is recognized that the form of Cited Design is as follows.

That is, the whole is composed of a body portion, a hood portion, and sleeve portions, and fur is provided at both tip ends of the sleeve portions and a periphery of an opening portion of the hood.

The body portion is generally cylindrical, with a medium length up to the knee length, in which the left and right contours of the body portion are slightly narrowed toward the hem, the front side is overlapped, the wings are tailored so that the inside of the mating part is not visible from the outside, a generally horizontally long rectangular flap is placed horizontally and symmetrically slightly below the waist on the front side, and a wide band-shaped decorative belt portion is arranged slightly below the back side; the sleeve portions are long sleeves with a generally narrow cylindrical shape as a whole, in which tip end portions including fur extend to below the belt portion on the back side, and cuffs are provided with a volumetric fur that is about 1/6 of the length of the entire sleeve including the fur; a hood portion is provided in a generally triangular shape in a side view so as to protrude from the vicinity of the collar to the back side, in which a volumetric fur is provided along the periphery of the opening of the hood portion; and the hood portion, the fur of the hood portion, and the fur of the cuffs can be removed and used, and it can be used with all removed. Also, the fur of the cuffs can be removed and attached to the collar.

Then, as for the color, the body portion, the sleeve portions, and the hood portion are off-white, and the fur on the hood and the fur on the cuffs are both beige.

As changing aspects, "a state in which a broach is attached, a hood with fur is attached, and fur is attached on sleeves," "a state in which a broach is not attached, a hood is attached, and fur on the hood and sleeves is removed," "a state in which a

broach is attached, a hood is removed, and fur is attached to sleeves," "a state in which a broach is attached, a hood is removed, and fur on sleeves is removed," and "a state in which a broach is not attached, fur on sleeves is removed, and fur is attached to a neck" are shown.

(C) Comparison of the Registered Design and Cited Design (hereinafter, referred to as "the two designs")

1) Article to the design

First, concerning the articles to the design, the two designs relate to "Coat" and they coincide in the articles to the design.

2) Common features in form

The two designs are mainly common with each other in the following points.

(A) The point that the whole is composed of a body portion, a hood portion, and sleeve portions, and fur is provided at a periphery of an opening portion of the hood and cuffs,

(B) the point that the body portion is generally cylindrical, with a medium length up to the knee length, in which the left and right contours of the body portion are slightly narrowed toward the hem, the front side is overlapped, the wings are tailored so that the inside of the mating part is not visible from the outside, a generally horizontally long rectangular flap is placed horizontally and symmetrically slightly below the waist on the front side, and a wide band-shaped decorative belt portion is arranged slightly below the back side,

(C) the point that the sleeve portions are long sleeves with a generally narrow cylindrical shape as a whole, in which tip end portions including fur extend to below the belt portion on the back side, and cuffs are provided with a volumetric fur that is about 1/6 of the length of the entire sleeve including the fur,

(D) the point that a hood portion is provided in a generally triangular shape in a side view so as to protrude from the vicinity of the collar to the back side, in which a volumetric fur is provided along the periphery of the opening of the hood portion, and

(E) the point that the hood portion, the fur of the hood portion, and the fur of the cuffs can be removed and used, and it can be used with all removed. Also, the fur of the cuffs can be removed and attached to the collar.

3) Different features in form

In the Registered Design, the body portion, the sleeve portions, and the hood portion are navy, and the fur of the hood portion and the fur of the cuffs are both dark brown, whereas in Cited Design, the body portion, the sleeve portions, and the hood portion are off-white, and the fur of the hood portions and the fur of the cuffs are both beige. Therefore, there are main differences in color between the two designs.

(D) Determination of similarity between the two designs

The articles to the designs of the two designs are identical. Hereinafter, the common features and the different features in form of the two designs are evaluated, and the similarity between the two designs will be judged.

1) Common features

The common feature (A) in which the whole is composed of a body portion, a hood portion, and sleeve portions, and fur is provided at a periphery of an opening portion of the hood and cuffs, forms a structure of the form of both designs. Therefore, the constitution itself, consisting of the body portion, the hood portion, and the sleeve portions is a commonly seen aspect, and although it cannot be said that it alone does not give a strong common impression to the two designs, the aspect provided with the fur on the periphery of the opening portion of the hood portion and the cuffs creates a sense of unity throughout the coat, can be said as the one giving a strong common impression to consumers in that point, and affects the determination of similarity between the two designs.

Then, regarding the common feature (B), about the aspect in which the body portion is generally cylindrical, with a medium length up to the knee length, in which the left and right contours of the body portion are slightly narrowed toward the hem, the front side is overlapped, the wings are tailored so that the inside of the mating part is not visible from the outside, a generally horizontally long rectangular flap is placed horizontally and symmetrically slightly below the waist on the front side, and a wide band-shaped decorative belt portion is arranged slightly below the back side, the aspect of the body portion forms the structure of the two designs, and thus, in the whole observation of the design, the common feature thereof gives a strong impression to viewers and affects the determination of similarity between the two designs.

Also, regarding the sleeve portions of the common feature (C), about the aspect in which the sleeve portions are long sleeves with a generally narrow cylindrical shape as a whole, in which tip end portions including fur extend to below the belt portion on the back side, and cuffs are provided with a volumetric fur that is about 1/6 of the length of the entire sleeve including the fur, it can be said that the aspect in which fur is volumetric is characteristic, so that it can be said that it gives an impression common to the two designs and affects the determination of similarity between the two designs.

Then, also regarding the common feature (D), it can be said that the point that a hood portion is provided in a generally triangular shape in a side view so as to protrude from the vicinity of the collar to the back side, in which a volumetric fur is provided along the periphery of the opening of the hood portion, is a point attracting the attention

of consumers, and thus it can be said that it affects the determination of similarity between the two designs to some extent, together with the aspect of the sleeve portions of the common feature (C).

Furthermore, regarding the common feature (E) in which the hood portion, the fur of the hood portion, and the fur of the cuffs can be removed and used, and it can be used with all removed, although one is partly in common, since the variation used in a changing form increases by removing the hood or fur and using it, it can be said to be a part attracting the attention of consumers, and it can be said that the common impression is increased. Therefore, together with the other common features, it can be said that it affects the determination of similarity between the two designs.

Then, the aspects related to the common features (A) to (D), considering a visual effect generated by those together, has extremely high commonality in basic modeling, and causes a common aesthetic feeling to consumers. Especially, the aspect of the common feature (B) and the impression of the fur of the common feature (C) and the common feature (D) largely affect the determination of similarity between the two designs. Although it cannot be said that the aspect related to the common feature (E) alone largely affects the determination of similarity between the two designs, but it causes a common aesthetic feeling to consumers together with the common features (A) to (D), and thus the common features of the common features (A) to (E) determine the similarity judgment of the two designs.

2) Different features

Against this, the different features do not significantly affect determination of similarity between the two designs, and do not predominate over the common aesthetic impression with the two designs.

That is, regarding the difference in color that is the only different feature, it is a common aspect to change the hue of the body portion, the sleeve portions, and the hood portion, and the fur of the hood portion and the cuffs like as the Registered Design, including the difference in saturation and brightness and to make the color similar without changing the hue like Cited Design, in that in the field of this kind of coats, and all of these can be said to be common aspects. Since there are usually various color variations, it cannot be said that difference in color is so attractive, and in the implementation, it can be said that the difference gives the recognition that the same product has different colors (color variations). Thus, it cannot be said that the difference would greatly affect the determination of similarity of the two designs.

3) Summary

As described above, articles to which both designs are respectively applied

correspond to each other, and regarding the form, taking the different features into account generally, as effect of design appealing to the eye, the common features (A) to (E) significantly affect determination of similarity between the two designs, effect caused by the common features predominates over effect of different features, the common features cause common aesthetic impression of consumers as the whole design, and thus the two designs are similar to each other, and the Registered Design is similar to Cited Design that had become available to the public through electric communication lines before the application for the Registered Design was filed.

(2) Regarding Cited Design and the design described in the proving document for seeking the application of provision of exceptions to lack of novelty of the Registered Design

(A) Regarding Article 4(2) of the Design Act

In the provision of the Design Act before the revision of 1999 (Act No. 41 of 1999), although Article 4(2) of the Design Act was that "with respect to a design that has fallen under Article 4(1)(i) or 4(1)(ii) of the Design Act due to the action of a person who has the right to receive a design registration, even when an application for design registration is filed by said person within six months from the date on which the design falls under either of those items, the same as the previous paragraph shall apply," in the provision of the Design Act after the revision of 1999, it was revised as "with respect to a design that has fallen under Article 3(1)(i) or 3(1)(ii) of the Design Act due to the action of a person who has the right to receive a design registration, the previous paragraph shall apply for the application of provisions of Article 3(1) and Article 3(2) of the Design Act about the design related to an application for design registration is filed by said person within six months from the date on which the design fell under either of those items."

In the provision of the Design Act before the revision of 1999, "if each of the various variations of the design is published, even if you applied for the application of provision of exceptions to lack of novelty and applied for design registration," "the application of provision of exceptions to lack of novelty can be received only when a design that is substantially identical to a design that has lost its novelty has been filed, and when a design with other variations announced by oneself is filed, there was a case where design registration was not possible because it could have been similar to a design that lost novelty or it could have been easily created based on a design that lost novelty." Then, in "the law revision of 1999," "not only when the application of the design that is the same as the design that lost novelty is filed, but also when the

application of a design similar to that or a design that could have been easily created based on that is filed, the provision of exceptions to lack of novelty can be applied." ("Explanation of legal 'Industrial Property Right Law (Industrial Property Law) commentary [Law of 1994 to Law of 2004]" Chapter 9: Expansion of the application scope of provision of exceptions to lack of novelty: Article 4 of the Design Act: Page 103)

That is, in the law revision of 1999, it became possible to describe the designs of other variations announced by oneself in "the proving document for seeking the application of provision of exceptions to lack of novelty." If the designs of other variations announced by oneself had fallen under the Article 3(1)(i) or Article 3(1)(ii) of the Design Act, it would become possible that the design can receive the application of provision of Article 4(2) by submitting the proving document for seeking the application of provision of exceptions to lack of novelty.

Then, in the court decision of the case for 1995, (Gyo-Ke) No. 159 "Terminal Board" (Rendition of Decision on February 28, 1996 at Intellectual Property High Court, Evidence B No. 10) mentioned by the demandee, in the case where a design that is within the scope of the sameness as a design published by the public action for which the application of provision of exceptions to lack of novelty is applied is announced more than once, even if you did not apply for provision of exceptions to lack of novelty each time, it is not considered to have lost novelty. After the revision of the law revision of 1999, the intent does not change, and that does not mean that the application for exceptions to lack of novelty can be omitted, when a design with a variation that is not within the scope of the same identity as the design published by the publication act that applied for the exceptions to lack of novelty announced by oneself is announced.

Therefore, so as to receive the application of provision of Article 4(2) of the Design Act for the designs of other variations that are not within the scope of the same identity as the design announced by oneself, it is necessary to apply for the exceptions to lack of novelty; that is, it is necessary to apply for the exceptions to lack of novelty for each design of each variation.

(B) Regarding the design for seeking the provision of Article 4(2) of the Design Act

The Registered Design was filed on January 30, 2015 for seeking the application of the provision of Article 4(2) of the Design Act, and the proving document for seeking the application of provision of exceptions to lack of novelty (Evidence A No. 2: see Appendix 3) was submitted on February 26, 2015. Accordingly, it was proven by employees of the company that manages the Internet site that a coat published on the Internet site of ARPEGE Co., Ltd. on August 1, 2014 was the one

presented by the photo.

The coat presented by the photo has a product name of "5-WAY Cocoon Coat" of the brand "Apuweiser-riche" of the same company, and the article to the design is recognized as "Coat" and as for its form, it is as follows.

That is, the whole is composed of a body portion, a hood portion, and sleeve portions, and although fur is provided at both tip lower end portions of the sleeve portions, fur is not provided at a periphery of an opening portion of the hood portion.

The body portion is generally cylindrical, with a medium length up to the knee length, in which the left and right contours of the body portion are slightly narrowed toward the hem, the front side is overlapped, the wings are tailored so that the inside of the mating part is not visible from the outside, a generally horizontally long rectangular flap is placed horizontally and symmetrically slightly below the waist on the front side, and a wide band-shaped decorative belt portion is arranged slightly below the back side; the sleeve portions are long sleeves with a generally narrow cylindrical shape as a whole, in which tip end portions including fur extend to below the belt portion on the back side, and cuffs are provided with a volumetric fur that is about 1/6 of the length of the entire sleeve including the fur; a hood portion is provided in a generally triangular shape in a side view so as to protrude from the vicinity of the collar to the back side, and the fur of the cuff and the hood portion can be removed and used, and it can be used with all removed. Also, a broach can be attached to the alignment portion of a front side.

Then, two type of colors are published; in one, the color of the body portion, the sleeve portions, and the hood portion is navy and the color of the fur of the cuffs is dark brown, and in the other one, the color of the body portion, the sleeve portions, and the hood portion is light blue, and the fur of the cuff is beige.

As changing aspects, "a state in which a broach is attached, the hood is removed, and fur is attached to sleeves," "a state in which a broach is not attached, the hood is attached, and fur is attached on the sleeves," "a state in which a broach is not attached, the hood is attached, and fur is attached to the sleeves," "a state in which a broach is not attached, the hood is attached, fur is attached to the sleeves, and a front is opened," and "a state in which fur on the sleeves is removed, and fur is attached to a neck" are shown.

(C) Regarding the design of Evidence A No. 2 and Cited Design

The demandee alleges that the design of "Cocoon Coat" (Maker Item No.: 24422350) that is the same as Cited Design published and sold by the demandee is within the scope of identity as the design described in Evidence A No. 2 for receiving the application of provision of Article 4(2) of the Design Act.

However, the design shown in Evidence A No. 2 has no fur on the hood, and

Cited Design has fur on both the cuffs and the periphery of the opening portion of the hood. Therefore, they are different in form. Also, the fur provided at the periphery of the opening portion of the hood of Cited Design is voluminous and prominent. There is a difference in the volume around the hood part of the coat and the impression between the hood portions that has fur or no fur. For women who purchase this type of coat, the presence or absence of fur is a big difference, there is no mistake in the design of Evidence No. 2 and Cited Design, so that it should be said that the two designs are not recognized as being within the same scope.

Also, Cited Design has the fur around both the cuffs and the hood portion, and includes the aspects change due to its removal. Against that, as recognized in (B) above, the design of Evidence A No. 2 has no fur on the hood portion, and thus changing aspects shown there are also limited.

Therefore, it can be said that Cited Design and the design of Evidence A No. 2 are different also in the changing aspect, and thus it can be said that Cited Design and the design of Evidence A No. 2 are different in the form including the changing aspects.

Therefore, the demandee's allegation that the designs of Evidence A No. 13-1 and Evidence A No. 13-2 including Cited Design are within the scope of identity with the design of Evidence A No. 2 cannot be accepted.

(D) The demandee's allegation

Since the demandee alleges that Cited Design is within the scope of identity with the design described in the proving document for seeking the application of provision of exceptions to lack of novelty of the Registered Design, the point is described below.

(A) The demandee alleges, regarding Cited Design and the design of Evidence A No. 2, while those are made to be the product A related to Evidence A No. 2 and the product B related to Cited Design, that "it was sold as Product B with fur on the hood of Product A. Product A and Product B are substantially the same product, and in the proving document for seeking the application of provision of exceptions to lack of novelty, since Product A and Product B are substantially the same product, the design of Product A that is a first published design receives the application of lack of novelty," and alleges that it affects the determination of the application of provision of Article 4(2) of the Design Act.

First, since Cited Design related to Product B and the design of Evidence A No. 2 related to Product A are different in the form including the changing aspects, it cannot be said that they are the same design. Even if the two designs are published or exhibited with the same product name, and even if it is recognized that the left and right contours of the body portion are slightly narrowed toward the hem, it is as explained in

(c) above that consumers will not mistake the two designs for the same product.

Also, generally, a coat with fur on the hood and a coat without fur on the hood are considered separate.

(B) Next, it will be examined whether or not Product B related to Cited Design and Product A related to Evidence A no. 2 are the same product

In this case, no objective evidence has been submitted that suffices to admit that Product B related to Cited Design is one with the hood of Product A related to Evidence A No. 2 attached.

The demandee, regarding Product A described in Evidence A No. 2, states "although the Internet image of the coat attached with the fur on the hood is not published, the sale of Product A started in midsummer, August 1, 2014, and it was too early to advertise the product with fur on the hood, so that the image of the state in which the fur was attached was merely not introduced in business."

However, in the article (Evidence A No. 47-3) posted on August 4, 2014 of the official blog "Apuweiser-riche Official Blog" of the brand "Apuweise-riche" of the demandee, the photo of "Fake Mouton Coat" with the fur around both the cuffs and the hood is published, and it is described that pre-order and sale were done. From that point on, since even in midsummer, it is recognized that it promotes products with fur on the hood, it can be said that the demandee's allegation "was merely not introduced in business" is not reasonable.

Also, according to Evidence A No. 13-1 and Evidence A No. 13-2, the selling price of Product B related to Cited Design is recognized as 63,720 yen, whereas, according to Evidence A No. 2, the selling price of Product A related to Evidence A No. 2 is recognized as 56,160 yen. It can be considered that the presence of fur has an influence on the fact that the selling prices of the two products are different.

Further, regarding the start of sales of both products, regarding the start of sales of Product B related to Cited Design, according to Evidence A No. 36-2, pre-order and sales started on October 24, 2014, and it is different from August 1, 2014 of Evidence A No. 2.

In addition to the facts mentioned above, in Evidence A No. 13-1, there are descriptions of "Limited point" and "fur is attached to both the sleeves and the hood of Apu's popular 5-WAY Coat"; that is, in view of the fact that the demandee emphasized that the fur attached to the hood was new in the sale of Product B, the demandee's allegation that Product B related to Cited Design can be regarded as a series of products with Product A of Evidence A No. 2 cannot be immediately recognized.

(C) Furthermore, the demandee, in the written reply dated April 28, 2017, alleges that

"the product development of the Registered Design had been completed on August 1, 2014. '5-WAY Cocoon Coat' related to the Registered Design was scheduled for sale to the general public in the fall, but it was transferred to specific customers. The demandee (the holder of a design right) ARPEGE Co., Ltd ordered the 'Arpege Story Limited Cocoon Coat' with the supplier "NIPPON STEEL TRADING CORPORATION" on July 1 (2014AW, July 1) (Evidentiary fact 6, Evidence B No. 21)."

Certainly, the Maker Item Nos. described in the Evidence B No. 21 certificate are "244-22350" and "AR-22350", and the Item No. of "[Arpege story Limited] Cocoon Coat" (Maker Item No. 24422350) of Evidence No. 13-1 and Evidence A No. 13-2 and the end of the part number match with 22350, and thus it can be inferred that the demandee ordered a similar item number at the same time as Evidence A No. 2.

Also, in Evidence B No. 21, drawings with fur on the hood are posted, and above that, there are descriptions about the colors of "off-white", "navy", and "white" that are common to the colors of Cited Design, so that it can also be inferred that the demandee was ordering a product with fur in the hood portion, similar to Cited Design.

However, since the item numbers of Product B related to Cited Design and Evidence B No. 21 are the same, even if the product ordered by Evidence B No. 21 includes Product B related to Cited Design, in Evidence A No. 2, so long as the item number of Product A is unknown, it cannot be said that Product A is included in the product ordered by Evidence B No. 21.

Also, although there are descriptions of "fur removal" and "hood removal" and fur "for cuffs and hoods" in the description of Evidence B No. 21, as described above, so long as the item number of Product A is unknown, the specific form of the product of Evidence B No. 21 is only outlined, and because of this, it cannot be determined whether the product is the same as Product A of Evidence A No. 2. Therefore, according to Evidence B No. 21, it is not enough to admit that the fur is attached to the hood of Product A and that the demandee has ordered such Product A.

As described above, according to Evidence B No. 21, the fact Product A ("5-WAY Cocoon Coat") related to Cited Design has been transferred to a specific customer before the application for the Registered Design was filed, and the fact that fur is attached to the hood of Product A related to Cited Design and the demandee has ordered such Product A, which are alleged by the demandee, cannot be recognized, so that it cannot be recognized that Product A is designed so that the fur can be removed from the hood and is the same product as Product B.

(D) Furthermore, although the demandee, in the written reply dated April 28, 2017, alleges that when describing about the fur of the sleeves and the hood, in general, fur strengthens the elements of elegance style, but it can be removed to accommodate casual style. About the hood, since the simple hood to which fur is not attached strengthened the casual element generally, the design was made such that the fur is dismountable so that it could respond also to a casual style. In the design of such product development, it is impossible to attach fur only to the sleeves of the coat and not to the hood, since both coats with fur on the cuffs and the hood portion, and coats with fur only on the cuffs and no fur on the hood portion, were allowed before the application for the Registered Design was filed, the aspect "with fur only on the cuffs and no fur on the hood portion" is the aspect of Evidence A No. 2, and is actually sold as the product of the demandee, and it cannot be said that such a design is impossible, and that allegation cannot be confirmed.

(E) Summary

Therefore, on the basis of the fact that the design for which "the application of provision of exceptions to lack of novelty" that was made in the application related to the Registered Design was sought and Cited Design are within the scope of identity, when judging the novelty and ease of creation of the Registered Design, Cited Design cannot be regarded as not falling under the provision of Article 3(1)(i) or Article 3(1)(ii) of the Design Act.

(3) Brief Summary

As described above, the Registered Design is a design similar to Cited Design, and cannot be granted under the provisions of Article 3(1)(iii) of the Design Act.

Therefore, Reasons for Invalidation 3 have reasons.

5. Regarding Reasons for Invalidation 4

According to the written request for trial, the Registered Design could have been easily created by a person skilled in the art based on one or more designs that were publicly known before the filing of the application, and cannot be granted under the provisions of Article 3(2) of the Design Act.

(1) Ease of Creation-1

The demandant alleges that the Registered Design is constituted by combining the design of the fur around the hood of either one of the design of Evidence A No. 4 or the design of Evidence A No. 7, and the design of the fur around the cuffs of either one of the design of Evidence A No. 14 and the design of Evidence A No. 10, with the

designs of Evidence A No. 3-1 and No. 3-3, and is nothing more than a design collected by a common technique for a person skilled in the art.

However, in the designs presented in Evidence A No. 3-1 and No. 3-3, the body portion is with a slightly short length up to the knee length, in which the left and right contours of the body portion are linear, whereas in the Registered Design, the body portion is with a medium length up to the knee length, in which the left and right contours of the body portion are slightly narrowed toward the hem, the form of the body portions of the two designs are largely different (see (3) of "2. Regarding Reasons for invalidation 1"). Thus, even if the design of the fur at the periphery of the opening portion of the hood portion of either one of the design of Evidence A No. 4 and the design of Evidence A No. 7, and the design of the fur around the cuff of either one of the design of Evidence A No. 14 and the design of Evidence A No. 10 are combined with the designs of Evidence A No. 3-1 and No. 3-3 that have the different form of the body portion, the form of the Registered Design cannot be made, so that it cannot be recognized that the Registered Design could have been easily created by a person skilled in the art based on the publicly known forms.

Therefore, Ease of Creation-1 alleged by the demandant is groundless.

(2) Ease of Creation-2

The demandant alleged that the Registered Design is constituted by combining the design of the decorative belt of the designs of Evidence A No. 3-1 and No. 3-3, the design of the fur around the hood portion of either one of the design of Evidence A No. 4 and the design of Evidence A No. 7, and the design of the fur around the cuffs of either one of the design of Evidence A No. 14 and the design of Evidence A No. 10, with the design of Evidence A No. 11, and is nothing more than a design that merely collects the designs of Evidence A No. 3-1 and No. 3-3, the design of Evidence A No. 4 or the design of Evidence A No. 7, and the design of Evidence A No. 14 or the design of Evidence A No. 10, with the design of Evidence A No. 11.

However, as explained in (1) and (2) of "3. Regarding Reasons for Invalidation 2" above, in Evidence A No. 11, there are only photos from the front of the product. As explained in (3) of the same, in the design of Evidence A No. 11 recognized from that, the back shape, the presence or absence of the belt, and the shape of the hood portion, which occupy important elements in comparison with the Registered Design, cannot be visually recognized.

Therefore, the Registered Design and the design of Evidence A No. 11 can be recognized as having a common aspect as viewed from the front, in the point that the body portion is with a medium length up to the knee length, the front side is overlapped,

a generally horizontally long rectangular flap is placed horizontally and symmetrically slightly below the waist on the front side, the sleeve portions are long sleeves with a generally narrow cylindrical shape as a whole, in which volumetric fur is provided at both tip end portions of the sleeves.

However, it should be said that the Registered Design and the design of Evidence A No. 11 have difference in the point that the back surface shape of the design or the presence or absence of the belt portion, and the shape of the hood portion of Evidence A No. 11 cannot be visually recognized.

Then, even if the design of the decorative belt of the designs of Evidence A No. 3-1 to No. 3-3, the form of the fur around the hood portion of either one of Evidence A No. 4 and the design of Evidence No. 7, the form of the fur around the cuffs portion of the design of Evidence A No. 14 or the design of Evidence A No. 10, with the design of Evidence A No. 11 that has the difference in the point that the size and shape of the hood, and the back shape which occupies an important factor in this type of coat are not visually recognized, since the position of the belt on the back and the shape and size of the hood portion are not necessarily the same as in the Registered Design, it cannot be said that the form of the Registered Design can be derived immediately.

As described above, according to the demandant's allegation and evidence, the Registered Design cannot be recognized as a design that could have been easily created by a person skilled in the art based on the publicly known forms.

Therefore, Ease of Creation-2 alleged by the demandant is groundless.

(3) Ease of Creation-3

The demandant alleges that the Registered Design has the same form in which a bijou broach that is a component thereof from the designs of Evidence A No. 13-1, Evidence A No. 13-2, Evidence A No. 36-1, and Evidence A No. 36-2, and it is an ordinary technique for a person skilled in the art to make the constitution reducing the component (bijou broach) from the design (hereinafter, referred to the "Design"), so that the Registered Design could have been easily created by a person skilled in the art based on the Design.

Therefore, it is examined as follows.

It is as described by comparing the off-white coat in "4. Regarding Reasons for invalidation 3" that Cited Design of Reasons for Invalidation 3 and the Registered Design, that is a design related to the product "Cocoon Coat" (Maker Item No. : 24422350) of the designs of Evidence A No. 13-1, Evidence A No. 13-2, Evidence A No. 36-1, and Evidence A No. 36-2 (see Appendix 2), have the same shape and differ only in color.

As evidence for those, in "DETAIL item details" showing changing forms, "a state in which a broach is attached, the hood with fur is attached, and fur is attached to sleeves," "a state in which a broach is not attached, the hood is attached, and fur on the hood and sleeves is removed," "a state in which a broach is attached, the hood is removed, and fur is attached to the sleeves," "a state in which a broach is attached, the hood is removed, and fur on the sleeves is removed," and "a state in which a broach is not attached, fur on the sleeves is removed, and fur is attached to a neck" are displayed.

Also, other color variations of white and blue coats are posted, the same as the Registered Design, the coat in which the body, sleeves, and hood are navy, and the fur on the hood portion and the fur on the cuffs are both dark brown is included, and the off-white coat is shown in an enlarged view, showing the aspect in which the hood and fur can be removed the same as the Registered Design.

Attaching or removing brooches is a common technique for this type of coat, and does not require special creation. Also, since it is normal to have color variations in the coat and the coat in which the body portion, sleeve portions, and hood portion are navy, and the fur on the hood portion and the fur on the cuffs are both dark brown were publicly known before the application of the Registered Design was filed, it can be said that the aspect of the Registered Design can be easily derived by removing the removable bijou broach from the Design showing the changing aspects.

It is as described by comparing the off-white coat in "4. Regarding Reasons for Invalidation 3" that Cited Design and the Registered Design have the same shape and differ only in color, and since it does not require special creativity to remove the bijou brooch, make the color of the body portion and the hood navy, and make the color of the fur on the cuffs and the fur on the hood fur dark brown, the Registered Design could have been easily created by a person skilled in the art based on the Design, and thus cannot be granted design registration under the provision of Article 3(2) of the Design Act.

Therefore, Ease of Creation-3 alleged by the demandant has reason.

(4) Brief Summary

As described above, although Ease of Creation-1 and Ease of Creation-2 alleged by the demandant have no reasons, by the reasons of Ease of Creation-3, the Registered Design could have been easily created by a person skilled in the art based on forms, patterns, colors, or any combination thereof that were publicly known in Japan or a foreign country before the application of the Registered Design was filed, and cannot be granted design registration under the provision of Article 3(2) of the Design Act.

Therefore, Reasons for Invalidation 4 have reasons.

No. 7 Closing

As described above, the Registered Design is similar to the design described in a publication distributed in Japan or abroad or the design available to the public through electric telecommunication lines before the application of the Registered Design was filed, and falls under the provision of Article 3(1)(iii) of the Design Act. The Registered Design was granted design registration (Reasons for Invalidation 3) despite being unable to receive design registration. The Registered Design could have been easily created by a person skilled in the art based on forms, patterns, colors, or any combination thereof that were publicly known in Japan or a foreign country, and was granted design registration (Reasons for Invalidation 4) despite being unable to receive design registration under the provision of Article 3(2) of the Design Act, and thus should be invalidated under the provisions of Article 48(1)(i) of the Design Act.

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

November 21, 2017

Chief administrative judge: KOBAYASHI, Hirokazu
Administrative judge: SAITO, Takae
Administrative judge: SHODA, Takeshi

Appendix 1 Registered Design (Design Registration No. 1537464)

Evidence A No. 1-1

甲第 1 号証

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【氏名又は名称】 蔵田 昌俊
(74) 【代理人】
【識別番号】 100080285
【弁理士】
【氏名又は名称】 小出 俊寛
(74) 【代理人】
【識別番号】 100123250
【弁理士】
【氏名又は名称】 吉田 親司
【新規性喪失の例外の表示】 意匠法第4条第2項の適用申請がありました。
【審査官】 木本 直美
(55) 【意匠に係る物品の説明】 本物品は、フード及びファー付きのコートであり、「ブローチを付け、ファーを全て外した状態の参考斜視図」、「ブローチを付け、フード及びファーを外した状態の参考斜視図」、「フードを外した状態の斜視図」及び「ネックにファーを取り付けた状態の斜視図」に示すとおり、首回り（ネック）及び両袖に、取り外しと付け替えができるファーを設けたものである。「ネックにファーを取り付けた状態の斜視図」は、両袖のファーを解けて首回り（ネック）に取り付けたものである。また、「ブローチを付けた状態の参考斜視図」に示す通り、適宜、ブローチを付けることもできるコートである。
【図面】
【斜視図】

斜視圖



正面圖



背面圖



平面圖



底面圖



左側面圖



右側面圖



ブローチを付けた
状態の参考斜視図



ブローチを付け、
ファーを全て外し
た状態の参考斜視図



ブローチを付け、フ
ード及びファーを外
した状態の参考斜視図



フードを外した状態の斜視図



ネックにファーを取り
付けた状態の斜視図



Reference Material Evidence A No. 1-2

Reference Material 1

参考資料 甲第1号証の2

甲第 1 号証 の 2

参考資料 1

【正面図】



Reference Material 2

【斜視図】



Reference Material 3

【背面図】



甲第 13 号証

Apuweiser-riche | アプワイザー・リッシェ | Arpege story :Apuweiser-riche > 【Arpe... 1/2 ページ

甲第 7 号証の 2

Arpege story 送料 ¥9,000 以内はご購入で送料無料

TOP > Apuweiser-riche > 商品詳細

Mail Magazine

Arpege story & 店舗

カテゴリから探す

- トップス
- アウター
- ワンピース
- ボトムス
- バッグ
- シューズ
- ファッション小物

価格帯から探す

- ¥1,000
- ¥1,001~¥15,000
- ¥15,001~¥18,000
- ¥18,001~¥10,000
- ¥10,001~¥13,000
- ¥13,001~¥20,000
- ¥20,001~¥30,000
- ¥30,001~

商品種別から探す

- and GIRL
- 大人気品
- ArtCan
- swast
- オトメミュージズ
- VERY
- MV

カラーから探す



X フロントなし
X 袖ファーなし

Color エキストラカラーオプション



Detail アイテムごとの



【Arpege story限定】コクーンコート

価格 63,720円 (税込)

590 ポイント獲得できます。

送料無料です

在庫状況

サイズ	在庫	ステータス
S (SOLDOUT)		SOLDOUT
M (SOLDOUT)		SOLDOUT
L (SOLDOUT)		SOLDOUT
XL (SOLDOUT)		SOLDOUT
5 (SOLDOUT)		SOLDOUT
6 (SOLDOUT)		SOLDOUT

商品説明

ボリウムファーがラグジュアリーに演出する、レディなワードコート。

背中で長くビシューモチーフが、アウター最上級の輝きをプラス。スリットとしたフラインフロントも、洗練ムードを演出。スマートに見えるから、バックウエストにはさりげなくベルトを巻かせて、腰の裏にもメリハリをプラス。

ファー、フード、ビシューをそれぞれ取り外し可能なため、様々な印象を演出して、アレンジを楽しめるのも大きな魅力！

商品ポイント

アプの大人気SWAYコートに袖とフードの両方にファーを一つ付ました。

【ご注意】サンプルの為、実際の色合いが異なります。

スタッフ身長：172cm

類似商品情報

商品登録
2014年 11月 商品登録済

類似商品情報

商品登録
2014年 11月 商品登録済

その他

メーカー番号：24423200

素材：【生地】毛100%【裏地】ポリエステル100%【袖口裏地】フロック

価格：540円(税込)

配送地によって / 送料・送料に別して (送料別注)

商品サイズ詳細

サイズ	バスト	袖丈	ウエスト	ヒップ	裾丈
ズ	ト	袖丈	ウエスト	ヒップ	裾丈

http://ap-story.jp/ap/f.html?md=f04&id=DC0014208F&brc=&spc=DCS&colvar=&st=0 2014/11/27

Arpege story

送料14,800円以上ご購入で送料無料

4478 | 商品名 | アプワイ | DC0003 | 企画/制作
 企画/制作 | 企画/制作 | 企画/制作
 キーワード/メーカー/ブランド名 | アプワイ

TOP > Apuweiser-riche > 商品検索

Mail Magazine
 ASY 2014年10月号



Arpege story & 店舗
 最新のイベントのお知らせはこちら。

カテゴリから探す

- トップス
- アウター
- ワンピース
- ボトムス
- バッグ
- シューズ
- フアクトories

価格帯から探す

- ～43,000
- 43,001～45,000
- 45,001～48,000
- 48,001～49,000
- 49,001～49,000
- 49,001～49,000
- 49,001～49,000
- 49,001～49,000
- 49,001～49,000
- 49,001～49,000

商品種別から探す

- and GBL
- 美人雑誌
- AsaCan
- swat
- オトナミュージック
- VERY
- WII

カラーから探す



X袖7分付



商品名: Arpege story
 商品ID: DC0003

Apuweiser-riche

【Arpege story限定】コクーンコート

価格 63,720円 (税込)

500ポイント獲得できます。

送料別注です。

【ポイント還元】商品価格に10%ポイント還元
 【ポイント還元】商品価格に10%ポイント還元
 【ポイント還元】商品価格に10%ポイント還元

サイズ: (M) サイズ

XS (SOLDOUT)	SOLDOUT
S (SOLDOUT)	SOLDOUT
M (SOLDOUT)	SOLDOUT
L (SOLDOUT)	SOLDOUT
XL (SOLDOUT)	SOLDOUT

申し訳ありません。在庫につき、この商品は売切れいたしました。

アイテム詳細

ボリュームファーがラグジュアリーに映える、レディなコートコート。
 襟元で輝くビジュースモチーフが、アウターらしい華やかさをプラス。スリキリとしたフラインフロントも、洗練ムードを演出。スマートに見えるはず、バックウエストに隠すベルトを脱がせて、後ろ姿にもメリハリをプラス。
 ファー、フード、ビジュースはそれぞれ作り出し、細かな縫製に印象を変えて、アレンジを楽しめるのも大きな魅力！

「ポイント」
 アプの大人気WAVYコートに袖とフードの両方にファーをつけた。また。

【ご注意】サンプルのみ、実際の色合いが異なります。

スタッフ身長: 172cm

商品説明

商品名
 2014年11月発売予定

商品説明

商品名
 2014年11月発売予定

その他

メーカー: 24422750
 素材: (表地)毛100% (裏地)ポリエステル100% (毛皮製)フ
 オックス
 送料: 940円(税込)
 返品: 返品不可 / 返品・交換に際して「送料負担」

商品サイズ詳細

サイズ: バスト 身長 ウエスト ヒップ 袖丈
 サイズ: バスト 身長 ウエスト ヒップ 袖丈

Arpege story

税込 ¥2,000円以上ご購入で送料無料

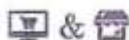
APUWEISER-RICHE | アプワイザー | アプワイザー | アプワイザー | アプワイザー

この商品の送料は無料です。送料は別途お見積りいたします。

メーカー/ブランド/メーカー名/ブランド名/ブランド名

TOP > Apuweiser-riche > 商品紹介

Mail Magazine
Apuweiser-riche



Arpege story & 店舗
全国の店舗一覧はこちらをご覧ください。

カテゴリから探す

トップス

アウター

ワンピース

ボトムス

バッグ

シューズ

ファッション小物

価格帯から探す

~¥1,000

¥1,001~¥5,000

¥5,001~¥10,000

¥10,001~¥15,000

¥15,001~¥20,000

¥20,001~¥30,000

¥30,001~

掲載誌から探す

and GIRL

美人百花

AnsCan

aved

オトメニュース

VERY

WIN

カラーから探す



×プロ-チ付



商品詳細 一覧

Apuweiser-riche

【Arpege story限定】コクーンコート

税込 ¥3,720円 (税込)

590 ポイント取得できます。

送料別注です。

【Arpege story限定】コクーンコートは、
Arpege story限定商品です。
ご注文の際は必ず「Arpege story」
と入力してください。

サイズ (M) サイズ

S (SOLD OUT)	SOLD OUT
M (SOLD OUT)	SOLD OUT
L (SOLD OUT)	SOLD OUT
XL (SOLD OUT)	SOLD OUT
2XL (SOLD OUT)	SOLD OUT
3XL (SOLD OUT)	SOLD OUT
4XL (SOLD OUT)	SOLD OUT

申し訳ありません。在庫につき、この商品は完売いたしました。

アイテム詳細

ボリュームファーがラグジュアリーに魅惑。レディなフードコート。肩周りで輝くビジュウモチーフが、アウターならではの輝きをプラス。スッキリとしたフラインフロントも、高級ムードを演出。スマートに見えるカゴ、バックウエストには細いベルトを効かせて、ゆとりにもメリハリをプラス。ファー、フード、ビジュウはそれぞれ個性が光るので、自由に組み合わせ、アレンジを楽しめるのも大きな魅力！

「限定ポイント」

アプの大人気AWAYコートに袖とフードの両方にファーをまつけました。

【ご注意】サンプルの色、実際の色が異なります。

スタッフ着番：173cm

商品規格情報

商品規格

2014年11月現在価格

商品規格情報

AnsCan

2014年11月現在価格

その他

メーカー品番：34422300
素材：(生地)100% (裏地)ポリエステル100% (毛皮)100%
ボックス
送料：540円(税込)
商品名に基づいて / 商品と一致しない場合、ご注文はできません。

商品サイズ情報

サイズ バス ヒップ ウエスト ヒップ 袖丈
ズ ト 丈 丈 ト 丈

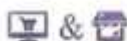
Arpege story

APUWEISER RICHE | 東京 | 大阪 | 福岡 | 札幌 | 仙台 | 名古屋 | 京都 | 広島 | 岡山 | 福岡 | 熊本 | 鹿児島 | 沖縄

〒100-0001 東京都千代田区千代田 1-1-1
 TEL: 03-5561-1111
 FAX: 03-5561-1112

TOP > Apuweiser-riche > 商品詳細

Mail Magazine
 4478 8888 コップ



Arpege story & 店舗
 欲しいアイテムがいつでも見つかります。

カテゴリから探す

- トップス
- アウター
- ワンピース
- ボトムス
- バッグ
- シューズ
- ファッション小物

価格帯から探す

- ~43,000
- 43,001~45,000
- 45,001~48,000
- 48,001~410,000
- 410,001~415,000
- 415,001~420,000
- 420,001~430,000
- 430,001~

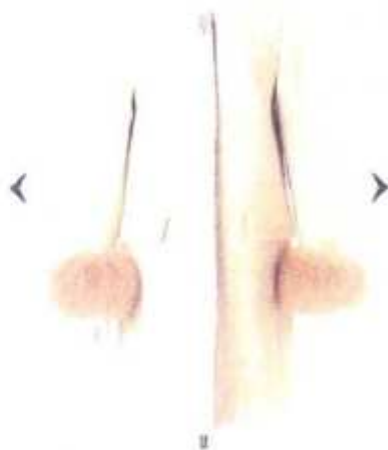
商品名から探す

- and GIRL
- 美人百花
- AnaCan
- emad
- オトナニュース
- VERY
- Vivi

カラーから探す



X フード付



Color



Detail



詳細情報 注文

Apuweiser-riche

【Arpege story限定】コクーンコート

価格 63,720円 (税込)

590 ポイント獲得できます。

在庫限りです

※この商品には送料がかかりますが、送料はお客様のご負担にはなりません。

サイズ: (S) サイズ

S (SOLDOUT)	SOLDOUT
M (SOLDOUT)	SOLDOUT
L (SOLDOUT)	SOLDOUT
XL (SOLDOUT)	SOLDOUT
XXL (SOLDOUT)	SOLDOUT
XXXL (SOLDOUT)	SOLDOUT

申し訳ありません。在庫につき、この商品は完売いたしました。

アイテム詳細

ポリウレタンファブリックがラグジュアリーに映える、レディなフードコート。
 背中で大きくビジュアルが、アウターならではの華やかでセクシーな、スリットとしたフロントも、洗練ムードを演出。スマートに見えるので、バックウエストには隠すベルトを装着して、華やかにもメリハリをプラス。
 ファー、フード、ビジュアルはそれぞれ作り手しりあわせて、自由に想像を交えて、アレンジを楽しめるのも大きな魅力！

「商品について」

アプの大人気SWAYコートに袖とフードの両方にファーをつけてました。

【ご注意】 サンプルのみ、実際の色がご覧いただけます。

スタッフ身長：172cm

詳細情報

大人気商品
 2014年 11月現在販売中

定番商品
 2014年 11月現在販売中

その他

メーカー品番：24422190
 素材：(生地)毛100% (裏地)ポリエステル100% (毛皮部分)フェイクファー
 産地：中国(上海)
 製造国について / 産品・安全に関して (詳細情報)

標準サイズ表

サイズ: バスト 袖丈 肩幅 ウエスト ヒップ 股丈
 S ト M ト L ト XL ト XXL ト XXXL ト

Arpege story

送料10,000円以上ご購入で送料無料

AAVZ | 検索 | ログアウト | 会員登録 | お問い合わせ
 2014年11月28日 09時 51分00秒

キーワード検索 履歴表示 0件 [ここから検索](#)

TOP > Apuweiser-riche > 商品詳細

Magazine
 2014年11月28日09時09分

&

Arpege story & 関連
 類似商品/アイテムの紹介があります。

カテゴリから探す

- トップス
- アウター
- ワンピース
- ボトムス
- バッグ
- シューズ
- ファッション小物

価格帯から探す

- ~13,000
- 13,001~45,000
- 45,001~95,000
- 95,001~110,000
- 110,001~115,000
- 115,001~420,000
- 420,001~430,000
- 430,001~

商品名から探す

- and GIRL
- 美人目付
- AneCan
- smet
- オートマニユース
- VERY
- Vivi

カラーから探す



×70-手はし

商品名 詳細

Apuweiser-riche

【Arpege story限定】コクーンコート

価格 63,720円 (税込)

500ポイント獲得できます。

送料別送料あり

【ポイント】2倍獲得期間中(11/28~12/31)
 【クーポン】20%OFFクーポンあり(11/28~12/31)
 送料別送料あり(11/28~12/31)

サイズ (1) サイズ

XS (SOLDOUT)	SOLDOUT
S	SOLDOUT
M (SOLDOUT)	SOLDOUT
L	SOLDOUT
XL	SOLDOUT
XXL	SOLDOUT

申し訳ありません。在庫につき、この商品は完売いたしました。

アイテム詳細

ポリウレームファードラグジュアリーに熟練、レディなコートコート。
 特許で長くビシューモチーフが、アウターの手やせをプラス。スリキリとしたフライフロントも、調節ムードを高め、スマートに見えるのみ。バックウエストには調節ベルトを付かせて、後ろ姿にもメリハリをプラス。ファア、フード、ビシューはそれぞれ作り出し完成なので、自由に形を変えて、アレンジを楽しめるのも大きな魅力！

「関連アイテム」

アプの大人気WAVコートに袖とフードの両方にファーをつけてました。

【ご注意】 サンプルのみ。実物の写真がごさいます。

スタッフ身長：172cm

送料別送料あり

美人目付
 2014年11月28日発売開始

smet
 2014年11月28日発売開始

AneCan
 2014年11月28日発売開始

その他

メーカー品番：24423750
 素材：【生地】100% 【裏地】ポリエステル100% 【糸】100%
 オックス
 価格：540円(税込)
 送料別送料あり / 返品 / 交換について / 返品 / 交換について / 返品 / 交換について

商品サイズ詳細

サイズ バス ヒップ
 サイズ ト 袖丈 肩幅 ウエスト ヒップ 裾丈

ユーズ

アクション小物

価格帯から探す

¥3,000

1,001～¥5,000

1,001～¥8,000

1,001～¥10,000

10,001～¥15,000

15,001～¥20,000

20,001～¥30,000

¥30,001～

商品ジャンルから探す

id GIRL <id>

人形 <id>

ieCan

veet <id>

トナミューズ

RY

VI

カラーから探す

Color

カラーバリエーション

白 オフ白 黒

Detail

アイテム詳細

甲第 13 号証 表 2.

アイテム詳細

ポリウムファーがラグジュアリーに映える、レディコート。

特許で輝くビジュモチーフが、アクセントの華やかさを演出。スリットとしたフラインフロントも、洗練ムードに演出するカサ。バックウエストには折りたたみ可能なメリハリをプラス。

ファー、フード、ビジュはそれぞれ取り外し可能な点に留意を定めて、アレンジを楽しめるのも大きなポイント。

アプの大人気SWAYコートに袖とフードの両方に付きました。

【ご注意】サンプルの為、実際の写真と色合いが異なる場合がございます。

スタッフ身長：173cm

商品情報

発行人

2014年 11月発売開始

商品情報

AnsCan

2014年 11月発売開始

その他

メーカー品番：24422350

素材：【表地】毛100% 【裏地】ポリエステル100% (4オックス)

送料：540円(税込)

配送料について / 送料・送料に際して (送料詳細)

商品サイズ詳細

サイズ	バスト	袖丈	肩幅	ウエスト	ヒップ
ズ	ト	袖丈	肩幅	ト	ブ

//ap-story.jp/ap/f.html?md=f04&id=DC0014208F&brc=&spc=DCS&colvar=&st=0 2014



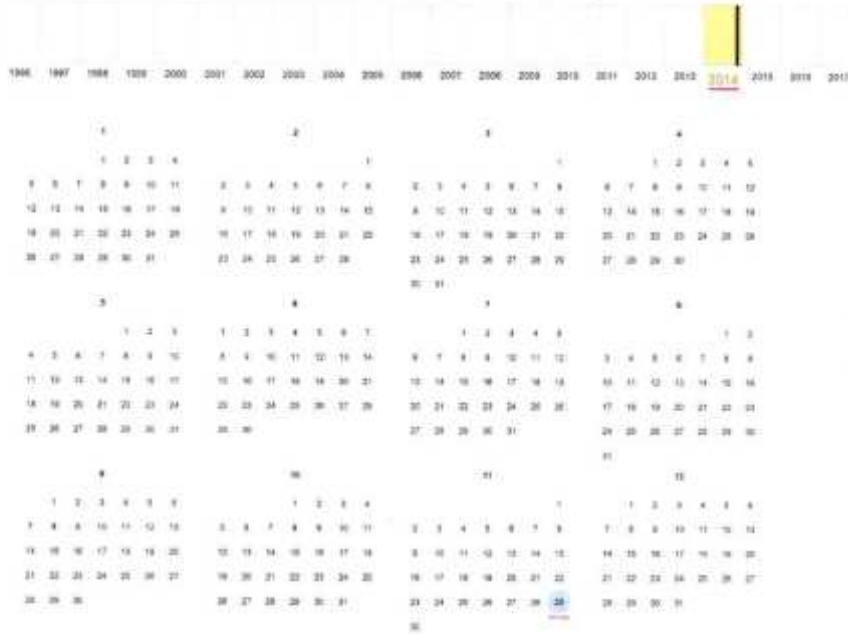
http://ap-story.jp/ap/f.html?md=f04&id=DC0014208F&brcc=

BROWSE HISTORY

http://ap-story.jp/ap/f.html?md=f04&id=DC0014208F&brcc=&spc=DCS&colvar=

Saved 1 time on 11月 29, 2014

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Note

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	L (L)	43,000円
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Arpege story



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https://web.archive.org/web/20141129111501/http://ap-story.jp/ap/f.html?md=f04&id=DC0014208... 2017/03/31

80 / 95

Arpege story

24,000 (税込)
カート: 0円 (税込)



【Arpege story限定】コケーンコート

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在庫限りです。

サイズ

XS (SOLID)	S (SOLID)	M (SOLID)	S (SOLID)	M (SOLID)	S (SOLID)	M (SOLID)
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商品説明

このコートは、アプワイザー・リッシェの定番アイテムである、トレンチコートです。コートは、アプワイザー・リッシェの定番アイテムである、トレンチコートです。コートは、アプワイザー・リッシェの定番アイテムである、トレンチコートです。

カラー

送料

在庫

012001~012002
012003~012004
012005~012006
012007~

検索履歴から探す

mid-0101L 10114
風人設定 10119
ApuCun
Hase 10120
オトナローズ
VERY
SVS

カラーから探す

012001~012002
012003~012004
012005~012006
012007~

Arpeweiser-riche
2014年 11月 発売予定商品
その他
メーカー品番 : 2442230
素材 : (裏地)毛100% (裏地)ポリエステル100% (毛混素材) [コクーンコート]
産地 : (AP)中国製
配達料について / 返品・交換について (返品料あり)
商品サイズ詳細
サイズ : バスト 股丈 肩幅 ウエスト トップ 袖丈
S 85cm 73cm 35cm 80cm 101cm 81.5cm
M 90cm 77.5cm 36.5cm 85cm 106cm 84cm
L 95cm 81.5cm 38cm 90cm 111cm 86.5cm
カラーを複数指定して商品ページで絞り込みや商品ページでも商品詳細に詳細があるはず
この商品にはまだ質問がしてありません。

Recommend

Arpeweiser-riche
ワンピース+スカート+ブラウス
1012007(100%)

Arpeweiser-riche
ワンピース+スカート+ブラウス
1012007(100%)

Arpeweiser-riche
ワンピース+スカート+ブラウス
1012007(100%)

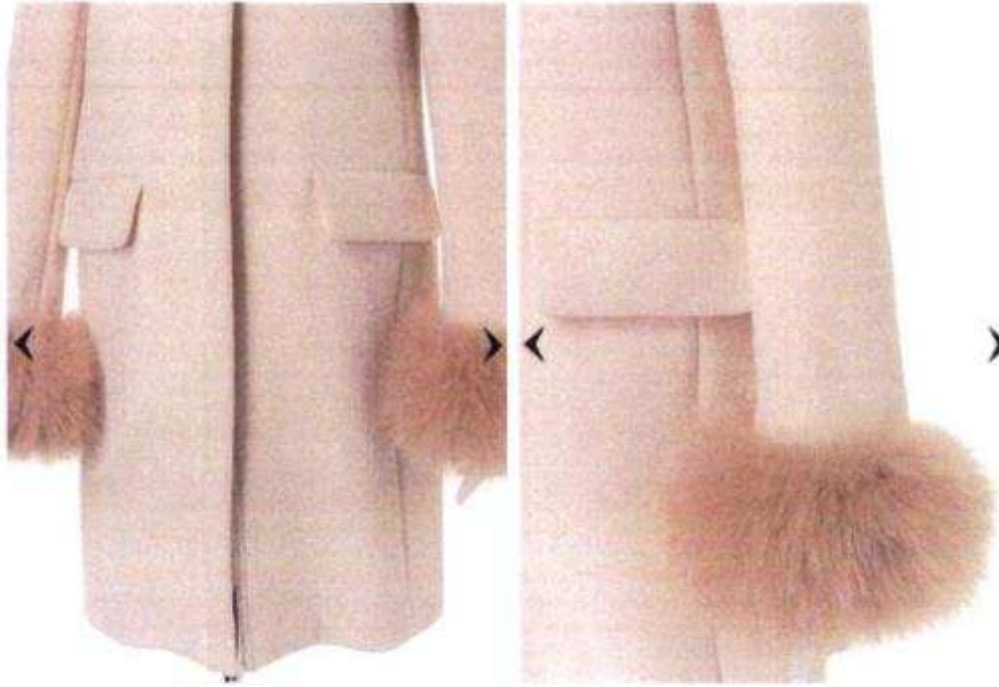
Arpeweiser-riche
ワンピース+スカート+ブラウス
1012007(100%)

Arpeweiser-riche
ワンピース+スカート+ブラウス
1012007(100%)

Arpeweiser-riche
ワンピース+スカート+ブラウス
1012007(100%)



1



13



3

Appendix 3 Evidence A No. 2

申第 2 号証

【書類名】 新規性の喪失の例外証明書提出書 【受付日】 平27.02.26
【意匠】 2015-001810 頁: 1/ 1

【書類名】 新規性の喪失の例外証明書提出書
【整理番号】 2014DJ0113
【提出日】 平成27年 2月26日
【あて先】 特許庁長官殿
【事件の表示】
【出願番号】 意願2015- 1810
【提出者】
【識別番号】 500416343
【氏名又は名称】 株式会社アルページュ
【代理人】
【識別番号】 100108855
【弁理士】
【氏名又は名称】 蔵田 昌俊
【電話番号】 03-5510-2988
【提出物件の目録】
【物件名】 意匠の新規性の喪失の例外の規定の適用を受けるための
証明書 1

【書類名】 添付物件 【受付日】 平27.02.26
【意匠】 2015-001810 頁: 1/ 4

【内容】

【添付書類】



新規性の喪失の例外規定の適用を受けるための証明書

1. 公開した意匠
別紙(添付)に掲載のArpege story「3wayコターンコート」の意匠
2. 公開の方法
インターネット上の下記アドレスのホームページに掲載
(1) ホームページのアドレス <http://www.arpege.co.jp>
(2) 意匠掲載ページのアドレス
<http://ap-story.jp/ap/1.html?mid=104&spc=DC5&id=DC60142038>
3. 公開した者
株式会社アルページュ
4. 公開した日
2014年8月1日
5. 新規性喪失に至った事実の本人以外の証明
(1) 証明する内容
2014年8月1日に、上記意匠掲載ページが、株式会社アルページュのインターネットサイトに掲載されたこと
(2) 証明をする者
証明人は上記掲載意匠のインターネットサイトを管理する会社の従業員である。
(3) 証明人の証明
上記の通りであることを証明します。

平成27年 2 月 24日

住所: 東京都目黒区1-24-12 オリックス目黒ビル6階
名称: 株式会社AMS (エーエムエス)

証明人: 古田俊雄 

Apuweiser-riche | アプワイザー・リッシェ | Arpege story :Apuweiser-riche > 5way... 1/2 ページ

2

Arpege story

ホーム 検索履歴 カート 問い合わせセンター 会員登録/ログイン
2015年02月23日
09:04 (IP: 157.140.2.10)

5way Apuweiser-riche | アプワイザー・リッシェ | 5wayコクーンコート



商品名 商品説明
Apuweiser-riche
5wayコクーンコート
38,180円(税込) **20%OFF**
500ポイント獲得できます。
※このクーポンは、商品名が「5wayコクーンコート」の商品に限り有効です。お申し込みの時点で有効となります。
アプワイザー・リッシェ | アプワイザー・リッシェ | 5wayコクーンコート

Detail



Recommend



<http://ap-story.jp/ap/f.html?md=r04&spc=DCS&id=DC0014203B>

2015/02/23

Apurweiser-riche | アプワイザー・リッシェ | Arpege story -Apurweiser-riche > 5way... 2/2 ページ

3)

Checked 

Campaign 



Arpege story

ジャンル	カテゴリ	タイプ	状態
その他	その他	その他	その他
その他	その他	その他	その他
その他	その他	その他	その他
その他	その他	その他	その他
その他	その他	その他	その他
その他	その他	その他	その他
その他	その他	その他	その他
その他	その他	その他	その他
その他	その他	その他	その他



Appendix 4

1. Proof submitted by the demandant

The demandant submitted the following Evidence A No. 1 to A No. 51 as attached documents of the written request for trial, the written refutation, the written reply, the oral proceedings statement brief, and the oral proceedings statement brief (2).

Means of proof

- 1) Evidence A No. 1-1: Copy of the design bulletin of Design Registration No. 1537464
- 2) Evidence A No. 1-2: Copy of Reference Material 1 to Reference Material 3
- 3) Evidence A No. 2: Written submission of Proving Document for Exceptions to Lack of Novelty (Copy)
- 4) Evidence A No. 3-1: Copy of the website of "Style Cruise"
- 5) Evidence A No. 3-2: Copy of the image (enlarged) in the website of "Style Cruise"
- 6) Evidence A No. 3-3: Copy of the website of "DAILY BLOG" (IENA official blog)
- 7) Evidence A No. 4: Copy of the cover and page of the magazine "AneCan" issued in December, 2013
- 8) Evidence A No. 4-2: Copy (enlarged) of the magazine "AneCan" issued in December, 2013
- 9) Evidence A No. 5: Copy of the website of "Sweet Happy Life" (Blog)
- 10) Evidence A No. 5-2: Copy of the comment column displayed on the website of "Sweet Happy Life" (Blog)
- 11) Evidence A No. 6: Copy (excerpt) of the website of "UI MANAMI no HARE, DOKI DOKI, UI" (Blog)
- 12) Evidence A No. 7: Copy of the website of "eponge" (Blog)
- 13) Evidence A No. 8: Copy of "the description of evidence (1)" submitted by the demandee in the case of design right infringement injunction (Heisei 28-nen (wa) No. 9003)
- 14) Evidence A No. 9: Copy of the evidence document (Evidence A No. 7-1) submitted by the demandee in the case of design right infringement injection (Heisei 28-nen (wa) No. 9003)
- 15) Evidence A No. 10: Copy of the evidence document (Evidence A No. 8-1) submitted by the demandee in the case of design right infringement injection (Heisei 28-nen (wa) No. 9003)

- 16) Evidence A No. 11: The demendee mail order site "Arpege story" by Internet Archive Way Back Machine
- 17) Evidence A No. 12: Copy of "the first brief" submitted by the demandee in the case of design right infringement injection (Heisei 28-nen (wa) No. 9003)
- 18) Evidence A No. 13: Copy of the evidence document (Evidence A No. 7-2) submitted by the demandee in the case of design right infringement injection (Heisei 28-nen (wa) No. 9003)
- 19) Evidence A No. 13-2: Copy of a part (enlarged) of Evidence A No. 13-1
- 20) Evidence A No. 14: Copy (excerpt) of the website of "Feroux" of ONWARD KASHIYAMA Co., Ltd.
- 21) Evidence A No. 15-1: Copy (excerpt) of the website of "BAYCREW'S GROUP DAILY BLOG"
- 22) Evidence A No. 15-2: Copy (excerpt) of "BAYCREW'S GROUP DAILY BLOG" by Internet Archive Wayback Machine
- 23) Evidence A No. 16-1: Copy (excerpt) of the record of "Style Cruise" by Internet Archive Wayback Machine
- 24) Evidence A No. 16-2: Copy of the record of the product introduction pate of "Style Cruise" by Internet Archive Wayback Machine
- 25) Evidence A No. 16-3: Copy of the record of the product introduction pate of "Style Cruise" by Internet Archive Wayback Machine
- 26) Evidence A NO. 17: Copy of the website of "MY ROOM" (Blog)
- 27) The demandant additionally submitted Evidence A No. 18 to Evidence No. 30 with the written refutation.
- 28) Evidence A No. 31-1: Copy (excerpt) of the one displaying the article of October (30), 2014 in the website of the official blog of the brand "Apuweiser-riche Official Blog" of the demandee
- 29) Evidence A No. 31-2: Copy of the article of October 24, 2014 of the official blog "Apuweiser-riche Official Blog" of "Apuweiser-riche"
- 30) The demandant additionally submitted Evidence A No. 32 to Evidence No. 35 with the written reply.
- 31) Evidence A No. 36-1: Copy (excerpt) of the record of the product introduction of the demandee product "[Arpege story limited] Cocoon Coat" by Internet Archive Wayback Machine
- 32) Evidence A No. 36-2: Copy of a part (enlarged) of Evidence A No. 32-1 and the image (enlarged) of Detail
- 33) Evidence A No. 37: Copy (excerpt) of the Guide for making Applications and

Drawings for Design Registrations

- 34) Evidence A No. 38: Copy (excerpt) Examination Guidelines for Design (before the revision on March 31, 2017)
- 35) Evidence A No. 39: Copy of operation standard of examination for design of the Design Act revised in 1999
- 36) Evidences "Evidence A No. 11 to Evidence A No. 18" (excerpt) submitted by the demandee in the case of design right infringement injunction (Heisei 28-nen (wa) No. 9003)
- 37) Evidence A No. 41-1: Copy (excerpt) of the one displaying the article of November (14), 2014 in the website of the official blog "Arpege story official Blog" of the brand "Arpege story" of the demandee
- 38) Evidence A No. 41-2: Copy (excerpt) of the article of November 17, 2014 of the official blog "Arpege story Official Blog" of "Arpege story" of the brand "Apuweiser-riche" of the demandee
- 39) Evidence A No. 42: The news article (<https://messe.aikkei.co.jp/rt/news/128315.html>) on July 11, 2014 of "from NIKKEI pages" of retail tech JAPAN of the website of NIKKEI MESSE
- 40) Evidence A No. 43: Copy (excerpt) of Q & A about application of provision of exceptions to lack of novelty of the patent
- 41) Evidence A No. 44: Copies of the cover, the cover, back cover, pages (pp. 100, 102, 104, 105, 106) of the magazine "BIJINHYAKKA" issued in December, 2014
- 42) Evidence A No. 45: Copy of the archived record for 2014 of the official mail order site of the demandee brand "Apuweiser-riche" by Internet Archive Wayback Machine and the one recorded as published on October 25, 2014.
- 43) Evidence A No. 46: Copy of the cover, back cover, pages (pp. 02, 05) of spare volume appendix issued in December, 2014 of the magazine "AneCan"
- 44) Evidence A No. 47-1: Copy (excerpt) of the list of the articles for August (25), 2014 of the official blog "Apuweiser-riche Official Blog" of the brand "Apuweiser-riche" of the demandee
- 45) Evidence A No. 47-2: Copy (excerpt) of the article on August 1, 2014 of the official blog "Apuweiser-riche Official Blog" of the brand "Apuweiser-riche" of the demandee
- 46) Evidence A No. 47-3: Copy of the article on August 4, 2014 of the official blog "Apuweiser-riche Official Blog" of the brand "Apuweiser-riche" of the demandee
- 47) Evidence No. 47-4: Copy (excerpt) of the article on August 28, 2014 of the official blog "Apuweiser-riche Official Blog" of the brand "Apuweiser-riche" of the demandee
- 48) Evidence No. 48-1: Copy (excerpt) of the list of the articles for January (23), 2015

of the official blog "Apuweiser-riche Official Blog" of the brand "Apuweiser-riche" of the demandee

49) Evidence A No. 48-2: Copy (excerpt) of the article on January 28, 2015 of the official blog "Apuweiser-riche Official Blog" of the brand "Apuweiser-riche" of the demandee

50) Evidence A No. 49: Copy of the archived record for 2014 of the official mail order site of the demandee brand "Apuweiser-riche" by Internet Archive Wayback Machine and the one recorded and provided as published on August 19, 2014

51) Evidence A No. 50: Copy (excerpt) and the like of the one recorded and provided as published on August 20, September 22, September 25, and October 19, 2014 in the archived record for 2014 of the official mail order side of the demandee brand "Apuweiser-riche" by Internet Archive Wayback Machine

52) Evidence A No. 51: Copy (excerpt) of 2014 of the official blog "Apuweiser-riche Official Blog" of the brand "Apuweiser-riche" of the demandee, the list of the articles for November (20), the article on November 14, 2014

2. Proof submitted by the demandee

The demandee submitted the following Evidence B No. 1 to Evidence B No. 24 as attached documents of the written reply, the written reply, the written reply (2), and the oral proceedings statement brief.

Means of proof

- 1) Evidence B No. 1 Design bulletin of Design Registration No. 1537464 (copy)
- 2) Evidence B No. 2 File record of Design Application No. 2015-001810 (copy)
- 3) Evidence B No. 3 2006 (Gyo-Ke) No. 10004 "Sport Shirt" Rendition of Decision on July 18, 2006 at Tokyo High Court (court decision extract copy)
- 4) Evidence B No. 4 2007 (Gyo-Ke) No. 10036 "三段焚斗付き紐丸冠瓦 (Sandantakutotsukihimomaru kanmurigawara)" Rendition of Decision on June 14, 2007 at Intellectual Property High Court (court decision extract copy)
- 5) Evidence B No. 5 "Design" written by TAKADA Tadashi, Cover, Pages 74 and 75, and imprint (copy)
- 6) Evidence B No. 6 1976 (Wa) No. 272 "Heat-Retaining Garment body" Rendition of Decision on June 24, 1983 at Nagoya District Court (court decision extract copy)

- 7) Evidence B No. 7 2001, (Gyo-Ke) No. 275 "Electric Guitar" Rendition of Decision on November 13, 2001 at Tokyo High Court (court decision extract copy)
- 8) Evidence B No. 8 2011, (Gyo-Ke) No. 10129 "Reflector for Lighting Equipment" Rendition of Decision on November 21, 2011 at Intellectual Property High Court (court decision extract copy)
- 9) Evidence B No. 9 2000, (Gyo-Ke) No. 331 "Grater" Rendition of Decision on November 28, 2000 at Tokyo High Court (court decision extract copy)
- 10) Evidence B No. 10 1995, (Gyo-Ke) No. 159 "Terminal Board" Rendition of Decision on February 28, 1996 at Tokyo High Court (court decision extract copy)
- 11) Evidence B No. 11 2004 (Wa) No. 24626 "Ladle Incident" Rendition on March 23, 2007 at Tokyo-District-Court (court decision extract copy)
- 12) Evidence B No. 12 1992 (Gyo-Ke) No. 227 "Rotation Alard Lamp" Rendition of Decision on July 15, 1993 at Tokyo High Court (copy)
- 13) Evidence B No. 13 2009 (Gyo-Ke) No. 10036 "Rubber Band" Rendition of Decision on July 21, 2009 at Intellectual Property High Court (copy)
- 14) Evidence B No. 14 Appeal No. 2008-10803 July 21, 2009 the appeal decision (copy)
- 15) Evidence B No. 15 Japan Patent Office "the Guide for making Applications and Drawings for Design Registrations " 10. In the case of changing form (copy)
- 16) Evidence B No. 16 Japan Patent Office " the Guide for making Applications and Drawings for Design Registrations " 10. In the case of having a part to be separated (copy)
- 17) Evidence B No. 17 2008 (Gyo-Ke) No. 10402 "Doll" Rendition of Decision on March 25, 2009 at Intellectual Property High Court (copy)
- 18) Evidence B No. 18 Proof of Evidentiary Fact 1 and Evidentiary Fact 2 "Coat with fur" described on the upper left side of Page 68 and "Down Coat with fur" described on Page 230 of "AneCan" issued in December, 2013 (copy)
- 19) Evidence B No. 19 Proof of Evidentiary Fact 3 "Down Coat with fur" described on "BIJINHYAKKA" issued in September, 2011 by Kadokawa Haruki Corporation
- 20) Evidence B No. 20 Proof of Evidentiary Fact 4 "Coat with fur" described in "BIJINHYAKKA" issued in February, 2012 by Kadokawa Haruki Corporation (copy)
- 21) Evidence B No. 21 Proof of Evidentiary Fact 6 the purchase order dated July 1, 2014 of the holder of a design right (ARPEGE Co., Ltd) to the supplier "NIPPON STEEL TRADING CORPORATION"
- Evidence B No. 21 the purchase order (copy) the Product Name "Arpege story Limited

Cocoon Coat"

22) Evidence B No. 22 Pages 1 to 18 of complaint of Heisei 28-nen (wa) No. 9003 the case of design right infringement injection (copy of a part of design right infringement injection)

23) Evidence B No. 23 Pages 1 to 17 of the fourth brief of Heisei 28-nen (wa) No. 9003 the case of design right infringement injection (copy of a part of design right infringement injection)

24) Evidence B No. 24 Regarding the published design of the proving document for seeking the application of provisions of Article 4(2) of the Design Act, the print of electronic images before the design described on the site of the demandant was submitted to Japanese Patent Office