

Study Desk Case
(“Use Relationship” between Registered and Nonregistered Designs)

Osaka District Court

Case No. S45 (wa) 507 (December 22, 1966)

FACTS

Plaintiff, X, had a design right regarding a desk for studying, which has only a desk part.

Subsequently, Defendant, Y, manufactured and sold a desk having a desk part and shelf part.

X sought an injunction to stop manufacturing and selling Y's desk, on the grounds that Y's design used X's registered design, and therefore infringed X's registered design.

ISSUE

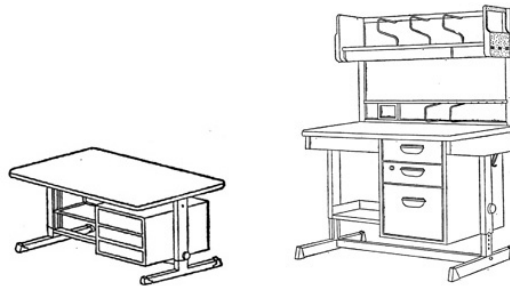
Whether a “use relationship” can be established between a registered design and a nonregistered design

HOLDING

Design Act Section 26 governs “use relationship” between registered designs. However, solely in terms of the use relationship itself, it is not necessary for a design using another, registered design to be itself registered for this

relationship to arise. That is, a use relationship can be established between a registered design and a nonregistered design. Thus, a registered design is infringed by manufacturing and selling a nonregistered design that uses a registered design of another or a similar design of the registered design.

In the present case, the desk part of Y's design is similar to X's design. Y practices a design for a desk for studying in which the desk part is a desk part that describes a design similar to X's registered design. Accordingly, Y's practice infringes X's design right.



Article 26(Relationship to registered designs, etc. held by others)

(1) Where a registered design uses another person's registered design, patented invention or registered utility model for which an application was filed prior to the date of filing of the application for the said design, or a design similar to another person's registered design, or where part of a design right pertaining to the registered design is in conflict with another person's patent right, utility model right or trademark right obtained based on an application filed prior to the date of filing of the application for the said registered design, or copyright which arose prior to the date of filing of the application for the said registered design, the holder of the said design right or exclusive licensee or non-exclusive

licensees of the said design right may not work the said registered design as a business.

(2) Where a design similar to a registered design uses another person's registered design, patented invention or registered utility model for which an application was filed prior to the date of filing of the application for the said design, or a design similar to another person's registered design, or where part of a design right pertaining to designs similar to the registered design is in conflict with another person's design right, patent right, utility model right or trademark right obtained based on an application filed prior to the date of filing of the application for the said registered design, or copyright which arose prior to the date of filing of the application for the said registered design, the holder of the said design right or exclusive licensee or non-exclusive licensees of the said design right may not work such similar design as a business.