

Self-Propelled Crane Case

Tokyo High Court / Case H09 (Ne) 404 (Jun. 18, 1998(H10))

FACTS

The plaintiff was a holder of the design right for the self-propelled crane. The defendant was manufacturing and selling self-propelled cranes. The plaintiff filed a lawsuit in Tokyo District Court, alleging that the defendant's products constitute infringement of the design right.

The District Court allowed injunctive relief and ordered the defendant to pay damages. The defendant appealed to the Tokyo High Court.

ISSUE

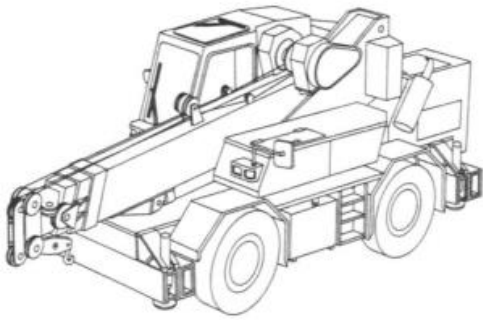
Whether the defendant's product is similar to the registered design or not.

HOLDING

It is necessary to observe the whole of a design when evaluating the similarity of a design. In this case, the requirements are (i) to ascertain the characteristic features of the design by assessing the part to which consumers or dealers are most attracted, based on the properties, purpose, and embodiment of usage of the article of the design, and based on the presence of the newly created portion that the prior design did not have, and (ii) to assess whether the registered design and the other design have a common element(s) in the characteristic features.

In this case, (i) even though the position and shape of the winch and existence and shape of the counter weight would attract the attention of a spectator, such elements do not constitute characteristic features of the present design. The difference between two designs, that is presence of the winch and counter weight, is not deemed to provide a completely different aesthetic impression to a spectator in the overall observation of both designs.

Registered Design



Suspect Product

