

**Newsletter / IP Japan**

**Court Decision relating to Partial Design Right**

**Heisei23 (Wa) 9476**

**Oscillating Arm for Angle Adjustment Mechanism**

1. General

Since only a very limited number of law suits are filed to the Courts relating to Partial Design right to date, it is very difficult to judge a scope of the Partial design right in actual disputes in Japan. In such circumstances, the Osaka District Court has issued a notable court decision with judgment of a scope of Partial design right as of May 24, 2012,

The plaintiff has the Registered design right (No.1399739) relating to Partial design of Oscillating arm for angle adjustment mechanism which is used for changing inclined angles of a seat back of a floor chair, as shown in Fig.1.

The defendant was manufacturing, using and selling three types of the Oscillating arms for angle adjustment mechanism, such as Accused products A, B and C, as shown in Figs.2, 3 and 4, respectively.

2. Registered Patent right

The Registered partial design comprises Gear plate portion, Elevated portions and Inclined lines as shown by solid lines of Fig.1. Portions shown by dotted lines are basically out side of the scope of Partial design right.

However there are various kinds of arguments so far in Japan with reference to the influence of Position, Size and Portion of the Partial design shown by solid line compared to total shape of the products including portions shown by dotted lines.

3. Accused Products

Accused products A and B have Gear plate portion, Elevated portions and Inclined lines with the shapes as shown in Figs. 2 and 3.

Accused product C has Gear plate, Elevated portions and Depressed portions with the shapes as shown in Fig. 4. As is clear at a glance, only the Accused product C has concave shapes at both sides of the Gear plate portion.

#### 4. Consideration of the Court

Actually the influence of Position, Size and Portion of the Partial design compared to total shape of the products is not discussed in this case because Position, Size and Portion around Gear plate portion compared to the total arm shape is naturally determined according to its function. Therefore judgment is made based on comparison of shape of the portion described by solid line (Partial design portion).

The Court judges that Substantial portion of the Partial design right resides in arrangement of Gear plate portion, and shapes of Gear teeth and Elevated portions. Although the defendant argues Gear plate portion should not be Substantial portion because they are well known in the art, the Court does not accept the defendant's argument.

#### The accused products A and B

According to the above mentioned judgment of Substantial portion, the Court considers that difference between the Registered partial design and the shapes of the Accused products A and B is very small.

#### The accused product C

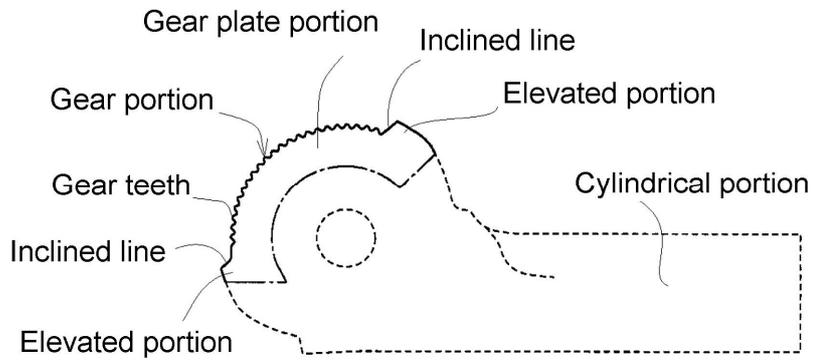
On the other hand, the Court considers that existence of the Depressed portions, which are main different parts, occupy a certain degree in the design of Accused product C. Such difference is superior to the commonality between the Registered partial design and Accused product C.

#### 5. Conclusion

The Court concludes that Accused products A and B infringe the Registered partial design right and Accused product C does not infringe the Registered partial design right.

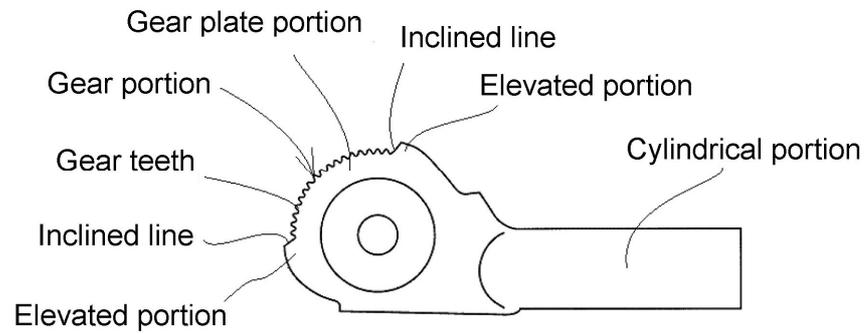
**Fig. 1**

**Registered Partial Design**



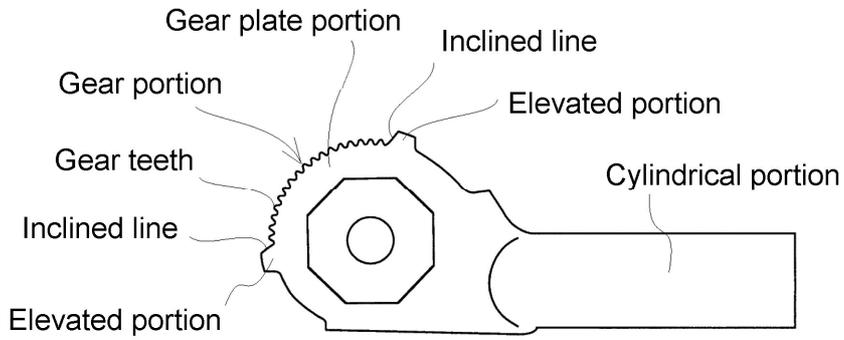
**Fig2**

**Accused Products A**



**Fig.3**

**Accused Products B**



**Fig.4**

**Accused Products C**

