

Latest Court Decisions

2012:

[October]

- **AO Case (Cancellation Suit of Trial Decision)**

IP High Court 2012.10.25 H23(Gy-Ke)10359

A trademark application for "AO" in standard characters specifying medical apparatus in Class 10 and medical training in Class 41 was rejected due to lack of distinctiveness (Article 3-1-5). The secondary meaning under Article 3-2 of the Trademark Law was also denied by the JPO.

Then, the applicant filed a Cancellation Suit demanding the cancellation of the Trial Decision before the IP High Court. However, the IP High Court also dismissed the demand by the applicant (the Plaintiff).

The trademark "AO" stands for "Arbeitsgemeinschaft für Osteosynthesefragen" in German that means "Labor Community for Internal Bone Fixation". "AO Foundation" was a nonprofit foundation established in Switzerland in 1958 for the research, development and education of the fracture treatment by the internal fixation (AO Treatment). The applicant, AO Technology AG, is the representative firm in the AO Foundation group.

The AO medical apparatus which was specially designed and manufactured for the AO Treatment had to be used. The AO Treatment was widely spread all over the world. It was introduced in Japan in 1987. After that, approx. 6,000 surgeons and nurses had taken the AO Treatment education and many books on the AO Treatment were issued.

Under these situations, the IP High Court admitted that the AO Treatment itself was well-known among the medical people. However, the Court denied that the applied-for trademark "AO" was still not well-known because there is no evidence proving that "AO" had been used as a trademark for the specified goods or services. From the Court Decision, it seems that there is no fact that "AO" had been used solely without any other words.

We feel that "AO" could have been able to fulfill a distinguishable function as a trademark since the AO Treatment was well-known among the medical workers if the AO Foundation exclusively used the word "AO" in the medical field and if there is no other meaning in the medical field.