

Judgments of Tokyo District Court, 47th Civil Division

Date of the Judgment: 2005.7.5

Case Number: 2004(Gyo-U)No.278

Title (Case):

A case wherein:

1. The court regarded the holder of a breeder's right for an existing registered variety and the non-exclusive licenses thereof as having the standing to sue for a declaration of invalidation of a later variety registration;
2. The court rejected the claim of the existence of a gross and obvious defect in the variety registration.

Summary of the Judgment:

X1 (a company engaged in the production and sale of flowers and ornamental plants) holds a breeder's right for a registered variety of gentian named "Hatsukansetsu (first snow cap) Green," and also holds a right to provisional protection prescribed in Article 14 of the Seeds and Seedlings Act for other varieties of gentian named "Hatsukansetsu 2" and "Hatsukansetsu Mini." X2 and X3 (producers of seedlings and flowers of gentian) have obtained non-exclusive licenses from X1 for the varieties of gentian mentioned above. X1, et al. actually produce and assign these varieties of gentian.

Y (Minister of Agriculture, Forestry and Fisheries) granted two parties outside the suit, A and B, a variety registration with respect to a variety of gentian named "Geihoku no Banshu (Late fall of Geihoku)" (this registration shall hereinafter be referred to as the "Registration," and the registered variety shall hereinafter be referred to as the "Variety"). The Variety is created by crossing the paternal line "Nouvel" and the maternal line selected from variations of "Heidi."

In this case, X1, et al. allege that the examination procedure through which the Registration was granted was illegal, and also allege that there is a gross and obvious defect in the Registration on the grounds that the examiner granted the Registration while ignoring the fact that the Variety lacked the requirements for an independent variety, i.e. distinguishability, uniformity, and stability (Article 3(1) of the Seeds and Seedlings Act). Based on these allegations, X1, et al. seek a declaration of invalidation of the Registration.

Regarding the legality of this suit, the court held as follows: As a measure to deal with the case where a variety has been registered in violation of the requirements for registration, the Seeds and Seedlings Act only provides that the Ministry of Agriculture, Forestry and Fisheries shall revoke the registration ex officio. Under this Act, invalidation proceedings are not available in the way that they are under the Patent

Act and other Acts, nor are there any statutory means whereby a person who is dissatisfied with such a variety registration may challenge it. However, such a person is allowed to directly bring an action in court under the Administrative Case Litigation Act in order to seek a declaration of invalidation of the registration.

The court, while regarding X1, et al. as having standing to sue, rejected the existence of a gross and obvious defect in the Registration, and dismissed their claim, on the following grounds.

In the case where the Variety is newly registered, if it cannot be clearly distinguished from the varieties for which X1 holds a breeder's right (e.g. Hatsukansetsu Green) with respect to all or part of its characteristics, X1 would be prevented from enforcing its breeder's right or right to provisional protection against the Variety, which would result in infringement of these rights. Furthermore, the three parties including X1 might be subject to a request made by the breeder of the Variety for an injunction (Article 33 of the Seeds and Seedlings Act) against their use of the varieties based on their breeder's right and non-exclusive licenses or claim for damages. This definitely constitutes infringement of the breeder's right granted under the Seeds and Seedlings Act. Consequently, X1, et al. fall under the category of "person who has legal interests" as prescribed in Article 36 of the Administrative Case Litigation Act and therefore have standing to sue in the principal action to seek a declaration of invalidation of the Registration.

With respect to the allegation of X1, et al. regarding the existence of a defect in the examination procedure, the court held that this allegation was intended exclusively to claim the violation of procedural matters that were not directly related to the grounds for rejection set forth in Article 17 of the Seeds and Seedlings Act or other matters that had no impact on the legality of the Registration. Consequently, the court concluded that there was not any defect at all in the examination procedure, or even if there was any, it was not so large as to give rise to a defect in the Registration. With respect to the allegation of the lack of distinguishability (Article 3(1)(i)), uniformity (Article 3(1)(ii)), and stability (Article 3(1)(iii)) of the Variety, the court held that this allegation was intended to argue a procedural defect in the examination procedure, which cannot be regarded as grounds to reject an application for variety registration under the Seeds and Seedlings Act and had in itself no impact on the legality of the Registration, or the allegation failed to show a relevance between the cause of illegality that they argued and any grounds for rejection or prove the existence of grounds for rejection. Consequently, the court denied the existence of a gross and obvious defect in the Registration.

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