

Date	January 15, 2018	Court	Intellectual Property High Court, Fourth Division
Case number	2017 (Ne) 10076		
<p>- The governing law for a lawsuit seeking an injunction against the use or disclosure of information about trade secrets is "the law of the place where the result of the wrongful act occurred" which shall govern "the formation and effect of a claim arising from a tort," pursuant to Article 17 of the Act on General Rules for Application of Laws.</p> <p>-If the information owned by a Japanese corporation is used or disclosed in Japan, a claim for an injunction against the use and disclosure of the information shall be governed by the law of Japan where the result of the act occurred.</p> <p>- "Gross negligence" as regulated in in Article 2, paragraph (1), item (viii) of the Unfair Competition Prevention Act refers to a case in which the duty of care required in transactions is breached even though the act of unfair disclosure can be easily revealed if the duty of care is carried out.</p>			

References: Article 2, paragraph (1), item (viii), and Article 3, paragraphs (1) and (2) of the Unfair Competition Prevention Act, and Article 17 of the Act on General Rules for Application of Laws

Summary of the Judgment

This is a case in which the appellant demands that the appellee be subject to an injunction against the use and disclosure of information (the information) about the plaintiff's products disclosed in a document, by arguing that the appellee's act of acquiring the information and submitting the document about it as proof in another lawsuit corresponds to the act of acquiring the information, which is the appellant's trade secrets, through gross negligence in not knowing that the act is wrongful disclosure or that there has been an intervening act of the disclosure (act of wrongful disclosure), and using the information on the trade secrets acquired in such a way.

The judgment in prior instance dismissed the appellant's claim by stating that it cannot be considered that when the appellee acquired the

document, the appellee was in a state where he/she should have considered the possibility of the act of unfair disclosure and concluding that the appellee was not grossly negligent. The appellant was dissatisfied with the judgment and filed this appeal.

As stated in the outline, this appeal was dismissed since this judgment determined that the governing law was the law of Japan and that appellee was not grossly negligent.

The lawsuit seeking an injunction against the use or disclosure of the information about trade secrets is merely part of civil relief against illegal activities. Therefore, in light of the nature of the legal relationship, it relates to a tort and shall be governed by "the law of the place where the result of the wrongful act occurred" pursuant to Article 17 of the Act on General Rules for Application of Laws. When the appellant is a Japanese corporation having its principal office in our country and the information was used or disclosed in Japan, the place where the result of the act occurred should be understood to be Japan and the law of Japan should be regarded as the governing law.

"Gross negligence" as regulated in Article 2, paragraph (1), item (viii) of the Unfair Competition Prevention Act should be understood to refer to a case in which the duty of care required in transactions is breached even though the act of unfair disclosure can be easily recognized if the duty of care is carried out. With reference to the appellee's acquisition of the document describing the information, if the content of the document incorporated into the appellee's products can cause a serious disadvantage to the appellant, this possibility can be regarded as one of the factors for justifying the existence of the duty of care required in transactions. On the other hand, the acquisition of the document in the ordinary course of business corresponds to a fact that denies the existence of the duty of care.

It is not considered that a serious disadvantage can occur to the appellant if the content of the document is incorporated by the appellee into his/her products. The document was obtained in the ordinary course of business. Under these factual relationships it cannot be said that on the appellee's acquisition of the document, he/she had the duty of care required in transactions to carry out an investigation for the purpose of confirmation that there is no possibility of the act of wrongful disclosure, while being grossly doubtful about it.