

Date	April 18, 2013	Court	Intellectual Property High Court, Fourth Division
Case number	2012 (Ne) 10076		
<p>– The intellectual creation of a compilation can be sufficiently found by the expression of the results of creative activities by a person and the personality of the editor shown in some form, in the selection or arrangement of the contents.</p> <p>– A case in which the court found that the selection and arrangement of medicines in a handbook of herbal medicines of the appellant's book on medicine constituted intellectual creations and that the selection and arrangement of medicines in a handbook of herbal medicines of the appellee's book on medicine, which are completely identical to the appellant's selection and arrangement, are reproductions.</p>			

References:

Article 12, Article 21, and Article 27 of the Copyright Act

In this case, the appellant filed an appeal seeking compensation for damages based on tort and payment of delay damages accrued on damages except for the attorney's fees against the appellee, alleging that the appellee's act of printing and selling the book *Handbook of Clinical Drug 2008: Points in Selecting and Prescribing Medicines* (hereinafter referred to as the "Appellee's Book") infringed the co-ownership interests in the copyright (right of reproduction and right of ownership transfer, both of which are based on Article 28 of the Copyright Act) held by the appellant with respect to a book titled *Today's Drug Therapy: Explanation and Handbook 2007 Edition* (hereinafter referred to as the "Appellant's Book"). The appellant further alleged that the appellee's act fell under an act of reproduction or adaptation with respect to the following selections and arrangements in the Appellant's Book: (i) the selection and arrangement of medicines in the handbook of non-prescription medicines of the Appellant's Book; (ii) the selection and arrangement of medicines in the handbook of herbal medicines of the Appellant's Book; and (iii) the selection and arrangement of medicine information in the handbook of herbal medicines of the Appellant's Book.

The judgment in prior instance dismissed the appellant's claims by holding that the Appellee's Book cannot be deemed to be a reproduction or adaptation of the Appellant's Book as compilations. Dissatisfied, the appellant filed an appeal.

This judgment modified the judgment in prior instance by holding as follows.

Compilations which, by reason of the selection or arrangement of their contents, constitute intellectual creations shall be protected as independent works (Article 12, paragraph (1) of the Copyright Act). Therefore, it is construed that the intellectual creations of compilations can be sufficiently found by the expression of the results of

the creative activities by a person and the personality of the editor shown in some form, in the selection or arrangement of the contents. Yet, it should be restated that, with respect to compilations, what shall be protected is the selection or arrangement of the contents shown in specific compilations as a creative expression, and not the editorial policy itself, which departs from the specific compilation.

(1) Regarding the selection and arrangement of medicines in the handbook of non-prescription medicines of the Appellant's Book

The selection of medicines in the handbook of non-prescription medicines of the Appellant's Book and that in the handbook of non-prescription medicines of the Appellee's Book cannot be deemed to be identical or similar as a whole, and the portions that the Books have in common cannot be found to have intellectual creations in their selection. Therefore, a person would not be able to directly realize the essential characteristic of expressions in the Appellant's Book from the selection of medicines in the handbook of non-prescription medicines of the Appellee's Book, and thus said selection in the Appellee's Book is not a reproduction or adaptation.

So long as a person would not be able to directly realize the essential characteristic of expressions of a specific arrangement of medicines published in the handbook of non-prescription medicines of the Appellant's Book from the specific arrangement of medicines published in the handbook of non-prescription medicines of the Appellee's Book, said arrangement of the Appellee's Book is not a reproduction or adaptation.

(2) Regarding the selection and arrangement of medicines in the handbook of herbal medicines of the Appellant's Book

The handbook of herbal medicines of the Appellant's book selected "coix seed extract" alone from among a number of crude drugs as one to classify under the large category "herbal medicines," in addition to containing 148 prescription names of herbal medicines. The handbook further selected all of the medicines of the three herbal medicine manufacturers that belong to the prescription names of herbal medicines for which there were any medicines manufactured and sold by the three herbal medicine manufacturers, and selected other medicines separately by taking into consideration the importance and frequency of use at the clinical site with respect to the prescription names of herbal medicines for which there were no medicines manufactured and sold by the three herbal medicine manufacturers. Accordingly, the results of creative activities by the appellant and other persons involved in the compilation of the Appellant's Book and their personalities can be found in the selection of medicines. Furthermore, the arrangement of medicines in the handbook of herbal medicines of the Appellant's Book, which were made by selecting medicines

based on the abovementioned considerations and by daring to break the principle of the order of Japanese syllabary based on historical and empirical proof, is an expression of the results of the creative activities by the appellant and other persons involved in the compilation of the Appellant's Book and their personalities, and thus constitutes intellectual creation. Therefore, the selection and arrangement of medicines in the handbook of herbal medicines of the Appellee's Book, which are completely identical to the abovementioned selection and arrangement, must be considered a reproduction of the selection and arrangement made in the Appellant's Book.

(3) Regarding the selection and arrangement of medicine information in the handbook of herbal medicines of the Appellant's Book

The selections and arrangements of medicine information in the handbook of herbal medicine in the Appellant's Book and Appellee's Book are similar only in the parts that have no intellectual creations of expression. Moreover, the handbook of herbal medicines of the Appellant's Book selected other side effects and prices, as well as "sho" (diagnosis and treatment), as information that is not included in the attached document, while the handbook of herbal medicines of the Appellee's book selected the points in prescription and dispensing and pharmaceutical management. Therefore, a person who has read the Appellee's book would not be able to directly realize the essential characteristic of expressions of the Appellant's Book. Therefore, the handbook of herbal medicines of the Appellee's Book is not a reproduction or adaptation of the handbook of herbal medicines of the Appellant's Book in terms of the selection and arrangement of medicine information.