

Unfair Competition	Date	February 9, 2024	Court	Osaka High Court, 8th Civil Division
	Case number	2023 (Ne) 1657		
<p>- A case in which the court held that the specific information alleged to be embodied by a UCN (ultra neutrons) testing device (trade secret) is not considered to have been "disclosed" as a trade secret as referred to in Article 2, paragraph (1), item (vii) of the Unfair Competition Prevention Act.</p>				

### Summary of Judgment

This is a case in which X, etc., who are Y's researchers engaged in a UCN research project funded by KAKENHI (grant-in-aid for scientific research), alleged that Y's use, etc. of a testing device produced in the research project and donated to Y constitutes an act of unfair competition under Article 2, paragraph (1), item (vii) of the Unfair Competition Prevention Act, and instituted a claim against Y seeking an injunction against the use, etc. of the device, pursuant to Article 3 of the same Act, as well as a claim for compensation for damage suffered by X, etc. due to the act of unfair competition, pursuant to Article 4 of the same Act.

In the judgment of prior instance (Osaka District Court, July 3, 2023 (2020 (Wa) 12387); see the court's website), Y alleged that, as a preliminary issue before the merits of the case, the claims of X, etc. are illegal because the information alleged by X, etc. to constitute a trade secret (i.e., the information alleged to be embodied in the testing device) is not clearly identified and therefore the claims are not specified, but the court rejected this allegation based on the ground that the subject-matter of the injunction, etc. in this case is the testing device and therefore is not considered to be totally unclear as long as the claims of X, etc. are concerned. However, the court dismissed the entirety of the claims of X, etc. with prejudice on the merits, holding that the allegations of X, etc. are groundless, based on the findings that the alleged trade secret would not even allow the determination of eligibility as a trade secret, as it is merely an extremely abstract statement of attributes of the information from which it is totally impossible to deduce any specific contents thereof, such as technical ideas or technical significance, or to evaluate the difference with publicly available information (i.e., usefulness or non-public nature) or how it is managed (confidential treatment).

In this judgment, for Y's allegation with respect to the preliminary issue, the court rendered a decision largely similar to the prior instance judgment. On the other hand, the court dismissed the appeal of X, etc. with prejudice on the merits, determining that

it could not find that the information which constitutes a trade secret was "disclosed" to Y, as Y could not grasp the information allegedly embodied in the testing device without the involvement of X, etc., and therefore it was impossible for Y to identify the information only by receiving the donation of the testing device and placing the device under its control.

Judgment rendered on February 9, 2024

2023(Ne)1657, Appeal case of seeking an injunction on the use of experimental devices  
(Court of prior instance: Osaka District Court 2020 (Wa) 12387)

Date of conclusion of oral argument: October 17, 2023

### Judgment

Appellant (First-instance Plaintiff):

P1

(hereinafter referred to as "Appellant P1")

Appellant (First-instance Plaintiff):

P2

(hereinafter referred to as "Appellant P2")

Appellee (First-instance Defendant):

Inter-University Research Institute Corporation High Energy Accelerator Research  
Organization

### Main text

1. All of the Appeals by the Appellants shall be dismissed.
2. The Appellants shall bear the cost of the appeal.

### Facts and reasons

#### No. 1 Claim

1. The judgment in prior instance shall be changed as follows.
2. The Appellee shall not use for study or allow a third party to disclose or use the experimental devices listed in 1. through 3. stated in the Attachment to the Judgment in Prior Instance "List of Articles."
3. The Appellee shall deliver the Articles to the Appellants.
4. The Appellee shall pay to each of the Appellants, respectively, 25 million yen and an amount accrued thereon at 3% per annum for the period from March 20, 2021 until the completion of payment.
5. The Appellee shall bear the court costs for both the first instance and second instance.
6. Declaration of provisional execution

#### No. 2 Outline of the case

Unless specifically noted, the abbreviations used below are subject to the ones used in the judgment in prior instance.

1. In this case, the Appellants, who are researchers of the Appellee and engaged in a UCN (ultracold neutron) research project funded by KAKENHI (grant-in-aid for scientific research) of the Japan Society for the Promotion of Science (hereinafter referred to as the "JSPS"), filed claims as stated below concerning the treatment of the Articles that were manufactured in said research project and donated to the Appellee (both the relationship between the claim in (1) A. and the claim in (2) A., and the relationship between the claim in (1) B. and the claim in (2) B. are optional.).

(1) The following claims on the premise that the Appellee is responsible to the Appellants for maintaining the confidentiality accompanying the agreement that was established in association with the JSPS's decision to grant KAKENHI and was concluded between the Appellants and the Appellee who engage in the research as a project conducted with KAKENHI, and the JSPS (hereinafter the agreement is referred to as the "KAKENHI Agreement").

A. A claim for an injunction against the use, etc. of the Articles as a claim for the performance of said obligation and a claim for the delivery of the Articles.

B. A claim for compensation for damages on the grounds of non-performance of said obligation.

(2) The following claims on the grounds that the act of the Appellee to use or otherwise handle the Articles falls under unfair competition as set forth in Article 2, paragraph (1), item (vii) of the Unfair Competition Prevention Act (hereinafter referred to as the "UCP Act") concerning trade secrets that the Appellants hold in relation to the Articles.

A. A claim for an injunction against the use, etc. of the Articles based on Article 3 of the UCP Act and a claim for the delivery of the Articles.

B. A claim for compensation for damages based on Article 4 of the UCP Act.

(3) The following claims on the grounds of infringement of the moral right, etc. due to the fact that the Appellee used or otherwise handled the Articles despite the intention of the Appellants.

A. A claim for injunction against the use, etc. of the Article and a claim for the delivery of the Articles.

B. A claim for compensation for damages based on torts.

2. In response to the petition by the Appellee before the merits that the claims (subject matters) are not specified since the trade secrets argued by the Appellants have not been specified, and the Appeal is illegal, the court of prior instance determined that the subject of the Injunction, etc. is the Articles and it is not considered to be unclear as far as the Appellants' claims (subject matters) are concerned, and the court of prior instance did not accept the Appellee's petition, while it determined that all the claims filed by

the Appellants were groundless and dismissed them. Dissatisfied with this, the Appellants filed the Appeal. The Appellants filed an objection concerning their claim for compensation for damages to the extent of requesting the payment of 25 million yen (total amount of half of total damages argued) to each of the Appellants, or 50 million yen in total.

On the other hand, the Appellee limited its defense before the merits that the appeal is unlawful to the one against the appeal related to the claim indicated in 1. (2) A. above (hereinafter referred to as the "claim for injunction, etc. based on the UCP Act").

3. Basic facts are as stated in No. 2, 2. of the "Facts and reasons" section in the judgment in prior instance (from page 2, line 19 through page 5, line 12 in the judgment in prior instance), and therefore they are cited, except for the following alterations.

(1) The phrase "Associate Professor" on page 3, line 4 of the judgment in prior instance is altered to "a person who held a position of Associate Professor, but resigned from the post in March 2022".

(2) The part from the beginning of page 3, line 5 through the end of line 7 of the judgment in prior instance is altered as follows.

"When Appellant P1 was a researcher of the Appellee, Appellant P1 engaged in a UCN research project funded by KAKENHI of the JSPS as a researcher of the Appellee and as the research representative, and Appellant P2 participated as sub-researcher in said research project."

(3) After the phrase "KAKENHI, etc." on page 3, line 17 of the judgment in prior instance, the phrase "(related to Grant-in-Aid for Scientific Research A for which project period was from 2000 through 2002)" is added.

(4) The sentence that starts with the phrase "The major structure" on page 3, line 19 through the end of line 23 of the judgment in prior instance is altered to "The major structure of the device is as shown in View 1 attached to the Attachment to the Judgment in Prior Instance 'List of Articles' (see the part surrounded by a white line in Photographs 1-1 through 1-3 attached to the Attachment to the Judgment in Prior Instance 'List of Articles' and Photograph 1-4).".

(5) After the phrase "KAKENHI, etc." on page 4, line 1 of the judgment in prior instance, the phrase "(related to Grant-in-Aid for Scientific Research S for which project period was from 2009 through 2013)" is added.

(6) The section from the phrase ", which is the part" on page 4, line 6 of the judgment in prior instance through the end of line 8 is altered to " (see the part surrounded by a white line in Photographs 2-1 through 2-4 attached to the Attachment to the Judgment in Prior Instance 'List of Articles' (for Photograph 2-4, the center and right parts)).".

(7) The phrase "related to the Grant-in-Aid for Scientific Research for the period from 2006 through 2013" on page 4, line 11 through line 12 of the judgment in prior instance is altered to "related to the Grant-in-Aid for Scientific Research B for which the project period was from 2006 through 2008".

(8) The part from page 4, the beginning of line 18 to the end of line 25 of the judgment in prior instance is deleted.

(9) The following is added as a new line after the end of page 5, line 10 of the judgment in prior instance.

"(4) Management status of the Articles

A. The Articles were donated by the Appellants to the Appellee based on the relevant rules, and then transported from RCNP and installed at Osaka University, Graduate School of Science, with the Appellee's approval. However, from among the Articles, Article 1, cold neutron source and superfluid He-II container (B. [i] and [ii] above) from among Article 2, and Article 3 were transported from the Graduate School to TRIUMF, which is the national laboratory of Canada, and are being provided for joint research with TRIUMF and other third parties (Exhibits Ko 8 through Ko 10, Ko 22).

B. The He-II freezer (B. [iii] above) from Article 2 was stored at the Graduate School. Based on the final and binding judgment related to a different lawsuit filed by the Appellee, a compulsory execution involving the delivery was conducted and the He-II freezer is currently possessed and managed by the Appellee."

(10) The term "(4)" on page 5, line 11 is altered to "(5)".

#### 4. Issues

(1) Whether the Appellee breached the confidentiality incidental to the KAKENHI Agreement.

(2) Whether the appeal related to the claim for injunction, etc. on the grounds of the violation of the UCP Act is unlawful (issue before the merits).

(3) Whether the violation of the UCP Act is established.

A. Whether the Appellants and the Appellee fall under "undertaking" (Article 1 of the UCP Act).

B. Whether the Information falls under the Appellants' "trade secret" (Article 2, paragraph (6) of the UCP Act).

C. Whether "trade secret is disclosed" to the Appellee (Article 2, paragraph (1), item (vii) of the UCP Act).

D. Whether the Appellee "used" the Information "for the purpose of wrongful gain" (Article 2, paragraph (1), item (vii) of the UCP Act).

(4) Whether the Appellee infringed the moral right, etc. of the Appellants.

(5) Occurrence of damages and the amount thereof.

(6) Whether an injunction, etc. are necessary.

### No. 3 Judgment of this court

1. Issue (1) (Whether the Appellee breached the confidentiality incidental to the KAKENHI Agreement)

(1) As stated in (4) A. of the "Basic facts" section above, the Articles were donated by the Appellants to the Appellee based on the relevant rules. The Appellants argued that the Appellee, which is a research institution that accepted the aforementioned donation, is required to manage the Articles appropriately in accordance with the purpose of the granting of KAKENHI in lieu of the researchers, who are undertakers of the project, under the KAKENHI Agreement, and that, concerning the right related to the Information embodied in the Articles, the Appellee is obliged not to use the Information for purposes other than the aforementioned purposes, not to divulge, disclose, etc. it to a third party (confidentiality) under the principle of good faith in association with the Agreement.

(2) The Appellants' argument is examined below. Concerning the treatment of equipment, etc. purchased with the grants that are government funds, details are stipulated by the Act on Regulation of Execution of Budget Pertaining to Subsidies, etc. and other relevant rules and the Articles were donated by the Appellants to the Appellee in accordance with said Act and rules. The donation is generally considered to be a gift of assets to public and public-interest projects and groups and if the object is an article, it means a transfer of the ownership of the article for free. In addition, the following matters are found: according to Article 22 of the Guidelines for Inter-university Research Institutes, donated equipment, etc. is required to be managed based on the Fixed Asset Management Rules; Article 11 of the Rules has the statement that "In cases of acquiring fixed assets, etc. through a donation, the asset management supervisor shall"; in the "Research Grant Illicit Act Countermeasure Committee Report" of the Ministry of Education, Culture, Sports, Science and Technology compiled as of December 26, 2006, there is a statement that "Under the current competitive fund system, etc., if a device is purchased, for example, (omitted), if it is KAKENHI for an individual, the ownership belongs once to the researcher and then, the device is to be donated to the research institution to which the research belongs" (Exhibit Ko 63-1 and Ko 63-2); and in "KAKENHI FAQ" posted in the KAKENHI hand book prepared by the JSPS, there are the following statements: "Equipment, etc. purchased with direct expenses must be donated to the research institution to which the research

representative or sub-researcher belongs. [Q4405]"; "Equipment, etc. purchased with KAKENHI are to be donated to the research institution immediately after purchasing. Therefore, the equipment, etc. may be used for another research project, etc. even after the end of the research period according to the rules of the research institution. [Q44071]" (Exhibit Ko 21). It is reasonable to understand that all of these statements are on the premise that the donation of equipment, etc. by a researcher who purchased them with KAKENHI to the research institution to which the researcher belongs refers to the transfer of ownership of the equipment, etc. for free without reservation. In addition to the above, a memorandum of understanding on the joint UCN research between four research institutions, including the Appellee, RCNP, TRIUMF, and the University of Winnipeg, concluded in 2011 (2011 Memorandum) has a provision that the Appellee has ownership of the Articles (original provision is written in English). It is found that there is no special reservation on the right to the Information that the Appellants argued (Exhibit Ko 8).

Then, the donation provided for by the relevant rules that obliged the Appellants to make the donation can be construed to have the same meaning as a general donation and there is no provision in the relevant rules that serves as the ground to say that the Appellee who received donation of the Articles and acquired the ownership thereof should be restricted in using, gaining profits from, and disposing of the donated Articles. Therefore, even if the KAKENHI Agreement related to the Appellants' argument was established between relevant persons in association with the decision to grant KAKENHI, there is no room to understand that the Appellee has assumed the responsibility to the Appellants for confidentiality, which is a one-sided burden on the Appellee, under the principle of good faith.

(3) In this regard, the Appellants pointed out the existence of the "return rule" concerning equipment, etc. acquired with KAKENHI, which provides that, in cases where the representative researcher, etc. who donated equipment, etc. moves to another research institution, and if the research representative, etc. desires to continue using the equipment, etc., the equipment, etc. must be returned to the research representative, etc., and the Appellants argued that said rule embodies the aforementioned restriction on the Appellee that received the donation of the equipment, etc. (the Articles).

It is true that Institution Rules 2-3 and 3-28 have statements with the aforementioned purport; however, on the other hand, the aforementioned KAKENHI FAQ has the following statements: In cases where the researcher is transferred to another research institution during the project period, the research institution returns the equipment, etc. to the researcher based on the provisions of the research institution



[Q4405]; Equipment, etc. purchased in FY2020 and after are to be handled in the same way even in cases where it is within five years after the end of the research period (including cases where the project is discontinued) [Q4405 and Q44071]; Equipment, etc. purchased in FY2020 and before may be used for another research project, etc. even after the end of the research period in accordance with the provision of the research institution [Q44071].

However, according to these statements, at least in FY2020 and before, the "return rule" was a rule applicable only during the project period and it is reasonable to understand that the rule is based on the premise that the research institution is required to accept the request for returning the equipment, etc. made by a researcher who is transferred only during the project period. From among the Articles, the project period of the Grant-in-Aid for Scientific Research A related to Article 1 was from 2000 to 2002; the project period of Grant-in-Aid for Scientific Research S related to Article 2 was from 2009 to 2013; and the project period for Grant-in-Aid for Scientific Research B related to Article 3 was from 2006 to 2008 (Exhibits Ko 4, Ko 16 through Ko 18, the first oral argument record of this instance). Concerning the Articles, the project period has elapsed for all of them.

Consequently, even in consideration of the existence of the aforementioned "return rule," it is not construed that the Appellee, who acquired ownership of the Articles through donation, should assume the responsibility to the Appellants for confidentiality, where the Appellee is restricted in using, gaining profits from, and disposing of the Articles, under the principle of good faith.

(4) The secrets as used in the breach of confidentiality that is incidental to the KAKENHI Agreement are argued to be the same as the Information that the Appellants argued to be trade secrets in this case (the first oral argument record of this instance). As examined in 3. (2) below, the Appellants argued that the Information cannot be analyzed by the appearance of the Articles alone and cannot be acquired without the involvement of the Appellants. If so, even if the Articles were provided for the joint research with TRIUMF and other third parties, the secrets related to the argument of the Appellants (the Information) would not be disclosed. Even more, it cannot be assumed that any third party dismantles the Articles and searches for the secret (the Information) related to the argument. Therefore, even if the Appellee is liable for confidentiality, it can be pointed out that the state of a breach of confidentiality is unlikely to be caused by the provision of the Articles for the joint research with third parties.

In addition, as a basis for the confidentiality, the Appellants argued that the

existence of ownership of the Articles and the existence of technical information, such as know-how, etc., embodied in the Articles are issues on different levels; even if the donation results in the transfer of ownership of the Articles to the Appellee free of charge, since the Appellants had no intention of transferring the right related to the Information, it does not mean that the Appellee could freely use the know-how, etc. embodied in the Articles. However, as explained above, providing the Articles for research alone does not cause the state of a breach of confidentiality. Therefore, even if valuable know-how is used for the Articles, imposing restrictions in using, gaining profits from, and disposing of the Articles based on the above eventually results in making the donation of equipment, etc. meaningless. Therefore, the aforementioned argument of the Appellants cannot be accepted.

(5) Consequently, the Appellants' argument on the breach of confidentiality cannot be accepted and the Appellants' claims described in No.2, 1. (1), A. and B. above that are on the premise of the breach of confidentiality are groundless without needing to make determinations on the remaining points.

2. Issue (2) (Whether the appeal related to the claim for injunction, etc. on the grounds of the violation of the UCP Act is unlawful)

The Appellants argued that the Information that constitutes trade secrets is, in concrete terms, "the structure of the Articles itself, including the outer shape, inner configuration, and devices and equipment (constituent parts) of each unit assembled to fulfill the functions of the Articles and, in terms of the shape and configuration, information related to the shape, dimensions, processing, and assembly of the Articles as a whole and constituent parts."

According to the Appellants' argument, the Information that constitutes trade secrets related to the Appellants' argument is embodied in the Articles that really exist (it is obvious that the Articles are specified to the extent that they can be distinguished as tangible objects from other articles under social conventions). Therefore, they are in a relationship that when the Articles are specified, the Information is also specified to the extent that its extension is at least made clear. Based on the above, the claim for injunction, etc. targeting the Articles on the premise of the above is not defective in terms of specifying the claim (subject matter).

Consequently, the Appellants' claim for injunction, etc. on the grounds of the violation of the UCP Act does not violate Article 133, paragraph (2), item (ii) of the Code of Civil Procedure.

3. Issue (3) B. (Whether the Information falls under the Appellants' "trade secret" (Article 2, paragraph (6) of the UCP Act)) and C. (Whether "trade secret is disclosed"

to the Appellee (Article 2, paragraph (1), item (vii) of the UCP Act))

(1) In consideration of this case, Issue (3), B. and C. are examined together. The Appellants divided the Information related to their argument into requirements of secrecy in management, usefulness, and non-publicness to make an argument, and also argued that the Information (trade secrets) was disclosed to the Appellee by receiving the donation of the Articles or at that time.

(2) Aside from the point on whether the Information is enough to be identified (meaning identification as the factual circumstances that are the reason for action (Article 53, paragraph (1) of the Rules of Civil Procedure)) as trade secrets, first, looking at the requirement of non-publicness from among Issue (3) B., the Information argued by the Appellants is, in short, related to the configuration, etc. of the Articles and is used in the Articles themselves, and the Articles are already in a state where they are managed and freely used by a person other than the Appellants (as it is found and explained in 1. above, the Appellee has no obligation to confidentiality and neither do the rest of the third parties). Therefore, it is considered that the Information has lost the non-publicness as trade secrets. In this regard, the Appellants argued that the Information that constitutes trade secrets cannot be analyzed only by the Articles' appearance and cannot be acquired without the involvement of the Appellants, and therefore that the non-publicness is maintained.

It is true that if the Information is technical information as argued by the Appellants, although He-II freezer from among Articles 2 is managed by the Appellee and the rest of the Articles are managed by third parties, the Articles are used only for experiments, etc. that are the original purpose, and detailed dismantlement, examination, etc. have not been conducted to obtain the Information argued by the Appellants (it is difficult to consider such possibility since the Articles were purchased with KAKENHI). The Information that is allegedly impossible to be acquired without the involvement of the Appellants (the structure of the Articles itself, including the outer shape, inner configuration, and devices and equipment of each unit assembled to fulfill the functions of the Articles and information related to the shape, dimensions, processing, and assembly of the Articles as a whole and constituent parts) is not considered to be known to third parties, including the Appellee. If so, aside from the fact that the Information is not sufficiently specified as trade secrets, it should be said that it cannot be denied that the non-publicness is still maintained.

However, if so, even if the Appellee received donation of the Articles and put them under its management, the Appellee cannot learn the Information only through said acts. Therefore, there is no room to find the fact argued by the Appellants as stated in Issue

(3) C. that the Appellee was disclosed the Information that constitutes trade secrets by receiving donation of the Articles or at that time. The fact that the Appellants disclosed the Information to the Appellee in addition to delivering the Articles has not been argued and proved and there is no fact suggesting it. In addition, according to the Appellants' argument, even if the Articles are used for experiments, etc., the Information related to the configuration, etc. of the Articles cannot be learned from such use. Therefore, it is not found that the Information "was disclosed" to the Appellee even at this moment.

Based on the above, even if the Information may fall under trade secrets, the fact that "trade secrets were disclosed" to the Appellee is not found in this case, and therefore, there is no room to say that the Appellee's act falls under unfair competition as set forth in Article 2, paragraph (1), item (vii) of the UCP Act (on the other hand, if it is affirmed conversely that the Information was disclosed only by the delivery of the Articles, i.e., "trade secrets were disclosed," the Appellee is not liable for confidentiality and the same for the rest of the third parties as explained in 1. above; therefore, the Information that is allegedly used in the Articles does not fulfill the requirements for trade secrets since it has lost its non-publicness; and in this regard, the Appellee's act does not fall under unfair competition as set forth in said item.).

Consequently, although the Appellants do not specify the details of the Information concretely, and therefore, there is a problem that a determination cannot be made based on the details, as long as the argument that the Information that constitutes trade secrets argued by the Appellants cannot be acquired without the involvement of the Appellants is used as a premise, there is no room to accept the Appellants' argument that the Appellee's act falls under unfair competition as set forth in Article 2, paragraph (1), item (vii) of the UCP Act.

(3) The Appellants' argument includes the part that the Information constitutes "trade secrets" as set forth in Article 2, paragraph (6) of the UCP Act and is protected by Article 2, paragraph (1), items (iv) through (ix) of the UCP Act, and therefore, it is examined just in case. As mentioned above, since it is not found that "trade secrets were disclosed," there is no room to say that unfair competition is established not only under item (vii) of said paragraph, but also under item (viii) and item (ix) of said paragraph that are based on item (vii) of said paragraph. The Appellants did not argue that the Appellee conducted "the act of acquiring trade secrets by theft, by fraud, by duress, or by other wrongful means" (item (iv) of said paragraph) and there is no fact suggesting this. Therefore, there is no room for the unfair competition to be established under items (iv) through (vi) of said paragraph based on the above.

(4) Consequently, the Appellants' argument on the violation of the UCP Act cannot be accepted and the Appellants' claims in No.2, 1. (2), A. and B. above that are on the premise of the violation of the UCP Act are groundless without needing to make determinations on the remaining points.

4. Issue (4) (Whether the Appellee infringed the moral right, etc. of the Appellants)

(1) The Appellants argued that [i] the Appellants' rights related to the Information were infringed due to unauthorized use of the Articles (excluding He-II freezer from among Article 2) by the Appellee; [ii] the Appellant's research activities were significantly hindered since the Appellee brought out the Articles abroad; and [iii] the Appellee's act of [i] above is an obvious misconduct of research and the honor of the Appellants as researchers were infringed.

However, as explained in 1. and 3. above, ownership of the Articles was transferred from the Appellants to the Appellee for free and the Articles were actually delivered, and then the Appellee relocated the Articles abroad based on the ownership and is using them by providing them for joint research, etc. Therefore, all the aforementioned arguments of the Appellants lack premises.

(2) In addition, the Appellants argued that the act of the Appellee to take the Articles away from the Appellants (including the He-II freezer from Article 2) for which the Appellants should be approved to use and gain profits from them and to disable the Appellants to use them, infringes the Appellants' academic freedom.

However, as explained above, it was found that ownership of the Articles belonged to the Appellee; no rights were reserved for the Appellants with them; the Articles were actually delivered to the Appellee voluntarily or by compulsory execution proceedings after the end of the KAKENHI project period (research period) related to the Articles; and the Appellee is utilizing them effectively by providing them for the joint research with TRIUMF and other third parties. Therefore, even if the Appellants' research activities are actually restricted by the aforementioned act of the Appellee, such act is not found to infringe the Appellant's academic freedom and be illegal.

(3) Consequently, the Appellee's act is not found to constitute a tort, and therefore, the claims stated in No. 2, 1. (3), A. and B. that are on the premise of infringement of the moral right, etc. are groundless without needing to make determinations on the remaining points.

5. Based on the above, the judgment in the prior instance is reasonable. All appeals in this case by the Appellants are groundless and dismissed, and the judgment shall be rendered in the form of the main text.

Osaka High Court, 8th Civil Division

Presiding judge: MORISAKI Eiji

Judge: OKUNO Hisanori

Judge: IWAI Kazumasa