

International Jurisdiction Case

IP High Court

Case No. H22 (ne)10001

September 15, 2010

FACTS

Japanese corporation (plaintiff in the first instance), against Korean corporation (defendant in the first instance), demanded (i) an injunction against offer of transfer of the defendant's property (motor) and (ii) damages for a tort.

The court of the first instance (Osaka District Court) dismissed the lawsuit of (i) and (ii) by denying international jurisdiction.

ISSUE

Whether the Japanese court has international jurisdiction over the present actions.

HOLDING

The Japanese court has international jurisdiction over actions (i) and (ii).

It is appropriate to decide whether the Japanese court has international jurisdiction on the basis of reason, guided by the ideas of fairness between the parties and assurance of just and speedy adjudication.

If one of the territorial jurisdictions as provided for by the Code of Civil Procedure of Japan can be found to be present in Japan, it is appropriate to subject the defendant to the jurisdiction of the Japanese court in an action brought to a Japanese court. However, if there are special circumstances where handling of the proceedings in Japan is contrary to the ideas of fairness to the parties or assurance of just and speedy adjudication, the jurisdiction of the Japanese court should be denied (Supreme Court Decision of October 16, 1981. Supreme Court Decision of November 11, 1997).

The actions of (i) and (ii) are categorized as "actions relating to a tort" under Article 5-9 of the Code of Civil Procedure of Japan (Supreme Court Decision of April 8, 2004).

The place of jurisdiction of a lawsuit relating to a tort is "the place where the tort was committed" which includes both "the place where the wrongful act was

committed” and “the place where the result of the wrongful act occurred.” In this regard, the international jurisdiction of the Japanese court shall be determined by whether the offer for sale or receipt thereof, occurrence of result of wrongful act, occurred in Japan.

In the present case, by making a comprehensive evaluation of the followings, it is admitted that the offer for sale by the appellee and receipt thereof were conducted in Japan. The Japanese court has the international jurisdiction of the present lawsuit.

- The appellee opened an English-version website and indicated one item of defendant’s property as its product. In addition, the appellee indicated “Japan” as the “Sales Inquiry” location, and a Japanese address (Minato-ku, Tokyo), phone number and fax number for its “Sales Headquarters.”
- In the Japanese version of the website, there is a webpage which presents the defendant’s property, and an inquiry request form regarding the defendant’s property can be prepared.
- The appellant’s sales manager stated in his declaration that the appellee’s sales personnel conducted business activities regarding a motor in Japan and that a third party company evaluated whether the defendant’s product should be equipped on its product.
- The appellee’s business consultant is using business cards indicating in Japanese: his title, name of the appellee’s company, and an address of Minato-ku, Tokyo.
- DVD multi-drive equipped with the defendant’s property is highly likely to be manufactured and sold by Japanese companies and transacted in Japan.