

JAPAN

Apple's jurisdiction clause denied

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A Japanese small and medium-sized enterprise challenged world leading company Apple and obtained a favourable decision. Despite the fact that parties agreed on the exclusive jurisdiction in California where Apple is headquartered, a court invalidated the jurisdiction clause and held that the Japanese court has jurisdiction.

Summary of the case

Shimano Manufacturing, the plaintiff, owns a patent for an invention titled "Contact Terminal", and manufactures and sells parts called probe pins. Shimano had been continuously supplying Apple the probe pins for about nine years as Apple's supplier. The probe pins made by Shimano had been incorporated in connecting parts of computer chargers for laptops made by Apple.

According to Shimano, Apple suspended its order in 2012 and switched to another Asian company. Shimano alleged that it was compelled to comply with the reduction in price and payment of a rebate of about ¥160 million (\$1.5 million) in order to resume the deal.

Shimano filed a lawsuit seeking about ¥10 billion (\$93 million) damages alleging that this suspension of order, demand for reduction and rebate violated the Japanese Antimonopoly Act. Furthermore, Shimano filed a patent infringement lawsuit seeking injunction of sales of Apple's MacBook Air and MacBook Pro laptops and damages alleging that probe pins incorporated in them infringed the patent.

We discuss the validity of the jurisdiction clause which became an issue in the antimonopoly case.

Issues

In the antimonopoly case, prior to the trial of damage claim, international jurisdiction became an issue.

In September 2009, Shimano and Apple concluded master development and supply agreement (MDSA) which was a basic agreement regarding supplying parts. In MDSA, there are following provisions:

If the parties are unable to resolve the dispute within 60 days after commencing mediation, either party may commence litigation in the state or federal courts in Santa Clara County, California. The parties irrevocably submit to the exclusive jurisdiction of those courts.

The terms of this Section apply whether or not the dispute arises out of or relates to the Agreement, unless the dispute is governed by a separate written agreement.

Apple filed a motion to dismiss the action alleging that filing the suit in Japan was a breach of this agreement.

The Japanese Code of Civil Procedure Article 3-7(2), which was newly provided in the 2011 revision, stipulated that an agreement on jurisdiction shall not become effective unless it is made with respect to an action based on certain legal relationships. As the MDSA was concluded before the revision of the Code, whether Article 3-7(2) applies to the jurisdiction clause became an issue (issue (i)). Furthermore, even if Article 3-7(2) does not apply, whether a jurisdiction clause has to be limited to certain legal relationships based on rule of reason (issue (ii)) and whether the jurisdiction clause in MDSA was made with respect to an action based on certain legal relationships (issue (iii)) became issues.

Tokyo District Court judgment

The Tokyo District Court (Presiding Judge Chiba) rendered an interlocutory judgment on February 15 2016, which held that the Japanese court had jurisdiction.

Regarding the first issue, the Court held that Article 3-7(2) does not apply to the

clause concluded before the revision of the Code because it could cause unexpected damages on parties.

Regarding the second issue, the Court held that even if the jurisdiction clause is concluded before the revision of the Code, it has to be made regarding certain legal relationships on the basis of rule of reason. The reasons are: the purpose of Article 3-7(2) is to secure the foreseeability of parties and to prevent from causing unexpected damages on parties. The necessity of securing the foreseeability of parties equally exists with regard to an agreement concluded before the revision of the Code. Furthermore, regarding an agreement on domestic jurisdiction, it has to be made with respect to "an action based on certain legal relationships" since before the revision of the Code and the purpose of the provision is the same as international jurisdiction.

Regarding the third issue, the Court held that the jurisdiction clause was not made with respect to an action based on certain legal relationships because it did not limit the object of an action other than to the disputes between the plaintiff and the defendant and it is difficult to understand the basic legal relationship. Apple argued it was clear that this lawsuit relates to MDSA including the jurisdiction clause and this lawsuit would not harm the plaintiff's foreseeability. However, the Court did not accept this argument.

The Court concluded that the jurisdiction clause was invalid.

Practical tips

In this case, the jurisdiction clause is judged not to fulfil the requirement of "an action based on certain legal relationship" because it provided that the terms of this Section apply whether or not the dispute arises out of or relates to the Agreement. On the other hand, if the clause had been limited to certain disputes such as "the dispute arises out of or relates to this Agreement", the clause could have fulfilled the requirement and be deemed valid.

Foreign companies who had already concluded contracts with Japanese companies are encouraged to review the jurisdiction clause, check whether the

object of the jurisdiction clause is limited to “an action based on certain legal relationship”, and if there is a risk to be deemed as too broad it may be necessary to negotiate with the Japanese company to revise the jurisdiction clause. Foreign companies who will conclude contracts with Japanese companies from now are advised to limit the object of the jurisdiction clause to “an action based on certain legal relationship” for future contract drafting.

The antimonopoly case proceeds to a hearing on the merits of the case in the Tokyo District Court. Regarding the patent infringement case, in the judgment of March 17, 2016, the Tokyo District Court denied infringement.