

1. Request

Introduction of an effective system to maintain the confidentiality of allegedly-infringed trade secrets in criminal proceedings

2. Detailed description of requested measures

In order to allow Japanese industry to properly protect and use know-how-related intangible assets such as technologies, it is necessary to introduce an effective system to maintain the confidentiality of allegedly-infringed trade secrets in criminal proceedings.

3. Outline of specific measures and the grounds for the request

Japan is in the midst of great social change with its population graying and shrinking rapidly. In order to maintain and develop international competitiveness in the Japanese economy in this age of great transformation, we need to properly protect and use know-how-related intellectual property such as technologies (hereinafter referred to as “know-how”). Today, every company is aware of the importance of creating, managing, and using such intellectual property in maintaining and enhancing its competitiveness.

These days, in order to efficiently carry out research and development activities in their respective specialized fields, most companies conclude license agreements with others who have greater know-how in other fields or conduct joint research activities with them in order to share their know-how. This system of information sharing, which is similar to an open innovation system, requires an effective penalty system to impose proper punishment on those who intentionally divulge secret know-how. Such a penalty system would be indispensable for companies to share know-how with others without worrying about unintended spread or leakage of confidential information.

Once know-how is communicated from the owner to any other company, it is extremely difficult to control its spread. Under the current legal system, any intangible assets including know-how that are treated as confidential information are protected as trade secrets under the Unfair Competition Prevention Act. If a trade secret is infringed, the owner thereof may seek both civil and criminal redress. To maintain the confidentiality of trade secrets, said Act has a provision specifying that the confidentiality of an infringed trade secret shall be maintained in civil proceedings. However, such a provision is nonexistent for criminal proceedings, which often deal with particularly malicious infringements.

Against this background, when a company has suffered an infringement where the

know-how it had kept as a trade secret has been leaked in a malicious way, it hesitates to lodge a criminal complaint even if the company has identified the infringer. This is because the company fears that the know-how would be made public in the criminal proceedings and would lose both confidentiality and property value that is protected under said Act in the first place. This is unfortunate because such malicious infringement should be subject to criminal proceedings. Since infringers are well aware of the hesitation of the infringed companies, criminal redress has little deterrent effect.

In order to improve this situation as soon as possible, it is desirable to establish a provision that would stop mandating public disclosure of trade secrets in criminal proceedings.

Such a provision would resolve the current dilemma that the more important the infringed trade secret, the less likely the owner of that trade secret is to file a complaint, and would serve as an effective deterrent to trade secret infringements.

4. Underlying provisions

Article 21 of the Unfair Competition Prevention Act

The Code of Criminal Procedure

5. Competent authorities of the system

Ministry of Economy, Trade and Industry

Ministry of Justice

6. Proposer

Japan Intellectual Property Association

Fair Trade Committee