

94

Sichuan Province Guanghan City Sanfeng Science and Technology Co., Ltd.

v.

Sichuan Environmental Protection Construction and Development Corporation et al.

Citation: The Supreme People's Court's Judgment No. Zhizhongzi 2/2000

Date of judgment: August 31, 2000

Procedural history

The Sichuan Province Guanghan City Sanfeng Science and Technology Co., Ltd. (Sanfeng) sued Sichuan Environmental Protection Construction and Development Corporation (EPCDC), Gao Jinming, the Sichuan Province Green Environmental Protection Industry Development Co., Ltd. (Green) and Sichuan Province Neijiang Machinery Plant (NMP) for infringement of its know-how. The defendants were adjudged in the first-instance judgment not to have infringed the know-how in suit. Sanfeng appealed to the Supreme People's Court.

Issue

Elements of technical secret

Facts

Sanfeng had accomplished the R&D project on the harm-free technological process for processing life wastes and technology for utilizing the life wastes as resources before July 1997. In March 1999, Sanfeng sued the EPCDC on the grounds that it obtained the relevant technical data, in the name of cooperation, used them in its production and business, and, in so doing, infringed its know-how. During the first-instance trial, Sanfeng's said technology was appraised as a publicly

known and used technology.

The first-instance court accepted the experts' appraisal conclusion, holding that Sanfeng's technology was accessible in the known technologies, such as circulated publications and industrial standards. It did not possess the features of the know-how, nor the elements of a non-patented technical achievement; hence it decided to have rejected the plaintiff's litigant claims.

Sanfeng argued in its appeal that when ascertaining the facts, the court erred to have deemed the know-know to be equivalent to a non-patented technology or trade secret, and disregarded the fact that said technology remained confidential and the rightholder had taken measures to keep it confidential.

Reasoning

A know-how, viz a technical secret, under the protection of the Chinese laws, such as the Unfair Competition Law and the former Technology Contract Law, should possess the essential legal features of being unknown to the public, capable of bringing economic benefits to the rightholder, applicable, and kept secret by the rightholder with measures taken to this end. Merely setting forth the confidentiality liabilities in a contract did not mean that said technology had met all the statutory elements required of a technical secret. The technical appraisal conclusion on said technology or any relevant certificates issued by an administrative agency did not constitute the lawful grounds on which a defend was made against a court's decision made in its adjudication under the national law on whether a technology was a technical secret or eligible for legal protection. Being a known technology as appraised in the judicial appraisal procedure, Sanfeng's technology was not a technical secret protected under law. No matter whether the EPCDC and other appellees had obtained said technology from Sanfeng or used it, they did not infringe its technical secret or "non-patented technical achievement".

It was undue for the first-instance court to have entrusted technical experts with appraisal whether the technology in suit was the technical secret susceptible to the protection under law. However, as what the technical experts did mainly in the technical appraisal was to evaluate whether said technology was a known or used technology, the judgment for this case was not affected by the

undue entrustment with the technical appraisal by the first-instance court in this case.

Holding

A technical secret should possess the essential legal features of being unknown to the public, capable of bringing economic benefits to the rightholder, applicable, and kept secret by the rightholder with measures taken to this end, and a known technology was not a technical secret susceptible to the protection under the law.