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Eli Lilly And Company v. Jiangsu Haosen Pharmaceutical Industry Co., Ltd.

Citation: The Supreme People's Court's Civil Judgment No. Minsanzhongzi 8/2002

Date of judgment: June 17, 2003

Procedural history

The US Eli Lilly And Company (Eli Lilly) sued the Jiangsu Haosen Pharmaceutical Industry Co., Ltd. (Haosen) in the Jiangsu Province Higher People's Court for infringement of its patent for the process for preparing Gemcitabine Hydrochloride. The alleged infringement was not established in the first-instance judgment, and Eli Lilly appealed to the Supreme People's Court.

Issue

Should evidence relevant to trade secret be cross-examined by both parties?

Facts

Eli Lilly's three patents related to the process for preparing Gemcitabine Hydrochloride.

The first-instance court held that Gemcitabine Hydrochloride fell within the scope of new products as provided for in the Patent Law, and Haosen should be under the burden of proof in connection with its process for preparing Gemcitabine Hydrochloride. The first-instance court had arranged for an independent appraisal organization to appraise Haosen's technical data of the processes that usually needed to be examined by the plaintiff on the ground that said data related to Haosen's commercial interests, and used the appraisal conclusion as a piece of valid evidence for it to decide the case on, and found Haosen not infringing the patent in suit.

Eli Lilly appealed, arguing that:

1. The first-instance court has deprived Eli Lilly of its legitimate litigation right by refusing, in the lawsuit, to allow it to examine the Haoshen's infringement evidence and the "facts" ascertained in the first-instance judgment were not cross-examined by the appellant.

Haosen argued in defence that:

1. Eli Lilly and Haosen were business competitors. If Eli Lilly took advantage of the cross-examination procedure and obtained its trade secret, tremendous damage would be inflicted to its commerce interests. The way the first-instance court adopted for the cross-examination of the evidence did not infringe Eli Lilly's equal litigation right.

Rule of law

Article 66 of the Civil Procedure Law *Evidence shall be presented and cross-examined by the parties concerned before court. But evidence that involves State secrets, trade secrets and personal privacy shall be kept confidential. If it needs to be presented before court, such evidence shall not be presented at an open court session.*

Reasoning

The data of the process for preparing Gemcitabine Hydrochloride which Haosen submitted and asked to be kept confidential should be cross-examined under Article 66 of the Civil Procedure Law. Only on the basis of the cross-examination of the evidence from the two interested parties is it possible to determine whether the allegedly infringing process was identical with, or equivalent to, the patented process.

The appraisal organization should appraise the technical matter in suit on the basis of the data of evidence cross-examined by the two parties before court. The technical data relating to Haosen's process which the first-instance court presented to the appraisal organization were not cross-examined by the two parties before court. Accordingly, the appraisal conclusion made by the appraisal organization on said data of evidence that were not cross-examined or verified by the two parties

was not legitimate, valid evidence, and should not serve as the basis on the basis of which the facts of the case were to be ascertained.

Holding

Evidence relating to a trade secret should also be cross-examined by the two parties. The first-instance court accepted the evidence that was not cross-examined by the two parties, failed to ensure Eli Lilly to exercise its legitimate litigation right, and it based the entrusted technical appraisal on such evidence. By doing so, the court has acted in violation of the provision of the Civil Procedure Law that evidence on the basis of which facts of a case are to be ascertained should be cross-examined before court.