Title of Proposed Article: Trade secret protection in Taiwan: Scope of enhancing equitable enforcement for civil litigation

II. Abstract

Trade secret protection is of critical importance in Taiwan as well as in other nations, for more and more high tech companies which obtain enormous and sensitive information would have a greater impact on the worldwide economy. Trade secret protection is mainly governed by Trade Secret Act (hereinafter: TSA) in Taiwan. The remedies for the violation of trade secrets under this Act include civil and criminal suits. Due to the fierce cross-border competition, leakage of trade secrets and poaching of research staff from cross-strait in particular, Taiwan follows the US approach in criminalizing trade secret protection. Compared to the strong criminal procedures investigated by public prosecutors, right holders often encounter challenges in civil litigation. For examples, the ambiguity of the scope and content of the trade secret, the difficulties of evidence collection, the conditions under which an injunction might be ordered in case of violation, and calculation of damages. Among those, evidence collection is essential in civil proceedings, especially when there is no discovery system in Taiwan like in the US. If it fails to induce the infringing party to provide evidence in the court, and to ask the right holder to bear all the burden of proof, the right holder would have difficulties obtaining the relief he deserves. On the one hand, it’s necessary to reduce the degree of proof of the right holder, then to oppose an obligation by demanding the opposing party to specify his claims. However, the conjunctive key point is the significance of the relation with fundamental rights, i.e free movement and rights to work of the laborers.

This study aims to outline the legal nature of trade secrets and emphasize the importance of reconciliation of different parties’ interests in trade secrets cases. Current legislation and legal practice concerning trade secrets in Taiwan will be examined under the global perspective. Considering the fact that the unlawful acquisition, use or disclosure of a trade secret by a third party could have devastating effects on the legitimate trade secret holders, as once publicly disclosed, it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. This study is of the preliminary opinion that there are no sufficient civil remedies, procedures and fast, effective and accessible provisional measures in Taiwan Trade Secret Act.