[Deciding Court]
Tokyo District Court

[Date of Decision]
28 August 2007

[Case No.]
2007 (yo) No.20047

[Source]
Hanrei Jiho No1991 p.89

[Summary of Facts]

X (the plaintiff) is a Japanese corporation engaged in the business of selling semiconductor related products, and Y (the defendant) is a South Korean corporation engaged in the manufacturing of silicon wafer (hereinafter, the "Y Products"). In order to sell the Y Products to non-party A, a Japanese joint stock corporation, Y executed an agreement with X for Y to deliver, etc. to A the Y Products in accordance with X's order, with X being Y's agent (hereinafter, the "Agreement"). The Agreement contained an arbitration clause that the arbitration agency in Seoul would resolve disputes, and a provision rendering the laws of South Korea as the governing laws. Thereafter, this agreement was renewed multiple times, and on January 22, 2007, Y manifested its intent that it did not have the intent to renew the contract term upon the expiry of the contract term of March 31, 2007. However, since negotiations regarding the stable supply of 6-inch Y Products were being separately held among the three companies X, Y and A since previously, on February 26, 2007, although it was after the refusal to renew the Agreement, an agreement regarding 6-inch Y Products (hereinafter, the "6-Inch Three Party Agreement") was executed.

To Y's refusal to renew, X filed a petition claiming that the manifestation of intent to refuse renewal was invalid; even if it was valid there was an implied agreement to renew the Agreement by the execution of the 6-Inch Three Party Agreement; on the grounds that it has the right to claim for injunction regarding this refusal to renew pursuant to Articles 19 and 24 of the Anti-Monopoly Act, as a primary claim requesting for a temporary determination that Y must not sell the Y Products to A directly or through a third party without X's orders, Y must deliver to A the Y Products ordered by X on or before the delivery due date, X has the status under the Agreement, and as a secondary

claim requesting for a temporary determination that pursuant to the 6-Inch Three Party Agreement and limited till September 30, 2009, Y must not sell the 6-inch Y Products to A directly or through a third party without X's orders, Y must deliver to A the 6-inch Y Products ordered by X on or before the delivery due date, X has the status under the 6-Inch Three Party Agreement.

[Summary of Decision]
Petition dismissed

"Since there is no internationally recognized general rule nor sufficient maturation of international customary law as to when international court jurisdiction of a case involving an order for provisional remedy should be recognized, it is reasonable to determine the same in accordance with reason, in accordance with the ideals of fairness among the parties and appropriate and prompt court proceedings, similarly as general civil litigation .... When the court with jurisdiction over a case involving an order for provisional remedy provided in Article 12 Paragraph 1 of the Civil Provisional Remedies Act is within Japan, it is reasonable, as a general rule, to cause the obligor to submit to the court powers of Japan; however, if these do not exist, unless there are particular circumstances that the performance of court proceedings in Japan would be in accordance with the ideals of fairness among the parties and appropriate and prompt court proceedings, the international court jurisdiction of Japan should be denied."

"Article 12 Paragraph 1 of the Civil Provisional Remedies Act provides that the jurisdiction of a civil provisional remedies case is the court with jurisdiction over the merits or the district court with jurisdiction over the location of the provisionally seized property or the disputed subject matter. Since the 'merits' means the procedures to determine the existence or non-existence of the legal relationship or protected rights, and it is interpreted that not only litigation procedures but also arbitration procedures fall under this, it is reasonable to interpret that the 'court with jurisdiction over the merits' prescribed in the said paragraph in the case that there exists an arbitration agreement means the court with jurisdiction over the seat of arbitration of such arbitration, and that it does not include the court which would have had jurisdiction over the litigation on the merits if there were no arbitration agreement. This because if it were not interpreted in such manner, a court which does not have jurisdiction over the litigation on the merits due to the existence of an arbitration agreement would have jurisdiction only over the provisional remedies case, and it would result in being contrary

to the fact that a provisional remedies case is incidental to litigation on the merits. In addition, it would be in accordance with the reasonable intent of the parties who determined the seat of arbitration by the arbitration agreement for the court with jurisdiction over the seat of arbitration to have jurisdiction over the provisional remedies case, and it could be said that it also matches the ideals of fairness among the parties."

"Since the Arbitration Act does not have any express provision regarding the governing laws of the arbitration agreement, the validity of the arbitration agreement would be determined by the laws of the place selected by the parties at the time of such legal act (Article 7 of the Act on General Rules for Application of Laws). Since in this case there exists a governing law agreement rendering the laws of South Korea as the governing laws in this contract, the governing laws of the validity of this arbitration agreement would be the laws of South Korea. …… Article 3 Paragraph 2 of the Arbitration Act of South Korea provides that 'An arbitration agreement is an agreement to entrust to arbitrator(s) all or a part of the resolution of a civil dispute which has already occurred or a dispute related to a certain legal relationship (whether or not based on contract) occurring in the future', and Article 8 Paragraph 2 of the said Act provides that 'An arbitration agreement must be in writing.' Since this arbitration agreement meets these requirements, this arbitration agreement should be interpreted as valid in light of the laws of South Korea, …… and …… neither could it be said that it violates the public policy of Japan as a result of applying the laws of South Korea."

"Since an arbitration agreement rendering Seoul, South Korea as the seat of arbitration exists among the parties in this case, the 'court with jurisdiction over the merits' prescribed under Article 12 Paragraph 1 of the Civil Provisional Remedies Act does not exist in Japan, and neither does this petition request for provisional disposition regarding the provisionally seized property or disputed subject matter. Therefore, since the 'district court with jurisdiction over the location of the provisionally seized property or the disputed subject matter' would not be the court with jurisdiction, with respect to the petition rendering the right to claim for performance under this contract as the protected rights, the court with jurisdiction provided in Article 12 Paragraph 1 of the Civil Provisional Remedies Act does not exist in Japan. …… Neither could it be said that there exist particular circumstances that the performance of court proceedings in Japan would be in accordance with the ideals with fairness among the parties and appropriate and prompt court proceedings, nor that international court jurisdiction of Japan should be recognized for a petition rendering the right to claim for performance under this contract as the protected rights."