

BBS Case
Parallel Importation
Supreme Court
Case H7 (O) No.1988 (July 1, 1997)

A case where parallel importation of genuine patented products produced in a foreign country was determined not to infringe the patent by application of the doctrine of implied license.

FACTS

1. The appellant owns a patent titled "car wheels" (Patent No. 1,629,869) in Japan.
2. The appellant owns a German patent (Application No. 83105259.2) in Federal Republic of Germany for the same invention as the present patented invention.
3. The appellee imported and sold certain products, and may import and sell such products in the future.
4. These products fall under the technical scope of the present patented invention (hereinafter "patented products").
5. The patented products were produced and sold in the Federal Republic of Germany by the appellant as exploitation of the German patent after its entry into force.

ISSUE

Can a Japanese patent be enforced against parallel imports in Japan?

COURT DECISION

When a Japanese patentee or an equivalent person sells a patented product outside Japan, the patentee cannot enforce the patent to the patented product in Japan against a good-faith purchaser unless the patentee has an agreement with the purchaser to exclude Japan from areas for sale or use of the patented product and against a third person (subsequent purchaser) who purchases the patented product from the purchaser and a person who acquires the patented product afterward, and the above agreement with the purchaser is explicitly indicated on the patented product.

In the present case, an injunction or compensation for damages cannot be claimed based on the present patent since the above agreement and its indication are unclaimed and unproved.