

## *The Marginal Role of Japanese Trade Secret Law*

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Recent articles and studies show a growing importance of protection of intangible assets through trade secret protection. Compared to the US and to many EU member countries, Japan has been a latecomer when it finally introduced trade secret protection in the early 1990s. The gradual erosion of the traditional life-time employment system and the demands for trade secret protection in the TRIPS agreement were reflected in the enactment of the Japanese Unfair Competition Prevention Act (UCPA) in 1991, which, for the first time, provided for trade secret protection in Japan. As several Asian economies around Japan had started to catch up in the beginning of the 1990s, misappropriation of Japanese know-how started to become an issue for the industry, which now requested a tool to prevent domestic and international misappropriation of trade secrets. The Japanese government answered such requests by a series of amendments of the UCPA, aiming to establish a better level of protection to trade secrets by introducing civil remedies and criminal sanctions against misappropriation of trade secrets and use of illegitimately acquired know-how. This paper seeks to analyze the recent development of trade secret law in Japan in comparison with the evolution of trade secret protection in the US. Despite the introduction of a more stringent protection of trade secrets in the UCPA and repeated awareness and information campaigns of the Japanese government aiming to improve the governance of relevant business know-how especially at small and medium-sized enterprises, trade secret protection has not achieved the prominent role in supplementing patent law that it has in the US. The overall number of trade secret enforcement actions has remained stagnant in the last decade, and companies remain extremely cautious to file such enforcement actions. The paper will analyze the standard for showing trade secret misappropriation developed in recent case law in Japan, and attempts to answer the question whether the comparatively low visibility of trade secret protection in Japan is caused by the notorious honesty and integrity of the rule-abiding employees in Japan's technology leaders or rather by an unreasonably high burden of proof combined with insufficient means for evidence collection.

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