



# Preliminary injunction and criminal prosecution secured against trade secret misappropriation of a foreign company's marine port construction technology in Korea

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In this case, Shin & Kim successfully represented a foreign company, which does not have a business presence in Korea, in protecting its core technology in the legal proceedings that was drawn out over several years.

Shin & Kim represented Bygging-Uddemann AB (the “**Company**”), headquartered in Sweden, which designs the Gantry Slipform (factory-type) method and the skidding system (hereinafter the “**Method and System**”) used for mass production and transport of high-rise concrete structures, such as caissons for underwater structures or foundation construction. The Company also develops and supplies materials and equipment necessary for construction using the Method and System. The Company conducts its businesses in over 100 countries and is the only supplier of the Method and System in Korea.

In 2017, a Korean construction company secured a contract for the construction of a port in Korea, using the Company's Method and System (the “**First Construction Project**”) in its bid. However, the construction company later excluded the Company from the project, and instead, contracted local subcontractors to supply a similar slipform construction method and skidding system. In 2020, the Company discovered that the shapes and figures of the main components at the First Construction Project site were identical to its own Method and System. In response, the Company turned to Shin & Kim for help. Shin & Kim quickly collected relevant evidence and filed a criminal complaint against the subcontractors for infringement of the Company's trade secrets. Within 3 weeks, the investigators seized drawings and technical data of the Company's Method and System from the subcontractors' offices.

The criminal investigation has been extended over a long period of time as the scope of criminal investigation gradually expanded to dozens of officers and employees of the subcontractors. In the meantime, in 2023, while the investigation was still ongoing, some of the subcontractors still under investigation with respect to the First Construction Project entered into a new contract with another Korean construction company for the supply of similar slipform construction method and skidding system for another port construction project (the “**Second Construction Project**”). To prevent further infringement of trade secrets at the Second Construction Project, Shin & Kim filed an application for preliminary

injunction against relevant subcontractors. After a year of reviews and multiple hearings, the court issued a preliminary injunction prohibiting the infringement of the Company's trade secret.

In the preliminary injunction case, the subcontractors denied possessing the Company's drawings and technical data. The subcontractors alleged that the drawings and technical data were publicly available through academic papers and other publications and therefore did not meet the secrecy requirement for trade secret protection. The subcontractors further alleged that they were able to develop the factory-type slipform method and skidding system through reverse engineering, such as by observing the appearance of the construction at previous construction sites. They also alleged that the trade secret protection period had expired.

In response, Shin & Kim conducted a thorough analysis of the relevant drawings and technical data based on the in-depth understanding of the relevant technology to identify the Company's proprietary technical information. Shin & Kim then organized and presented the technology in a hierarchical diagram to demonstrate that even if the high-level aspect of the Method and System may be disclosed in academic papers or the photos of the construction sites, the detailed information at the lower level of the technology cannot be discerned from publicly available sources, and therefore the secrecy is not lost.

More specifically, Shin & Kim rigorously argued and showed that (i) the detailed shapes, dimensions, materials, component spacing, and assembly methods in the drawings and technical data were not disclosed in academic papers or other publications, (ii) reverse engineering of tens of thousands of components simply by observing the construction site was impossible and there was no evidence of independent development of the system by reverse engineering, and (iii) despite lacking experience in designing factory-type slipform methods and skidding systems, the subcontractors completed the design in an unusually short period of time.

As a result, the Suwon District Court found that the Company's drawings and technical data were trade secrets as they were not disclosed to the public and had been protected by the Company under secrecy. The court also rejected the subcontractors' claims that the trade secret protection period had expired and that the subcontractors did not possess or use (or reverse engineer) the Company's trade secrets. The court granted the Company's request for preliminary injunction against the subcontractors' use of the Company's drawings and technical data. Some of the subcontractors filed an objection to the preliminary injunction decision, but the court upheld the original decision finding again infringement of the Company's trade secrets by the subcontractors.<sup>1</sup>

In the criminal case related to the First Construction Project, Shin & Kim diligently represented the Company for over four years, successfully countering all legal and factual allegations made by the suspects and their legal counsels. As a result, 12 individuals were prosecuted on charges of unlawful acquisition, divulgence, and use of the Company's trade secrets.

The preliminary injunction case and the criminal case set an important precedent addressing the issues of whether secrecy can be denied based on the visibility of the construction at various construction sites or the disclosure in the academic papers and patents, and whether related technologies can be considered to have been developed through reverse engineering. In addition, despite the fact that the courts and investigation authorities show less interest in cases where the trade secrets of foreign companies are infringed in Korea compared to cases where trade secrets of domestic companies are leaked overseas, Shin & Kim was successful in quickly obtaining an injunction from the court and initiating prosecution of relevant officers and employees of the subcontractors, which demonstrates Shin & Kim's

expertise and capabilities in cases involving infringement of foreign companies' trade secret.

This case exemplifies why Shin & Kim is the best partner for foreign companies in protecting their core technologies in Korea.

<sup>1</sup> Some of the subcontractors appealed the lower court's preliminary injunction decision, and the case is currently pending before the High Court.

[\[Korean version\]](#) 외국 기업의 해양항만 구조물(케이슨) 제작 핵심기술이 국내에서 탈취된 사안에서 영업비밀 침해금지 가처분 결정 및 형사 기소를 이끌어낸 사례

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