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| Independent Study Title | : Problem of Anti-Reverse Engineering Clause Enforceability under Trade Secrets Act B.E. 2545 |
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ABSTRACT

Reverse engineering is the process of discovering the working method of a product through analysis of its structure, function and operation. This act is acceptable by many countries all over the world as a viable method to create an innovation and superior products into the society so reverse engineering is regarded to be legal by many countries. Thailand also allows the act of reverse engineering to discover the information which is a trade secret as provided in Section 7(4) of Trade Secrets Act B.E. 2545.

However, the last paragraph of Section 7 of the Act allows the owners of trade secrets or seller of the product and the person who conducted reverse engineering to expressly agree that such product cannot be reverse engineered or to put “anti-reverse engineering clause” in the agreement. This kind of agreement is often found stated in standard form contract for mass-market product to protect trade secrets owners’ intellectual labor and to prevent their competitors from using their products to develop new products to compete with them.

The problem which is occurred from the last paragraph of Section 7 is that whether or not the anti-reverse engineering clause should be enforceable. This problem is debated among people in many countries because some support its enforceability that it shall prevent the creation of competitive products through reverse engineering of the original, while the others say that this clause should not be enforceable because it shall frustrate the objective of the law to facilitate innovation and competitiveness in the market.

Under Thai law, to consider the enforceability of anti-reverse engineering clause, we have to take into consideration the public policy or public order under Section 150 of Thai Civil and Commercial Code and unfair contract term under Section 4 of Unfair Contract Terms Act B.E. 2540. Public policy is used to consider whether such clause results in any adverse effect to the public in general or not. And the unfair contract term is used to limit the enforceability of such clause to the extent that it is fair and reasonable in case it is not void under the Civil and Commercial Code.

This research is intended to show the enforceability of anti-reverse engineering clause which is allowed by the last paragraph of Section 7 of the Trade Secrets Act B.E. 2545 (2002) by analyzing the enforceability of anti-reverse engineering clause under public order and good moral or public policy in Section 150 of Thai Commercial and Civil Code and unfair contract term under Section 4 of Unfair Contract Terms Act B.E. 2540, including the conclusion and suggestion regarding to the problem of enforceability of anti-reverse engineering clause.

