2004年第1回知的財産翻訳検定

共通課題試験問題

検定問題	Sample 1	Sample 2
日本では、特許出願された発明が特許されるための要件を満たすか否かの判断は、時間的側面から云えば、その特許出願日を基準にされます。ですから、新規な製品について特許出願を済ます以前に、その製品を一般に公開すると、原則としてその製品についての発明は、新規性を失い、特許を受けることができなくなります。	In Japan, judgment as to whether an invention disclosed in a patent application is patentable is based on its filing date, in terms of the time standard. Accordingly, public disclosure of a new product before a patent application on the product concerned is finished normally causes the patent application therefor to destroy its patentability due to loss of novelty.	In Japan, whether or not an invention disclosed in a patent application[1] satisfies the requirements of patentability is determined temporally, at least, by that patent application's filing date. Accordingly, in principle, public disclosure of a new product before a patent application on the product concerned is completed causes the invention pertaining to that product to lose its novelty, and become ineligible to receive patent protection.
また、発明が特許されるための要件を、技術水準の側面から云えば、その発明に先行する公知技術と相違して新規性を有すること、しかも、その相違が審査官から見て、僅かな違いではない、即ち、進歩性を有すると認定されることが必要です。そこで特許要件に問題となる先行する公知技術は、他人によってなされたものだけでなく、仮に発明者自身によって為されたものであっても、問題とされるのです。ですから、新規な製品を製造し販売しようとする企業は、その製品は特許出願手続が終わるまで、秘密を保つ注意と手配を確立すべきです。ただし、新規な製品の公開の場合、秘密を保持する義務のある人達だけに公開することは、その発明の新規性を失わない事柄と解釈されます。	In terms of the technical standard, the patentability of an invention requires that the invention possesses a novelty distinctive over the publicized prior art, wherein the distinction should be more than a minor difference from the viewpoint of the patent examiner, that is, the invention must be found to have an inventive step. The publicized prior art that negates the patentability requirement includes not only the prior art made by others, but also that made by the inventor himself if it might be assumed so. Taking these things into consideration, a company, when going to produce and to start selling a new product, should establish an arrangement and attention to retain secrecy until a patent application thereon has been finished. However, to make the new product public to only those obliged to keep the product secret will be regarded as activity that does not cause the loss of novelty.	From the point of view of technical standards, patentability of an invention requires that the invention possess a novelty that makes the invention distinctive from the publicly known art preceding the invention. Moreover, in the eyes of the examiner, that distinction must be more than a minor difference, that is, the invention must be found to have an inventive step.[2] The prior, publicly known art that poses a problem for patentability includes not only that which is made by others but also even that which happens to have been made by the inventor himself[3]. Accordingly, a company attempting to manufacture and market[4] a new product should take steps to maintain the secrecy of the product until the filing of a patent application thereon is completed.[5] However, showing the new product only to those having a duty to maintain its secrecy will not be regarded as an activity such as to cause the invention to lose its novelty.

検定問題	Sample 1	Sample 2
以上は日本国内出願を考えた場合のことですが米国への特許出願を考慮するときは米国では、特許出願以前の事柄である発明の完成日が問題となります。即ち、日本は先願主義であるのに対して、米国は先発明主義をとっているからです。ですから、企業によっては、研究者に日々の研究の進捗を記録することを要求しています。しかし、この記録は後で改竄（かいざん）されることを防ぐ為に、手書きで為さねばならず、ワープロは使用できないといいう噂です。もしそうであれば、研究者には大きな負担となる懸念があります。	Noted above are matters regarding domestic patent applications. Considering those in the U.S., significant is the date of completing the invention that takes place prior to the patent application. Specifically, the U.S. has a first-to-invent system, unlike the first-to-file system in Japan. For this reason, some companies require researchers to record their research progress on a daily basis, but this recording should be hand-written to prevent later alterations. Thereby, it is allegedly said that word processing is not allowable. If true, there is concern that such would impose a great burden on researchers.	The foregoing pertains to domestic patent applications. When considering patent applications to the United States, the date of completion of the invention[6] that takes place prior to the patent application is significant. In other words, whereas Japan's is a first-to-file system, the American one is a first-to-invent system. Accordingly, some companies require researchers to record the progress of their research daily. However, it is alleged that this recording should be handwritten in order to prevent later alteration, and the use of word processing is not allowed. If true, it is feared that such a requirement will be an onerous burden on researchers.

[1] または "an invention for which a patent application has been filed"でも可。
[2] または "have inventive step"や"be nonobvious"としてもよい。ただし、アメリカのパテント・プラクティスにおいては"be nonobvious"の方がより一般に使われている。
[3] または "himself/herself"; "herself"等としてもよい。
[4] または "considering making and selling"; "contemplating manufacturing and selling"等。
[5] または "until patent prosecution is completed"とも考えられるが、そのようにした場合、原意から離れるとも解釈される。その理由は"prosecution"は最初の出願だけでなく、出願後の中間処理なども含むからである。
[6] または "date of invention"（特許用語：着想（conception）、場合によってはその後の実施化（reduction to practice）を含む。）でもよい。