

★★★ 2009年度第9回知的財産翻訳検定<第4回英文和訳> ★★★

≪ 1級・知財法務実務 ≫

【解答にあたっての注意】

1. ***START***から***END*** までを和訳してください。
2. 問題は2題あります。それぞれの問題の指示に従い、2題すべて解答してください。
3. 課題文に段落番号がある場合、これを訳文に記載してください。
4. 課題に図面が添付されている場合、該当する図面を参照してください。

※図面添付のない場合もごさいます。

★「課題図表の表示／非表示」リンクで表示

[問 1] 以下に示す英文は、ある米国特許出願のクレームの特許性について争われた訴訟において、米国連邦巡回控訴裁判所（CAFC）が起草した判決文の一部です（問題文とする都合上、原文にあった文献引用、及び一部の文章の削除等の改変を施しています）。この英文に示されている裁判所の判示の要旨を、原告の主張、CAFCの判断及びその理由に留意しつつ200字以内の日本語にまとめてください。日本語要旨の字数には、句読点も含めるものとします（ただし、文頭の字下げ、及び文中に意図せず混入したと思われる空白は字数に含めません）。なお、200字の字数制限は厳密に適用することとし、字数超過は減点の対象とします。

START

The presence of “art” in the statutory definition and its meaning can best be understood by reference to the legislative history of the Patent Act of 1952.

The report of the Senate Committee on the Judiciary notes:

The present law [i.e., the pre-1952 patent statute] states that any person who has invented or discovered any “new and useful art, machine, manufacture, or any new or useful improvement thereof” may obtain a patent.

That language has been preserved except that the word “art” which appears in the present statute has been changed to the word “process.”

The definition of “process” has been added in section 100 to make it clear that “process or method” is meant, and also to clarify the present law as to the patentability of certain types of processes or methods as to which some insubstantial doubts have been expressed.

The Supreme Court and this court have consistently interpreted the statutory term “process” to require action.

Nuijten’s argument (出題者注：Nuijten は本訴訟における原告の名称、音訳例「ナイテン」) that his claims might be covered by the “process” category even if they do not recite acts therefore lacks merit.

Nuijten also notes that his signal claims recite acts, noting that the claimed signal must be “encoded in accordance with a given encoding process.” But all that recitation implies is that these are potentially product-by-process claims “in which the product is defined at least in part in terms of the method or process by which it is made.

Such claims are still directed to the ultimate product, not the underlying process.

The presence of acts recited in the claim does not transform a claim covering a thing—the signal itself—into one covering the process by which that thing was made.

Since a process claim must cover an act or series of acts and Nuijten’s signal claims do not, the claims are not directed to a process.

END

[問2] 次の英文全文を和訳してください。

START

Restriction or Election

When an examiner begins the process of examining an application, he may determine that there are contained in the application claims directed to more than one independent and distinct invention. In the alternative, or in addition thereto, he may determine that there are claims present directed to more than one patentably distinct species of a single invention. Under current PTO practice, the examiner is given great discretion in requiring the applicant to select claims directed to only a single invention, and in this case, the examiner will not consider any claims directed to any other but the selected invention during examination of that particular application.

In the case of claims directed to more than one species of an invention, the examiner may require the applicant to elect a single disclosed species for purpose of initial examination. This does not preclude the examiner from later permitting the applicant

to maintain in the same application claims directed to other species of the same invention, but this depends upon the prior art developed by the examiner.

As a consequence, the first Official Action may simply be a letter informing the applicant of the various groups of claims that are considered to be directed to independent and distinct inventions or directed to different species of the invention, or both, and furthermore requiring the applicant to make the required selection or election of claims for examination. PTO Form PTOL-326 is normally used as the cover page for such an Official Action, and the remainder of the action is presented in typewritten form. A period of one month is normally fixed for response by the applicant. Today, telephone restriction practice eliminates many of these first written actions not on the merit.

END