

★★★ <第28回知的財産翻訳検定試験【第15回和文英訳】> ★★★  
《 1 級課題 -知財法務実務- 》

【問 1】

The Appellant describes various circumstances to assert that the original decision erred in that the provisions of Article 184-4 (3) and Article 184-5 (2) of Patent Act were not determined violating the principle of national treatment.

However, as pointed out in the original decision, since the procedure of submission of translation of the description, etc. and the procedure of submission of national documents are completely separate procedures for different purposes, there is a fundamental error with the assertion of the Appellant based on the assumption that the above different procedures are to be compared with each other. The Appellant asserts in various ways that substantial comparison should be made according to the reality. However, since the Appellant holds an erroneous assumption of comparing the procedures that are not comparable with each other, there is no room to accept the Appellant's assertion.

The Appellant asserts that the interpretation of "justifiable reason" prescribed in Article 184-4 (4) in the original decision is incorrect. The reasons are that the original decision (i) does not reflect the reality of inequality between nationals and foreigners, (ii) virtually determines that there was not the "justifiable reason" solely based on the fact of wrong transmission of an email, (iii) is against the demand of international harmonization under PCT, and so on.

However, with respect to (i) above, the Appellant's assertion of pointing out that there is a difference in procedures between nationals and foreigners or that there is reality of inequality between nationals and foreigners by considering the inherently different procedures in the same way is inappropriate by itself. The reason asserted by the Appellant with respect to (i) has no ground.

**【問 2】**

Section 1. This Rule governs the rights and duties of: ABCDE Co., Ltd. (this “Company”); and any of its officers, permanent or non-permanent employees and any other person employed by this Company as well as any temporarily-staffed worker, seconded worker or other worker employed by another company and subject to the directions and instructions of this Company (the “Employee”), in respect of any invention, device, technique, knowhow and design completed by any Employee and covered in the scope of this Company’s business (the “Work-Related Invention”) as well as any copyrighted work created by any Employee in the course of his/her past or current duties at this Company (the “Employee Work”).

Section 3.

1. If the Director of the Intellectual Property Department has determined that the Work-Related Invention notified pursuant to the preceding Section is the one completed in the course of such Employee’s past or current duties at this Company (the “Employee Invention”) and has decided that this Company should acquire the same, then the Director of the Intellectual Property Department shall so advise such Employee in writing.
2. Upon such advice under the preceding paragraph, any and all right in or to such Employee Invention (including without limitation the right to patent therefor) shall be deemed as having been originally vested in this Company, unless otherwise provided in the applicable law.
3. If with respect to any Work-Related Invention determined by the Director of the Intellectual Property Department as not being an Employee Invention, the Director of the Intellectual Property Department determines it preferable for this Company to be granted a license to exploit such Work-Related Invention, then this Company may propose to such Employee that this Company purchase such license for exploitation. The licensing terms therefor shall be as provided in such contract as separately entered by and between this Company and such Employee.