★★★ ＜第29回知的財産翻訳検定試験【第14回英文和訳】＞ ★★★
≪１級課題 -知財法務実務-≫

【解答にあたっての注意】
１．問題の指示により和訳してください。
２．解答語数に特に制限はありません。適切な箇所で改行してください。
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．課題は２題あります。それぞれの課題の指示に従い、２題すべて解答してください。

問１．下記の英文は、米国特許を侵害しているとして米国国際貿易委員会（ITC）から一部排除命令の決定を受けた被申立人が、その決定を不服として米国連邦巡回控訴裁判所（CAFC）に提起した訴訟の判決文から抜粋したものです。下線部を日本語に翻訳してください。
［翻訳に際しての注記］
（１）翻訳対象となる下線部は２箇所あり、それぞれ*** START ***, *** END ***で始終点を示してあります。
（２）下線部については原文中の他文献等参照、引用に関する記載と関連する引用符を削除してあります。また全体として原文の脚注を削除しています。
（３）他の事件名を略称する *Nautilus* の語は原語のまま転記してください。
（４）２箇所目の翻訳箇所を示す下線部に含まれている“lofty fibrous batting”の語句は、日本語に翻訳するに及びません。原語のまま翻訳文中で使用してください。

A

*** START *** A patent’s specification must conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. This statutory provision requires that a patent’s claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention with reasonable certainty. Indefiniteness is a question of law that we review de novo, subject to a determination of underlying facts, which we review for substantial evidence.

The "reasonable certainty" standard established in *Nautilus* reflects a delicate balance between the inherent limitations of language and providing clear notice of what is claimed. It mandates clarity, while recognizing that absolute precision is unattainable. It also accommodates the fact that some modicum of uncertainty . . . is the price of ensuring the appropriate incentives for innovation. Consistent with these principles, we have explained that a patentee need not define his invention with mathematical precision in order to comply with the definiteness requirement. Instead, the degree of precision necessary for adequate claims is a function of the nature of the subject matter. Indeed, descriptive words like 'copious' are commonly used in patent claims, to avoid a strict numerical boundary to the specified parameter.

To be sure, patents with claims involving terms of degree must provide objective boundaries for those of skill in the art in the context of the invention. Intrinsic evidence—such as the claims, figures, written description, or prosecution history of a patent—can provide the necessary objective boundaries. Extrinsic evidence can also help identify objective boundaries. *** END ***

B

On appeal, Alison challenges the Commission's determination that claims 1, 7, and 9 of the '359 patent are not indefinite. Alison argues that the challenged claims are invalid because "lofty . . . batting" is an indefinite term of degree without a precise boundary. While we agree that "lofty . . . batting" is a term of degree, Alison seeks a level of "mathematical precision" beyond what the law requires. *Sonix*, 844 F.3d at 1377. For the reasons that follow, we hold that the challenged claims are not indefinite because the written description of the '359 patent provides objective boundaries for the claim term "lofty . . . batting."

(中略)

The written description of the '359 patent is replete with examples and metrics that further inform the meaning of "lofty . . . batting." It identifies specific examples of commercial products that can qualify as a lofty batting,

including "Primaloft" (*id.* at col. 7 ll. 15–20), "Holofil" (*id.* at col. 7 ll. 50–56), "Thinsulate Lite Loft" (*id.* at col. 11 ll. 30–32), and "Quartzel" (*id.* at col. 12 ll. 6–9). It includes a list of nearly twenty "particularly suitable" fibrous materials for forming lofty batting, including commercial products like "Nomex," "Kevlar," "Spectra," and "Kynol." *Id.* at col. 9 ll. 25–40. It provides metrics for the fineness of fibers (*id.* at col. 7 ll. 23–25), the cross-sectional area of the fibers (*id.* at col. 7 ll. 32–36), the thermal conductivity of the batting (*id.* at col. 7 ll. 36–39), the compressibility and resilience of the batting (*id.* at col. 7 ll. 42–59), and the density of the batting (*id.* at col. 7 l. 64–col. 8 l. 1). The written description of the '359 patent concludes with a detailed discussion of seven examples of aerogel composites manufactured in accordance with the claimed invention, along with corresponding test results. *See id.* at col. 11 l. 21–col. 14 l. 34 (Examples 1–7).

*** START *** Because the written description is *key* to determining whether a term of degree is indefinite, we conclude that the evidence above is sufficient to dispose of this issue. But we note that the prosecution history also supports our conclusion. In the Statement of Reasons for Allowance, the patent examiner emphasized that the specification defined "lofty fibrous batting" as "a fibrous material that shows the properties of bulk and some resilience (with or without full bulk recovery)" and distinguished the prior art based on this term. *** END *** Similarly, in its decision denying institution of IPR, the Board noted that "both parties agree that ["lofty fibrous batting"] indicates a fibrous material with both bulk and 'resilience,' which is the ability to regain at least some portion of its original shape and size after being compressed." *Alison*, 2017 WL 2485089, at *3.

The extrinsic evidence provides further support for the objective boundaries of "lofty . . . batting." A technical dictionary confirms that "batting" and "loft" are terms of art that have meanings consistent with their use in the '359 patent. *See* J.A. 12520–24. Before the Commission, both parties' experts could explain the meaning of "bulk" and "some resilience," the two defining characteristics of a "lofty . . . batting." While not dispositive, the application of these terms by the parties' experts, along with

the examiner and Board at the Patent Office, further supports our conclusion that the challenged claim term is not indefinite. *See Sonix*, 844 F.3d at 1380 ("Although . . . application by the examiner and an expert do not, on their own, establish an objective standard, they nevertheless provide evidence that a skilled artisan did understand the scope of this invention with reasonable certainty.").

In sum, the written description of the '359 patent provides sufficient detail to inform a person of ordinary skill in the art about the meaning of "lofty . . . batting." That puts this case in the same class as cases like *Sonix* and *Enzo*, where we held that examples and procedures in the written description provided sufficient guidance and points of comparison to render claim terms not indefinite. *See Sonix*, 844 F.3d at 1376–81; *Enzo*, 599 F.3d at 1332–36. We therefore conclude that claims 1, 7, and 9 are not indefinite because the '359 patent informs a person of ordinary skill in the art about the scope of "lofty . . . batting" with "reasonable certainty." *Nautilus*, 572 U.S. at 901.

［参考１］本件米国特許７０７８３５９号の関連クレーム

1. A composite article to serve as a flexible, durable, light-weight insulation product, said article comprising a *lofty fibrous batting* sheet and a continuous aerogel through said batting. (Emphasis added)

7. The composite article of claim 1, further comprising a dopant.

9. The composite article of claim 7, wherein the dopant is present in an amount of about 1 to 20% by weight of the total weight of the composite.

［参考２］本件米国特許７０７８３５９号の関連図面

符号２０：aerogel composite

符号２１：inorganic or organic batting

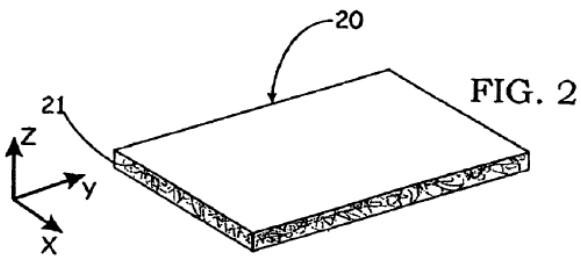

FIG. 2

問２．　以下の英文は、ドイツ法人 ABC Inc.（ABC）と日本法人 XYZ 株式会社（XYZ）が先に締結した本医薬品（Medicine）に関する共同研究契約（Joint Development Agreement）（文中にいう Original Agreement のことです。）に関して、共同研究（Joint Development）の結果生じた対象発明（Invention）の取扱いを変更するために締結された覚書を抜粋したものです（架空の事例です。）。翻訳対象箇所を日本語に翻訳してください。

［翻訳に際しての注記］

（１）翻訳対象箇所は１箇所で、*** START ***, *** END ***で始終点を示してあります。

（２）契約書中において特別に定義されている用語（先頭大文字の用語です。以下「定義語」といいます。）については、翻訳文でも定義語であることが一目瞭然となるように（定義語でない語と紛らわしくないように）訳語を工夫してください。

（３）。翻訳文だけを読んでも内容を正確に且つ容易に理解できるよう、契約書として自然な日本語訳を心がけてください。必要であれば、内容の正確性が担保される限りにおいて、一文を区切って二文で表現するなど、工夫を凝らしていただいて構いません。

*** START ***

ABC and XYZ hereby agree, notwithstanding the provision governing the ownership of any result obtained from the Joint Development under the Original Agreement, to apportion the titles, rights and interests (the "Titles") in and to the Invention between the parties hereto as set out below:

(a) Insofar as the territory of Japan is concerned, XYZ shall exclusively have all Titles in and to the Invention, which shall include without limitation the right to patent in respect of the Invention, the right to file and prosecute any patent application for the Invention under the sole name of XYZ, but expressly exclude any right to file and prosecute any patent application in respect of the Invention in any territory outside of Japan irrespective of whether or not any priority is claimed. For the avoidance of doubt, all cost required for exploiting, maintaining or protecting the XYZ's rights hereof (which shall expressly include perfecting such rights so as to be good against any third party) shall be

borne by XYZ;

(b) Insofar as the territories of the People's Republic of China (excluding Hong Kong, Taiwan and Macao) and the Republic of Korea are concerned, ABC shall have all Titles in and to the Invention, but XYZ is hereby granted with an exclusive license to manufacture the Medicine by exploiting the Invention and to export such Medicine to the territory of Japan, provided that it is expressly acknowledged and agreed that the exclusivity granted herein shall be construed as merely restraining XYZ from granting the same license to any third party and that nothing herein shall constitute the ABC's waiver of its right to manufacture, export or otherwise exploit the Invention on its own in these territories; and

(c) For any and all territory other than those set forth in paragraphs (a) and (b), ABC shall exclusively have all Titles in and to the Invention, and may enforce any of its rights in respect of the Invention against XYZ if XYZ commits any act contrary to the provisions herein (including without limitation any exploitation of the Invention) in any of such territories without a prior written authorization by ABC.

*** END ***