★★★ ＜第32回知的財産翻訳検定試験【第17回和文英訳】＞ ★★★
≪１級課題 -知財法務実務-≫

【問 1】

According to Article 2(1) of the Utility Model Act, a "device" is defined as a "creation of a technical idea utilizing the laws of nature," and Article 70(1) of the Patent Act, as applied mutatis mutandis by Article 26(1) of the Utility Model Act, provides that "a technical scope of a patent claim shall be determined based on the wording of the claims attached to an application." In view of the above provisions, it is reasonable to determine that the term "creator" refers to a person who has actually participated in acts of creation of the device, and in order to be entitled as a "creator," the person must have conceived the technical idea (technical problem and its solution) of the device embodied in the claims, or must have been creatively involved in embodying the idea.

The court finds that, by September 8, 2014, at the latest, the appellant and the appellee had shared information on the problems with full-harness air-conditioned clothes used with an inner spacer and information on the fact that the position of the hole for passing a lanyard at the back of the air-conditioned clothes differs depending on the shape of the harness-type safety belt and cannot be fixed in one position. Since the above information relates to the problem of the device, which is an essential part of the device, we determine the appellant substantially contributed to the completion of the device, and the device is one jointly created by the appellant and the appellee.

Although the appellee was obliged to file the application for utility model registration for the device jointly with the appellant, the appellee filed the application alone and obtained the utility model registration. Therefore, the present application falls within the scope of a violation of the joint application requirement.

【問 2】

1. XYZ hereby acknowledges and admits, and refrains from disputing, that the mark "ABC" (the "Mark") has acquired the notoriety in the territories of Japan through ABC's use of the same on a motion picture distribution service from April 2000 in the territories of Japan, and also that ABC holds a certain right or interest in and to the goodwill associated with the Mark (the "Trademark Right").

2. ABC hereby acknowledges and admits, and refrains from disputing, that the video sharing site operated by XYZ and entitled "ABC Content Market" does not necessarily cause confusion with the ABC's motion picture distribution service, and is distinguishable from the same in the market, and thus that the form of XYZ's use for "ABC Content Market" up to the execution date of this Agreement does not infringe the ABC's Trademark Right.

3. XYZ hereby agrees that on and after the execution date of this Agreement, it will change the indication of "ABC Content Market" to "ABC Content Market – Presented by XYZ" in its use, and also that even if it has obtained a trademark registration under the Trademark Act of Japan for "ABC Content Market" or any other mark that partially contains the word of "ABC" in respect of the designated services including video distribution services, it will not enforce the trademark right under such trademark registration against ABC or any third party designated by ABC.

4. ABC hereby agrees that on and after the execution date of this Agreement, even if it has obtained a trademark registration under the Trademark Act of Japan for the Mark in respect of the designated services including video distribution services, it will not interfere with the XYZ's video sharing service by enforcing the trademark right under such trademark registration or the Trademark Right, and also that it will not file a trademark application for any mark confusingly similar to "ABC Content Market" in respect of the designated services including video distribution services.