

★★★<第13回知的財産翻訳検定試験【第6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事項】

1. 課題は2題あります。それぞれの課題の指示に従い、2題とも解答してください。

[問1] 下記の英文は、欧州特許庁審判部の、発明の進歩性に関する考え方をまとめたものです。この英文を読み、その要旨を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。

To assess inventive step, the boards normally apply the "problem and solution approach". This consists essentially of:
(a) identifying the "closest prior art",
(b) assessing the technical results (or effects) achieved by the claimed invention when compared with the "closest state of the art" established,
(c) defining the technical problem to be solved as the object of the invention to achieve these results, and
(d) examining whether or not a skilled person, having regard to the closest state of the art, would have suggested the claimed technical features in order to obtain the results achieved by the claimed invention (see also Guidelines, C-IV, 11.5 - April 2010 version).

(中略)

According to board of appeal case law (see T 1/80, OJ 1981, 206; T 20/81, OJ 1982, 217; T 24/81, OJ 1983, 133; T 248/85, OJ 1986, 261), the assessment of inventive step has to be based on the objective, not subjective, achievement of the inventor. By starting out from the objectively prevailing state of the art, the technical problem is to be determined on the basis of objective criteria and consideration given to whether or not the disclosed solution is obvious to the skilled person. Although the problem and solution approach is not mandatory, its correct application facilitates the objective assessment of inventive step. The correct use of the problem and solution approach rules out an ex post facto analysis which inadmissibly makes use of knowledge of the invention (T 564/89, T 645/92, T 795/93, T 730/96 and T 631/00). In principle, therefore, the problem and solution approach is to be used; however, if exceptionally some other method is adopted, the reasons for departing from this generally approved approach should be stated.

[問2] 下記の英文は、米国特許出願の形態について解説したものです。この英文全文を正確で読みやすい日本語に和訳してください。

Differences Between Provisional and Nonprovisional Applications

Provisional applications and their prosecution differ from nonprovisional applications and their prosecution in a number of respects:

1. The period of pendency of a provisional application (12 months maximum) is not counted in determining the term of the patent.
2. It is not necessary to file claims in a provisional application.
3. Provisional applications are not examined on the merits during their pendency. Only formal matters as to the completeness of the provisional application will be addressed.
4. Nonprovisional applications may be converted into provisional applications by filing a petition and the appropriate fee.
5. Nonprovisional applications may claim the benefit of one or more provisional applications.
6. Provisional applications may not claim the priority of other patent applications, either domestic or foreign.
7. Provisional applications can be filed in a language other than English, but translations to English will be required by the PTO during their pendency. In fact, it is to the advantage of the applicant that the translation is filed prior to examination of the later filed nonprovisional application, because it will avoid potential rejections on prior art dated subsequent to the provisional date, thus avoiding delays in prosecution and ensuring minimal impact on the patent term.
8. No amendment, other than one making a provisional application comply with all applicable regulations, will be permitted.
9. Filing of prior art statements is prohibited in provisional applications.
10. Provisional applications automatically go abandoned on the expiration of 12 months from their filing date.

Thus, if one is considering filing a provisional application to avoid a loss of absolute novelty, consideration should be given to the invention intended to be ultimately claimed, and the disclosure necessary to support such claims in the country of interest to the applicant should be included in the provisional application.