受験番号：20IPL002

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設問1

(2) Legal Validity of Procedure

As described in the above section (1)(iii), the Decision of Rejection dated July 8, 2011 issued in the subject application indicates that the inventions according to Claims 1-18, 21-26, and 29-33 are not patentable. Accordingly, no ground of rejection is identified in the Decision of Rejection with respect to the invention according to Claim 19.

The amendments (“Subject Amendment”) by the Written Amendment dated November 14, 2011 are made to overcome the grounds of rejection in the Decision of Rejection, as described in the above section (1)(iv). As the appellant argued in the Written Appeal, it is considered that Claim 1 after Subject Amendment (i.e., currently amended Claim 1) is made by rewriting previously amended Claim 19 that recites Claim 1 before Subject Amendment (i.e., previously amended Claim 1), so as to specifically include such a recitation in Claim 1 in an independent form.

In this regard, currently amended Claim 1 is made by cancelling previously amended Claim 1 and revising previously amended Claim 19 as currently amended Claim 1. Accordingly, in view of an amendment to previously amended Claim 1, such an amendment is made to delete previously amended Claim 1 and not to restrict the scope of claims. Thus, the amendment should not have been dismissed on the basis of violation of requirements of independent patentability, as described above. Moreover, the contents in previously amended Claim 19 are the same as those in currently amended Claim 1. Even in view of an amendment to previously amended Claim 19, the amendment is not made to restrict the scope of claims. Therefore, the Appeal Decision is inappropriate because it rejects currently amended Claim 1, which is substantially previously amended Claim 19 that is not amended except for renumbering of the number of claim, for the reason that the amendment was dismissed due

to violation of requirement of independent patentability.

The aforementioned argument by the defendant is not clear; however, if the argument is intended to state that determinations which lack appropriateness may be allowed in some cases where prompt prosecution or appeal procedures is required, such an argument by the defendant cannot at all be accepted in view of ensuring due process of law in administrative cases. In addition, as determined in the above section (2), it is apparent that the Dismissal of Amendment in the present appeal case was made inappropriately. Thus, the defendant's argument cannot be accepted.

設問2

(2) As set forth in Patent Law, Article 35(4), employers, etc.(hereinafter, simply "employers") are allowed to specify, in their office regulations, etc., compensation for assignment of rights to obtain a patent of an invention made by employees, and if the specified rule is reasonable, it is sufficient to pay the compensation specified by the employers. Whether or not the specified rule is reasonable should be determined in consideration of: (a) whether it was discussed with employees when the rule for deciding compensation was set forth; (b) whether the rule is disclosed; (c) whether opinions from employees on calculation of compensation were heard; and (d) other conditions.
In view of the above, if the specified compensation by employers lacks procedures of the aforementioned (a) to (c) illustrated as points to be considered, it should be understood that payment of compensation on the basis of the rule specified by the office regulations, etc. is not reasonable, unless there are specific conditions, for example: employers hold a measure for protecting employee's benefits, which can be in place of the aforementioned procedures; an amount of compensation calculated in accordance with the rule is more than sufficient to compensate the procedural deficiencies.