

★★★ <第22回知的財産翻訳検定試験【第12回和文英訳】> ★★★

≪ 1 級課題-知財法務実務-≫

【問 1】

(1) According to the factual premise above, this court has found that (i) the plaintiff and the defendant entered into contract in the present case on November 26, 2002 in that "the defendant shall take actions of filing patent applications for each of the inventions in the present case, necessary actions up to registration, and actions regarding maintenance of the rights to be obtained upon registration" (Section 2, Item 1, main paragraph), (ii) the defendant did not request an examination for each of the patent applications in the present case within the time period for requesting an examination after filing of each of the patent applications in the present case, (iii) resultantly the plaintiff lost the rights to obtain a patent for each of the inventions in the present case.

According to (i) above, it is obvious that the defendant owed the plaintiff a duty to take an action of requesting an examination of the patent application within the time period for requesting an examination after filing of the application for each of the inventions in the present case based on the contract in the present case, and (ii) above shows the defendant did not fulfill its obligation. Therefore, this court cannot avoid determining that the defendant owes the plaintiff compensating damage caused by the above non-fulfillment of the obligation.

However, according to the entire import of the arguments, it is determined that the defendant entrusted patent attorney Aii of the patent law firm of the present case of taking actions for the patent applications for the respective inventions in the present case. On the other hand, as explained in (1) above, since the defendant basically took responsibility for requesting examination for the plaintiff, patent attorney Aii shall be determined to be an assistant performer for the defendant regarding the obligation of the defendant to the plaintiff. Accordingly, as between the plaintiff and the defendant, the willfulness and negligence of patent attorney Aii shall be equally attributable to the defendant according to fair and equitable principles. Accordingly, this court cannot take the above argument of the defendant.

【問 2】

Section 2 (Development)

5. Developer hereby assigns and transfers to Customer all Copyrights in and to the Custom Program which have arisen through the development of the Custom Program, and all rights in and to the screen graphic designs created through the development of the Custom Program, except for such rights as are reserved to Developer hereunder. Developer hereby further agrees to not enforce any author's moral rights against Customer with respect to the Custom Program, except for such rights as are reserved to Developer hereunder. Customer shall have, however, no assignment or transfer of any rights in or to any inventions having arisen through the development of the Custom Program or in the course thereof, or of any right in or to any technical knowhow or technical secrets of Developer used in the course of the Development of the Custom Program or incorporated in the Custom Program, and such rights are all retained by Developer.

Section 3 (License)

3. The License shall be deemed to also grant a license under a patent right to use the relevant Patented Inventions incorporated in the Program. The grant of such patent-right license, however, shall be only for limitedly authorizing such Customer's use of such Patented Inventions as inevitably caused by the Customer's use of the Program in the course of the exercise of the License, and in no event shall Customer have any license separate from or independent of the License, in respect of such Patented Inventions.

Section 10 (Indemnification)

2. Insofar as the damages are actually incurred by Customer directly as the result of an infringement of a third-party patent right or Copyright by the Program, notwithstanding the preceding paragraph, Developer shall fully indemnify Customer from such damages. Such Developer's indemnification shall be, however, conditioned upon and subject to: Customer's proving to a reasonable degree by written evidence that the following requirements are all satisfied; and Customer's having provided Developer with all reasonable cooperation for the settlement of such third-party claim:
 - (4) Such infringement has been neither caused by the Custom Programs or any devices, systems or software owned or controlled by Customer, nor by any combination, in part or in whole, of the Program with any of these above; and

- (5) No use of the Program by Customer has ever been in conflict with any of the Reserved Rights.