

★★★ <第25回知的財産翻訳検定試験【第12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。適切な箇所で行ってください。
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。

[設問1] 下に示す英文は、アメリカ特許商標庁の Patent Trial and Appeal Board での決定に対する控訴事件において、Court of Appeals for Federal Circuit (CAFC)によってされた判決から抜粋したものです。この英文の下線を付した部分を日本語に翻訳してください。なお、下線部に含まれる語句のうち、引用されている判決名、文献名等、及び当事者の名称 Whirlpool は、日本語に翻訳せずそのまま転記してください。

問題文ここから→

(前略)

## DISCUSSION

### I

Anticipation is a two-step analysis. The first step is properly interpreting the claims. Beachcombers v. Wilde Wood Creative Prods., Inc., 31 F.3d 1154, 1160 (Fed.Cir. 1994). The second step is determining whether the limitations of the claims, as properly interpreted, are met by the prior art. Id. The Board determined that Wulf did not anticipate the '688 patent because its disclosures did not meet the "settling speed" limitation. J.A. 14. However, the Board did "not adopt any explicit construction of the term for [its] Final Written Decision," J.A. 7, even though the parties disagreed as to claim construction. Just as district courts must, "[w]hen the parties raise an actual dispute regarding the proper scope of . . . claims, . . . resolve that dispute," O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., 521 F.3d 1351,

1360 (Fed. Cir.2008), the Board also must resolve such disputes in the context of IPRs. See CSR, PLC v. Skullcandy, Inc., 594 F.App'x 672, 678 (Fed. Cir. 2014) (holding that “[t]he Board erred by failing to construe ‘threshold value’ as it is used in claims 1-6 before finding that [prior art reference] Smith failed to disclose a ‘threshold value’” in anticipation). Given that the Board did not rely on extrinsic evidence here as to claim construction, we can determine the correct construction of “settling speed” and then determine whether the Board correctly held that Wulf does not meet the limitations of claim 1. Teva, 135 S. Ct. at 841.

“[T]he claim construction inquiry . . . begins and ends in all cases with the actual words of the claim.” *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998) (citations omitted). Here, the relevant language of claim 1 provides that during pulsing, “the speed of the cutter assembly is reduced from the operating speed to a predetermined settling speed.” '688 patent, col. 7 ll. 15-17 (emphasis added).

Whirlpool proposes that “a predetermined settling speed” means “a speed, greater than zero, that indicates that items have settled around the cutter assembly.” Appellee’s Br. 43. At times on appeal, Whirlpool argues that empirical testing is required to establish a settling speed. Whirlpool recognizes that empirical testing would require determining the settling speed for each individual blender and its content load, “[b]ecause so many factors affect the settling speed.” Appellee’s Br. 9; see also *id.* at 45; Oral Arg. 18:16-25 (skilled artisans looking at the ' 688 patent would “perform tests to determine . . . at what point in time [the blender ingredients] settles to arrive at the predetermined settling speed”). We conclude that a construction that would require empirical testing is incorrect. Indeed, the dissent also does not endorse a claim construction that requires empirical testing.

(後略)

←問題文ここまで

参考 問題文の裁判で審理の対象となった米国特許のクレーム 1

1. A cycle of operation for a blender comprising a motor, a container for holding items for processing, and a cutter assembly located within the container and operably coupled to the motor whereby the motor effects the rotation of the cutter assembly, the cycle comprising:

automatically controlling a rotational speed of the cutter assembly to effect a pulsing of the speed of the cutter assembly wherein each pulse comprises:

(A) a constant speed phase, where the operating speed of the cutter assembly is maintained at a predetermined operating speed,

(B) a deceleration phase, where the speed of the cutter assembly is reduced from the operating speed to a predetermined settling speed indicative of the items in the container having settled around the cutter assembly, which is less than the operating speed and greater than zero, and

(C) an acceleration phase, where the speed of the cutter assembly is increased from the settling speed to the operating speed.

[設問 2] 以下の問題文は、日本国の商標登録を受けている商標に関する商標譲渡契約（架空）の抜粋です。この問題文全部を日本語に翻訳してください。翻訳に際しては、次の各注意事項を遵守してください。注意事項を遵守していない答案については、減点対象となる場合もあります。

注記 1 : 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訳語を工夫してください。

注記 2 : 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。

問題文ここから→

- 1. Assignment.** Assignor hereby assigns to Assignee all rights, title and interest (collectively, the "Rights") in or to the trademark as identified in Exhibit 1 hereto (the "Trademark") insofar as the territory of Japan (the "Territory") is concerned and only in respect of the goods and services as so specified in Exhibit 1 hereto (the "Relevant Goods"), and also agrees to execute all evidentiary documents as are required for Assignee to register such assignment in the Japan Patent Office (the "JPO") (collectively, the "Executed Papers") and deliver such Executed Papers to Assignee. The Assignor's assignment of the Trademark and delivery of such Executed Papers shall be, however, expressly conditioned upon: (i) Assignor having received from Assignee the full payment of the Sales Price (defined below) for and in consideration of such assignment no later than November 30, 2017 by means of telegraphic remittance of such amount to the bank account as designated by Assignor; and (ii) the Assignee's execution of this Agreement and delivery of the same to Assignor no later than the same date.
- 2. Reservation.** Any and all other Rights in or to the Trademark not expressly provided herein as assigned to Assignee shall be reserved to Assignor, which shall include without limitation any Rights in respect of any goods and services other than the Relevant Goods anywhere in the universe and in respect of the Relevant Goods in all other territories than the Territory and the Rights in or to any other marks currently or hereafter in use by Assignor or its authorized assignee or licensee anywhere in the universe, whether or not such marks or the goods and/or services to which such marks pertain are confusingly similar to or competing with the Trademark or the Relevant Goods. Assignee hereby expressly agrees and covenants to not enforce any rights under the Trademark against Assignor or its authorized assignee or licensee in connection with any use of such marks in the Territory, whether in law or equity, and further to not oppose to, interfere with or otherwise

obstruct any such use and any proceeding initiated by Assignor before any government authority or court (including the trademark registration process before the JPO) in connection with such marks in the Territory.

←問題文ここまで