

★★★ <第27回知的財産翻訳検定試験【第13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。適切な箇所で行改行してください。
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。

問1. 米国連邦最高裁判所のある判決文の一部を下記に示しています。この下線部を付した部分を、日本語に翻訳してください。

翻訳上の注記：

1. 文中に引用されている他の判決名、文献名は、訳出するには及びません。翻訳文にも原文表記のままで記載してください。(例： *Stern v. Marshall*, 564 U. S. 462, 484 (2011))
2. ラテン語の略号(例： *Id.*)は、日本語に翻訳して(略号の意味するところを)記載してください。

III

Article III vests the judicial power of the United States “in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” §1. Consequently, Congress cannot “confer the Government’s ‘judicial Power’ on entities outside Article III.” *Stern v. Marshall*, 564 U. S. 462, 484 (2011). When determining whether a proceeding involves an exercise of Article III judicial power, this Court’s precedents have distinguished between “public rights” and “private rights.” *Executive Benefits Ins. Agency v. Arkison*, 573 U. S. ___, ___ (2014) (slip op., at 6) (internal quotation marks omitted). Those precedents have given Congress significant latitude to assign adjudication of public rights to entities other than Article III courts. See *ibid.*; *Stern, supra*, at 488-492.

This Court has not “definitively explained” the distinction between public and private rights, *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458

U. S. 50, 69 (1982), and its precedents applying the public-rights doctrine have “not been entirely consistent,” *Stern*, 564 U. S., at 488. But this case does not require us to add to the “various formulations” of the public-rights doctrine. *Ibid.* Our precedents have recognized that the doctrine covers matters “which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments.” *Crowell v. Benson*, 285 U. S. 22, 50 (1932). In other words, the public-rights doctrine applies to matters “arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it.” *Ibid.* (quoting *Ex parte Bakelite Corp.*, 279 U. S. 438, 451 (1929)). Inter partes review involves one such matter: reconsideration of the Government’s decision to grant a public franchise.

A

Inter partes review falls squarely within the public rights doctrine. This Court has recognized, and the parties do not dispute, that the decision to *grant* a patent is a matter involving public rights—specifically, the grant of a public franchise. Inter partes review is simply a reconsideration of that grant, and Congress has permissibly reserved the PTO’s authority to conduct that reconsideration. Thus, the PTO can do so without violating Article III.

1

This Court has long recognized that the grant of a patent is a “matte[r] involving public rights.” *United States v. Duell*, 172 U. S. 576, 582-583 (1899) (quoting *Murray’s Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856)). It has the key features to fall within this Court’s longstanding formulation of the public-rights doctrine.

Ab initio, the grant of a patent involves a matter “arising between the government and others.” *Ex parte Bakelite Corp.*, *supra*, at 451. As this Court has long recognized, the grant of a patent is a matter between “the public, who are the grantors, and ... the patentee.” *Duell*, *supra*, at 586 (quoting *Butterworth v. United States ex rel. Hoe*, 112 U. S. 50, 59 (1884)). By “issuing patents,” the PTO “take[s] from the public rights of immense value, and bestow[s] them upon the patentee.” *United States v. American Bell Telephone Co.*, 128 U. S. 315, 370 (1888). Specifically, patents are “public franchises” that the Government grants

“to the inventors of new and useful improvements.” *Seymour v. Osborne*, 11 Wall. 516, 533 (1871); accord, *Pfaff v. Wells Electronics, Inc.*, 525 U. S. 55, 63-64 (1998). The franchise gives the patent owner “the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States.” 35 U. S. C. §154(a)(1). That right “did not exist at common law.” *Gayler v. Wilder*, 10 How. 477, 494 (1851). Rather, it is a “creature of statute law.” *Crown Die & Tool Co. v. Nye Tool & Machine Works*, 261 U. S. 24, 40 (1923).

Additionally, granting patents is one of “the constitutional functions” that can be carried out by “the executive or legislative departments” without “judicial determination.” *Crowell, supra*, at 50-51 (quoting *Ex parte Bakelite Corp., supra*, at 452). Article I gives Congress the power “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” §8, cl. 8. Congress can grant patents itself by statute. See, e.g., *Bloomer v. McQuewan*, 14 How. 539, 548-550 (1853). And, from the founding to today, Congress has authorized the Executive Branch to grant patents that meet the statutory requirements for patentability. See 35 U. S. C. §§2(a)(1), 151; see also Act of July 8, 1870, §31, 16 Stat. 202; Act of July 4, 1836, §7, 5 Stat. 119-120; Act of Apr. 10, 1790, ch. 7, §1, 1 Stat. 109-110. When the PTO “adjudicate[s] the patentability of inventions,” it is “exercising the executive power.” *Freytag v. Commissioner*, 501 U. S. 868, 910 (1991) (Scalia, J., concurring in part and concurring in judgment) (emphasis deleted).

Accordingly, the determination to grant a patent is a “matte[r] involving public rights.” *Murray’s Lessee, supra*, at 284. It need not be adjudicated in Article III court.

Inter partes review involves the same basic matter as the grant of a patent. So it, too, falls on the public-rights side of the line.

Inter partes review is “a second look at an earlier administrative grant of a patent.” *Cuozzo*, 579 U. S., at ____ (slip op., at 16). The Board considers the same statutory requirements that the PTO considered when granting the patent. See 35 U. S. C. §311(b). Those statutory requirements prevent the “issuance of patents whose effects are to remove existent knowledge from the public domain.”

Graham v. John Deere Co. of Kansas City, 383 U. S. 1, 6 (1966). So, like the PTO's initial review, the Board's inter partes review protects "the public's paramount interest in seeing that patent monopolies are kept within their legitimate scope," *Cuozzo, supra*, at ____ (slip op., at 16) (internal quotation marks and alterations omitted). Thus, inter partes review involves the same interests as the determination to grant a patent in the first instance. See *Duell, supra*, at 586.

The primary distinction between inter partes review and the initial grant of a patent is that inter partes review occurs after the patent has issued. But that distinction does not make a difference here. Patent claims are granted subject to the qualification that the PTO has "the authority to reexamine - and perhaps cancel - a patent claim" in an inter partes review. See *Cuozzo, supra*, at ____ (slip op., at 3). Patents thus remain "subject to [the Board's] authority" to cancel outside of an Article III court. *Crowell*, 285 U. S., at 50.

This Court has recognized that franchises can be qualified in this manner. For example, Congress can grant a franchise that permits a company to erect a toll bridge, but qualify the grant by reserving its authority to revoke or amend the franchise. See, e.g., *Louisville Bridge Co. v. United States*, 242 U. S. 409, 421 (1917) (collecting cases). Even after the bridge is built, the Government can exercise its reserved authority through legislation or an administrative proceeding. See, e.g., *id.*, at 420 - 421; *Hannibal Bridge Co. v. United States*, 221 U. S. 194, 205 (1911); *Bridge Co. v. United States*, 105 U. S. 470, 478 - 482 (1882). The same is true for franchises that permit companies to build railroads or telegraph lines. See, e.g., *United States v. Union Pacific R. Co.*, 160 U. S. 1, 24 - 25, 37 - 38 (1895).

Thus, the public-rights doctrine covers the matter resolved in inter partes review. The Constitution does not prohibit the Board from resolving it outside of an Article III court.

問 2. 以下の問題文は、複数の社が知財を持ち寄って共同事業 (joint venture) を営むことを目的とする共同事業契約 (架空) の抜粋です。文中の下線部分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があります。

翻訳文上の注記

- 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 (定義語でない語と紛らわしくないように) 訳語を工夫してください。
- 2 : 契約に登場する当事者の名称は、カタカナ表記又は英数字とカタカナとの組み合わせの表記のいずれでも構いませんが、原文のとおり英数字表記のままとすることは不可とします。
- 3 : 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。

This joint venture agreement (this “Agreement”) is dated November 1, 2018 and entered into by and between: Map Data Corporation (“Map Data”); 3D Design Technology Limited (“3D Tech”); Car Navigation System Inc. (“Car Navigation”); and IT Software Distribution K.K. (“IT Software”), in connection with the joint business venture (the “Joint Venture”) for the development of the three-dimensional navigation smartphone application (the “App”) as well as for the distribution of the App through the smartphone app distribution network. In consideration of the mutual premises and covenants herein, the parties hereto hereby agree as follows:

問題文ここから→

1. For the formation of and success in the Joint Venture, the parties hereto hereby agree to make the following contributions to the Joint Venture:
 - (a) Map Data shall provide the map data for which it owns and controls 100% of the copyright and other licensing right as required by the Joint Venture (the “Map”), and grant each member of the Joint Venture all non-exclusive licenses of such Map necessary for the exploitation

through the Joint Venture, which shall include without limitation those for reproducing, adapting and transmitting online through the App;

(b) 3D Tech shall develop the App incorporating the Map as required under the specification agreed herein, fully exploiting and embodying its three-dimensional modeling technology patented under Japanese Patent No. XXXXXXX, and grant each member of the Joint Venture the exclusive licenses of such patented technology for the exploitation in the form of App; and

(c) Car Navigation shall develop the original naming and service logo of the App indirectly exploiting the goodwill of Car Navigation (the “App Mark”) (which shall include the clearance of any and all conflicting tradename, trademark and service mark for all categories of the App exploitation and the registration of such App Mark before all relevant trademark authorities) and exclusively license the App Mark for the use by the Joint Venture, and market and distribute the App through all available smartphone app distribution platforms under such App Mark.

2. The parties hereto expressly acknowledge and agree that the Joint Venture shall be in the form of a partnership having no independent legal capacity, for which IT Software shall serve as the representative of the Joint Venture where necessary for executing any contract, controlling the mutual asset (including any and all technical secret and knowhow and other intellectual properties originally and uniquely arising in the course of the Joint Venture) and otherwise protecting the mutual interest on behalf of the Joint Venture.

3. Any and all profit and loss and other results arising through the Joint Venture shall be distributed to, and borne by, each member to the Joint Venture on a basis of pro rata to the share of such member in the Joint Venture, such share being: 20% for Map Data, 40% for 3D Tech, 30% for Car Navigation, and 10% for IT Software for the purpose hereof.

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