

受験番号 : 28IPL002

問 1 .

The Appellant alleges, for various reasons, that the original judgment has an error in failing to recognize that the provisions under Paragraph 3 of Article 184-4 and Paragraph 2 of Article 184-5 of Patent Act are not consistent with the principle of national treatment.

However, as the original judgment points out, submission of Japanese translations of the description etc. and submission of National Documents are two separate procedures prescribed for different purposes. The Appellant's allegation has a fundamental error because it is based on a comparison of these two different procedures. While the Appellant emphatically alleges that these two must be compared substantially considering the actual situation, there is no room to accept such allegation as long as it is based on a false assumption of comparing two incomparable procedures.

The Appellant alleges that the interpretation and application, in the original judgment, of "justifiable reason" prescribed in Paragraph 4 of Article 184-4 of Patent Act is wrong because the original judgment (1) disregards the reality of inequality between foreigners and locals; (2) denies the existence of "justifiable reason" virtually only for the fact of erroneous email transmission at the Appellant's side; and (3) is against the policy of international harmonization in PCT.

However, the above reason (1) does not make sense because the Appellant's allegation that different procedures are imposed on foreigners and locals (thus, foreigners and locals are not treated equally) is based on a comparison of separate procedures.

問 2

Article 1

The purpose of this regulation shall be to define, pertaining to inventions, devices, technology, know-how and designs which are completed by an officer, an employee with or without a contract term and others hired by ABCDE Corporation (hereinafter called “Our Company”) and a temporary worker, a seconded worker and others hired by another company and working under the instruction and supervision of Our Company (hereinafter called “Employee etc.”) and are falling within the scope of the business of Our Company (hereinafter called “Work-related Invention”) and works which Employees etc. make in the course of a present or past duty at Our Company (hereinafter called “Employee Work”), the rights and obligations of the Employees etc.

Article 3

1. In case General Manager of Intellectual Property Department determines that the Work-related Invention notified in accordance with the previous article is completed in the course of a present or past duty, at Our Company, of the Employee etc. who submitted the notification (hereinafter called “Employee Invention”) and that Our Company shall assume the right thereof, General Manager of Intellectual Property Department notifies the same of the said Employee etc. in writing.
2. In case General Manager of Intellectual Property Department notifies the Employee in accordance with the previous paragraph, all the rights to the Employee Invention (including but not limited to the right to obtain a patent) shall be deemed to originally belong to Our Company, unless otherwise prescribed in laws and regulations.
3. In case General Manager of Intellectual Property Department determines that the Work Invention is not Employee Invention and that Our Company should have a license on the Work Invention, Our Company may offer, to the said Employee etc., to purchase the license on the Work Invention. The terms and conditions for the license shall be determined under a separate agreement between Our Company and the said Employee etc.