

受験番号 : 28IPL004

Appellant provides detailed circumstances to argue that the original ruling is not correct since the original ruling did not consider that the provisions of Article 184-4(3) and Article 184-5(2) of the Patent Act are in violation of the principle of national treatment.

However, as indicated in the original ruling, the procedures for filing translations of the specifications, etc. and those for filing national documents are simply separate procedures based on different purposes. Therefore, the argument of Appellant on the premise of comparing these different procedures is fundamentally incorrect. Although Appellant asserts in various ways that a substantial comparison should be made based on the actual situations, since such an assertion is based on the incorrect premise of comparing subjects that cannot be compared, there is no room for such an assertion to be considered. (200)

Appellant argues that the original ruling is not correct in the construction and application of the "justifiable reason" provided in Article 184-4(4) of the Patent Act because the original decision (i) does not take existing inequality between nationals and foreigners into consideration, (ii) is no different from determining lack of the "justifiable reason" only based on the fact of an email being sent by error, and (iii) is against a demand for international harmonization under the PCT.

However, with regard to (i), Appellant handles originally different procedures as if they could be handled in the same way, and asserts against the differences in procedures between nationals and foreigners (inequality between nationals and foreigners). Such an argument of Appellant itself is unreasonable, and thus there are no grounds in terms of (i) as asserted by Appellant. (180)

問 2

Article 1.

This regulation sets forth the right and obligation of ABCDE Co. Ltd. (hereinafter referred to as the "Company") and those employed by the Company including the officers, permanent employees, non-permanent employees, and other staff members, and those employed by other entities including temporary contracted workers and dispatched workers who are subject to instructions and orders of the Company (hereinafter referred to as the "Employees, etc."), with regard to inventions, devices, technology, knowhow, and designs completed by the Employees, etc. within the scope of business of the Company (hereinafter referred to as the "Inventions, etc. Made by the Employees, etc."), and with regard to the work prepared by the Employees, etc. in the course of past or present performance of duties in and/or for the Company (hereinafter referred to as the "Work Created by the Employee, etc.")

Article 3.

1. If the manager of Intellectual Property Right Department determines that Inventions, etc. Made by the Employees, etc., which has been reported according to the preceding article, correspond to inventions completed in the course of past or present performance of duties of the Employees, etc. in and/or for the Company (hereinafter referred to as the "Employee Inventions, etc."), and if the Company determines that the Company should obtain the Employee Inventions, etc., the Employees, etc. are notified in writing to that effect.
2. Unless otherwise provided by law, upon notification by the written notice as provided in the preceding provision, all the rights pertaining to the Employee Inventions, etc. (including but not limited to, the right to obtain a patent) are regarded as originally belonging to the Company.
3. For Inventions, etc. Made by the Employees, etc. for which the manager of the Intellectual Property Department determines as not corresponding to the Employee Inventions, etc., if the manager considers it preferable for the Company to receive a license for working of the Inventions, etc. Made by the Employees, etc., the Company can offer a proposal of purchasing a license thereof from the Employees, etc. The detailed conditions of the license are subject to provisions in a separate agreement to be executed between the Company and the Employees, etc.