

★★★ <第33回知的財産翻訳検定試験【第16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. 下記の英文は、人工知能システムが発明者となることができるか、について争われたオーストラリア連邦裁判所での訴訟における判決文から抜粋したものです。下線部を日本語に翻訳してください。

<翻訳に際しての注記>

(1) 翻訳対象となる下線部は2箇所あり、それぞれ*** START ***, *** END ***で始終点を示してあります。

(2) 各翻訳対象箇所において、下線を付していない箇所は訳出する必要はありません。

10 In summary and for the following reasons, in my view an artificial intelligence system can be an inventor for the purposes of the Act. First, an inventor is an agent noun; an agent can be a person or thing that invents. Second, so to hold reflects the reality in terms of many otherwise patentable inventions where it cannot sensibly be said that a human is the inventor. Third, nothing in the Act dictates the contrary conclusion.

11 It follows that I reject the Deputy Commissioner's determination and the Commissioner's position before me.

12 *** START *** First, that position confuses the question of ownership and control of a patentable invention including who can be a patentee, on the one hand, with the question of who can be an inventor, on the other hand. Only a human or other legal person can be an owner, controller or patentee. That of course includes an inventor who is a human. But it is a fallacy to

argue from this that an inventor can only be a human. An inventor may be an artificial intelligence system, but in such a circumstance could not be the owner, controller or patentee of the patentable invention. *** END ***

13 Second, on the Commissioner's logic, if you had a patentable invention but no human inventor, you could not apply for a patent. So by employing the Commissioner's device of using a procedural requirement in a subordinate instrument, you would substantively preclude the possibility of a patent grant for that invention. Nothing in the Act justifies such a result. And it is the antithesis of the s 2A object.

14 *** START *** Third, in my view the Commissioner has not kept faith with the tenet that "[i]t is also of fundamental importance that limitations and qualifications are not read into a statutory definition unless clearly required by its terms or its context, as for example if it is necessary to give effect to the evident purpose of the Act" (PMT Partners Pty Ltd (in liq) v Australian National Parks & Wildlife Service (1995) 184 CLR 301 at 310 per Brennan CJ, Gaudron and McHugh JJ). Indeed the evident purpose of the Act, a proxy for which is s 2A, is at odds with the unreality of persisting with the notion that artificial intelligence systems cannot be inventors.

15 Fourth, much of the Commissioner's argument descended into dictionary definitions of "inventor". But more is required of me than mere resort to old millennium usages of that word. If words are only "pictures of ideas upon paper" (Dodson v Grew (1767) Wilm 272 at 278; 97 ER 106 at 108 per Wilmot CJ) and if, as Holmes J described it, they are not "crystal[s], transparent and unchanged, [but] the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which [they] are used" (Towne v Eisner, 245 US 418, 425 (1918)), I need to grapple with the underlying idea, recognising the evolving nature of patentable inventions and their creators. We are both created and create. Why cannot our own creations also create? *** END ***

問2. 以下は ABC Inc.及び XYZ 株式会社間で締結を予定している架空のシステム開発契約の抜粋です。翻訳対象箇所を日本語に翻訳してください。

<翻訳に際しての注記>

(1) 翻訳対象箇所は1箇所、***** START *****, ***** END *****で始終点を示してあります。

(2) 翻訳に際して、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。

(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、文書として自然な翻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。

System Development Agreement

(中略)

***** START *****

a. XYZ hereby engages ABC for the services (the “Services”) of the development and production of a system (the “System”) in use for XYZ to manage and control its Intellectual Property Portfolio (as defined below), which may be added, deleted or modified from time to time, in accordance with the specifications and instructions given by XYZ, and ABC hereby accepts such engagement, and agrees to perform any and all Services as required herein. Only for the purpose of the Services, XYZ will make available to ABC the information and data about the patents (utility and design), trademarks, service marks, software programs, trade secrets, work of authorship as owned by XYZ (the “Intellectual

Property Portfolio”), for which ABC shall be granted with a limited license to use such information and data only for the purpose of performing the Services.

- b. Any and all titles, rights and interests in any results and proceeds of the Services (including without limitation the System as delivered to XYZ as the final deliverable) shall vest in XYZ upon ABC’s delivery of the same to XYZ, including without limitation all design manifestation of the System or any part thereof, the Intellectual Property Portfolio and the information and data thereof as made available and licensed to ABC in accordance with the preceding paragraph, provided, however, that any and all general-purpose program, software, source code or other technology controlled by ABC or any third party and exploited by ABC or such third party generally for the sake of the clients of ABC or such third party prior to the commencement of the Services (the “XYZ Property”) shall remain to be the exclusive property of ABC or such third party as applicable, for which ABC must (i) obtain a prior approval of XYZ with respect to the incorporation of such XYZ Property into the System; (ii) clear any and all third-party rights as applicable to such XYZ Property at its sole expenses and liabilities to enable XYZ to exploit the System in any manner; and (iii) grant XYZ a non-exclusive royalty-free license necessary for XYZ’s exploitation of the System in respect of such XYZ Property without restriction on the time, territory, media, form or whatsoever.

***** END *****