

★★★ <第34回知的財産翻訳検定試験【第18回和文英訳】> ★★★
《 1 級課題 -知財法務実務- 》

【問 1】

There are two types of systems for keeping patent applications unpublished: the system used in the U.S., U.K., France, and other countries to withhold the procedure for granting a patent (so-called "examination suspension" system), and the system used in Germany and China to grant a patent right without publishing applications to the public (so-called "patent grant" system). Both in view of the nature of the Japanese patent system, and from the standpoint of practical usability, a system of withholding procedures should be introduced.

In other words, for patent applications that contain inventions that are extremely sensitive to Japan's security and should not be made public, such a system should be introduced that enables withholding patenting procedures, such as publication of an application while securing the status of a prior application for an applicant, taking measures to prevent the outflow of such inventions, and returning such applications to a normal patenting procedure when the degree of sensitivity thereof decreases. As for the procedure for selecting inventions not to be disclosed to the public, it is impractical to conduct a full-scale examination of all applications, amounting to approximately 300,000 applications per year, which may cause delays in the entire patent procedure. The number of eligible applications should be narrowed down as much as possible, and a second examination should be conducted by the department in charge of the new system, which comprehensively examines the sensitivity of the application and its impact on industry.

If, as a result of the second-stage examination, it is decided not to disclose the invention, there should be a framework that requires the applicant to take measures to preserve information on the sensitive invention and imposes restrictions on the implementation of the invention, as is the case in other countries. In addition, as long as the government imposes such restrictions, it should compensate for any loss.

Furthermore, since it is not appropriate to allow foreign applications to be filed freely while establishing such a system, it is necessary to establish an obligation to file a patent application in Japan first for inventions subject

to the second examination.

【問 2】

1. ABC hereby represents and warrants the following to XYZ:
 - (1) In connection with the Standard Essential Patents, ABC is authorized by the patent holders of each patent constituting the same to grant any business operator engaged in the business of manufacturing and distributing the Products a license as required for the manufacture and distribution of the Products on a non-exclusive basis; and
 - (2) If there occurs any addition to the Standard Essential Patents due to addition of any new technique to the Standard Essential Techniques, ABC will automatically grant XYZ a license for such added Standard Essential Patent on the terms and conditions as contained herein without requiring XYZ to pay any additional license fee as long as this Agreement continuously remains in force.

2. XYZ hereby represents and warrants the following to ABC:
 - (1) XYZ is a business operator engaged in the business of manufacturing and distributing the Products, and exploits the Standard Essential Patents in and for the Products as manufactured and distributed by itself;
 - (2) If XYZ manufactures any component of the Product for the benefit of any third party and supplies the same to such third party, XYZ acknowledges that the license granted hereunder in respect of the Standard Essential Patents shall not be valid with respect to such component, and that such third party should separately acquire a license for the final product containing such component, and in the event that XYZ agrees anything contrary to the foregoing with such third party, XYZ shall perform such agreement at its own expense and liability; and
 - (3) Even if in connection with any Standard Essential Patent, in part or in whole, the patent right therefor has been invalidated or otherwise ceased to exist, XYZ may not refuse the payment of any license fees payable to ABC, or require any discount in the amount thereof.

3. Any breach of any representation or warranty as set forth in the preceding two paragraphs shall also constitute a breach of this Agreement, and the non-breaching party shall also be entitled to any remedy under this Agreement and the law (including equity where applicable) as applicable to a breach of contract.