

★★★ <第37回知的財産翻訳検定試験【第18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. 以下に示す英文は、アメリカ合衆国・連邦巡回控訴裁判所の判決文からそのまま抜粋したものです。事案は、連邦地方裁判所における特許権侵害訴訟事件の原告敗訴の原判決に対する控訴事件に関します。注意書きに従って、この英文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。(****)は英文の一部省略箇所を示します。
- (2) 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。
- (3) 文中に引用されている他の判決等の文献の記載(例えば *In re Thorpe*, 777 F.2d 695, 697 (Fed. Cir. 1985)等)は、訳出せずに英語のまま日本語翻訳文中に残してかまいません。

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Realtime argues that “the disclosed inventions . . . provide specific, unconventional technological solutions that improve computer functionality and overcome problems specifically arising in the realm of compression of digital computer data.” Appellant’s Br. 63. But this “amounts to no more than a restatement of the assertion that the desired results are an advance.” *Am. Axle & Mfg.*, 967 F.3d at 1299. As explained above, the claims here merely claim a result and are thus directed to ineligible subject matter.

“ “[A] claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept’ required to cross the line into eligibility.” Id. (quoting BSG Tech, 899 F.3d at 1290).

As for the specific patents, Realtime contends that the claims of the family 1 patents “require specific, unconventional combinations of specially configured computer elements,” like using content dependent and content independent data compression, encoders, and processors. Appellant’s Br. 60–61. The common specification of the family 1 patents, however, does not purport to require the use of any special processor. See, e.g., ’728 patent at 6:32– 37 (“[T]he system modules described herein are preferably implemented in software as an application program that is executable by, e.g., a general purpose computer or any machine or device having any suitable and preferred microprocessor architecture.”). The same goes for the “encoders.” See, e.g., id. at 7:13–17 (****); id. at 6:30–32 (****). And the common specification explains that data can be analyzed “using methods known by those skilled in the art to extract the data compression type descriptor associated with the data block,” id. at 14:59–64, that “there are many conventional content dependent techniques,” id. at 2:67–3:2, and that it was known that the effectiveness of data compression is “highly contingent upon the content of the data being compressed,” id. at 2:33–35.

Realtime also argues that “analyzing the data to identify one or more parameters or attributes and performing compression with a plurality of different encoders based on that analysis” is a “non-conventional” function and that using “multiple encoders to compress data blocks based on an analysis of the specific content or type of the data being encoded without relying solely on a descriptor” is what the common specification of the family 1 patents “makes clear” is the “inventive concept.” Appellant’s Br. 64–65. But these are themselves abstract ideas and thus cannot provide an inventive concept. BSG Tech, 899 F.3d at 1290.

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問2. 以下はあるアニメ映像の商品化許諾に関するライセンス契約（架空）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。なお、(****)は中略を意味するもので、そのまま転記してください。
- (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。

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1. Definition.

For the purpose of this Agreement, the following terms shall have the meanings as defined below:

- (1) “Animation Film” means, collectively and individually as the context may require, the series of television animation films comprised of fifteen (15) episodes with approximately thirty (30) minutes in length for each and currently titled as “XYZ (Season 1),” which is wholly owned and controlled by Licensor. For the avoidance of doubt, any reference to the Animation Film herein excludes any and all films that are currently or may be in any future time produced by Licensor or any authorized third party as any sequel or spin-off therefor or other work having some relevancy therewith, which shall be subject to a license that is totally separate from the license granted hereunder.
- (2) “Licensed Goods” means any goods, products or other tangible items covered under the categories as enumerated in Exhibit A hereto and within the Licensed Territories and during the License Term, manufactured or

offered for sales or distributed by Licensee or any Authorized Retailers through any Authorized Channels, for which any element of any Animation Film is hereby authorized to be embodied as approved by Licensor.

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5. Consideration.

In consideration of the license granted hereunder, Licensee shall pay Licensor the following monies as calculated in accordance with the formulae set forth below respectively. Any payment by Licensee as required hereunder shall be made by wire transfer to the bank account as separately designated by Licensor. Time shall be of essence.

(1) License Fees. Within fifteen (15) days upon its signature on this Agreement, Licensee shall pay Licensor the product of: Fifty Thousand United States Dollars (US\$ 50,000); multiplied by the number of the categories as enumerated in Exhibit A hereto. The License Fees shall be non-recoupable by its nature even if the sales revenues from any Licensed Goods are below the Licensee's estimate, and as such no refund or offset or debit against any money payable by Licensee hereunder shall be allowed unless otherwise Licensor approves in writing.

(2) Royalties. In addition to and as separate from the License Fees, within fifteen (15) days upon conclusion of each Quarter, Licensee shall pay Licensor the product of: the Net Retail Price or the Licensor Price Index applicable to each Licensed Goods, whichever is greater; multiplied by the total quantity of such Licensed Goods manufactured during such Quarter; multiplied by the Royalty Rate applicable to such Licensed Goods as determined from Exhibit A hereto.

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