

Column No.11

WHAT ARE IMPORTANT IN PATENT BUSINESS

To read what is not written in sentences; to have a clear view of what to write

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In the patent business, it is extremely important to read what is not written in sentences. It is also very important to have an eye to see clearly what to write and what not to write.

Ideals of decisions of examination and judgment are said to be sentences which are "full but not overflowing." This means sentences in which all of what should be written are written, and what are unnecessary are not written. In the patent business, we cannot read what does each provision in the Patent Law imply, without plenty of knowledge in judicial precedents relative to each provision. When we read a patent specification, or a cited reference, its contents cannot be accurately comprehended without technical common knowledge which is basic to persons skilled in the art.

In the patent business, what is the knowledge needed as basics? At least a plenty of knowledge on judicial precedents and minimum technical knowledge as a basis of the technical field will be required. Without such knowledge, it is not possibly expected either to read what is not written in sentences or to see clearly what to write. With respect to this, the following quotation is full of suggestion. "Let's consider reading information which is not expressed by words with words as a clue. They say "read between lines," but there is not even a space between lines. Even from one sentence, it is possible.

The eyes are red.

The eyes are blue.

The sentence structures of the above two are identical. Then, do the "red" and "blue" in the two indicate the same state of color of the same place? No, they do not. "Red" indicates the white of the eye, while "blue" indicates the iris, that is, the pupil of the eye. Why? Any Japanese should naturally know. That is to say, if we live an ordinary life, it is a fact that we would not even doubt throughout the life.

If we wonder here why, similar situations occur to our mind one after another. Though "taiyaki" and "takoyaki" are the same in word structure, they are quite different things. Further, "ikayaki" is different, too. "Moeru otoko (passionate man)" and "moeru gomi (burnable waste)" are also different. "Moeru gomi" is not burning. How should we read such differences not written? What appear here are concepts called "schema" and

"frame"? It is a framework to judge "such is such" on account of the knowledge acquired through experiences.

-----Omission-----

However, where is a boundary between what is not written but can be read and what cannot be read without writing? Ability to read between lines and information not written is important. More important is an eye to see clearly what should be written and what should not be written." (The University Graduates' Society Bulletin No. 2005-I No. 850, quoted from "Modern Words" by Akemi Hotta)

In the following, I would like to focus on the importance of reading what is not written. The above quotation specifically describes, by exemplifying, dangerousness of jumping to a conclusion by seeing as a matter of form what is meant by the expression of a sentence and understand as it is. The dangerousness of this is increased by overconfidence of our own knowledge.

In the patent business, in regard to common technique and common general-purpose technique, we tend to be overconfident of our own knowledge. In other words, we tend to be careless, or negligent in conducting research. It is general that the simpler a technique is, the harder a judgment becomes.

One of matters difficult to judge in the patent business is to judge whether an amendment can be considered an addition of "a new matter" or not. An amendment to a specification should not have contents exceeding the scope of "the matter described in an original specification and the like." "The matter described in an original specification and the like" implies not only "a matter described in an original specification and the like" but also "the matter described in the original specification and the like" even where there is no explicit description. A judgment whether or not it is "an obvious matter from a description of an original specification and the like" depends on an ability to read what is not written in sentences. This ability is extremely important in the patent business.

