

SUCCESSFUL ENGLISH-TO-JAPANESE PATENT TRANSLATIONS

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As legal documents, patents contain information that must be crafted with greater attention to detail as compared to other technical documents. In translating patent documents from one language to another, differences in vocabulary and linguistic structures of languages often cause mistranslations, which may lead to serious consequences. Below, Takayoshi Kawai explains the importance of English-to-Japanese patent translations, identifies factors that often lead to mistranslations, and presents tips for successful English-to-Japanese patent translation.

The Importance of English-to-Japanese Patent Translation

Recent statistics from the Japan Patent Office (JPO) show that patent application rejections based on the written description requirement make up about 40% of all patent application rejections issued by the JPO. When limiting these applications to foreign applications pending with the JPO, the percentage of rejections for failure to comply with the written description requirement is assumed to be as high as 60%. The cause of this 20% increase is considered to stem from both differences between the examination guidelines of Japan and the country of original filing and, more interestingly, from poor quality in patent translations.

Factors that Impact the Quality of English-to-Japanese Patent Translation

Factors that account for the inadequacy of English-to-Japanese translations are differences in the vocabulary and the linguistic structures between languages, the inappropriate application of JPO examination guidelines, and a lack of capable human resources.

1. Differences in the Vocabulary and the Linguistic Structures between the Languages

The Japanese language has adopted a number of English words expressing the original sounds of the English words in Japanese characters. The sounds of the English words are reproduced using the Japanese phonetic alphabet, which differs from the sounds of the English language. For example, the English language does not contain the “tsu” sound and the Japanese language does not distinguish the “l” and “r” sounds. Thus, the Japanese words that originated from English words may differ significantly in sound from the original English meaning. These adopted words can also sound confusingly similar to other adopted words with completely different meanings. Such words can often be found in the chemistry field with regard to material names. In using such adopted words, there is a high risk of mistakenly selecting an incorrect word that sounds similar, which leads to mistranslation.

As to differences in linguistic structure, Japanese and English differ drastically in the word order of the sentence structures. Accurate translation requires significant reorganization of the word order of the original text. This reorganization of the sentence structure must be done in conjunction with the accurate transfer of all the information contained in the original document without including additional information or eliminating information. Due to the complexity of patent documents, accurate restructuring of the words within a sentence to enhance readability tends to be very difficult and can often lead to mistranslation resulting in the accidental inclusion of a new limitation or the omission of information.

2. Inappropriate Application of Examination Guidelines

The Examination Guidelines of the JPO, in Part VIII “Foreign Language Application” 1.4(3), reads; “the applicant shall submit, as a translation under Article 36bis(2), a literal translation in proper Japanese (a word-by-word translation into proper Japanese in accordance with the context of the foreign language document).” Many patent translators have interpreted this language to mean that literal translation of patent language is the best practice, and translate patents accordingly. Consequently, many inappropriate Japanese expressions that have unnatural word order and relation result from such translation methods and lead in ambiguity in their meaning. These expressions are not technically mistranslations; however, they fail to capture the entire meaning and intricacy of the original text. As such, the inappropriate application of the aforementioned examination guideline may cause “non-technical” mistranslations. It is considered better practice for patent translator to take heed to the JPO language specified in section 1.4(2); “submission of translation that the matters described in the foreign language document, etc. are translated into proper Japanese without excess nor shortage.”

3. Lack of Capable Human Resource

Aside from the above described systemic problems due to linguistic structures and the inappropriate application of examination guidelines, a lack of capable human resource also causes mistranslations. This deficiency arises when translators lack the appropriate technical knowledge and patent attorneys lack the requisite English fluency.

Translators who lack the appropriate technical knowledge or experience may mistranslate technical aspects to a technology. One famous and simple example of such a mistranslation was in a patent application in the chemistry field in which the temperature in “Fahrenheit” was mistranslated into temperature in “Celsius”. This application was rejected and eventually brought to litigation, but the rejection was finalized. Amendment was not an available remedy in this case—the patentee was not allowed to correct the mistranslation based on priority documents.

On the other hand, patent attorneys who lack the ability to fully comprehend the original English text may mistranslate the original text or fail to adequately oversee and correct the translators’ translations. This lack of oversight and correction may also be due in part to a lack of communication between translators and attorneys within a business structure. Such structures can be found most commonly when patent translations are outsourced to non-patent attorneys.

In order to minimize mistranslations, those responsible for such translations are encouraged to correctly identify adopted words and select words with the broadest meaning when given a plurality of candidate words so as to minimize the risk of narrowing the technical scope. Although additional words will inevitably be inserted in translations to reflect the original meaning, such additions should be kept at a minimum. It is worth noting that sorting information in chronological order and placing the modifier and noun being modified as close to each other as possible will effectively contribute to better sentence structure and clarity. Translating double-negative expressions as single-negative expressions or translating assumptions as assertions are typical mistranslations that cause serious defects in a patent application. Needless to say, numerical digits, numerical units, numerical ranges, and the appropriate use of expressions like “more than”, “less than”, or “equal to” should be handled carefully so that the original information is precisely recited in the translation.

Tips for Successful English-to-Japanese Patent Translations

Conducting English-to-Japanese patent translation at a satisfactory level requires significant skill. A key success factor in creating such translations is to use highly skillful local representatives or agents. Such representatives and agents can be, for example, a single patent attorney or translator who possesses both strong English abilities and technical knowledge, or patent attorneys with solid technical knowledge who work cooperatively with translators with strong English skills (such a task force is typically available at patent firms with in-house translators). It is essential to retain attorneys who are aware of these occurrences so that they may resolve any translation issues before they arise and diminish the probability of receiving a rejection from the JPO for failing to comply with the written description requirement.

The use of filing and procedural structures afforded by the JPO is also strongly recommended. The employment of such methods in filing patent applications functions as a safety net in case of mistranslation. When filing an application with the JPO through the Paris Convention route, electing for foreign language applications is recommended. Here, applications drafted in English are submitted to the JPO followed by subsequent submission of the Japanese translation. This process allows for the translation correction and amendment is as broad a scope as the original text of the English filed application. Such amendment is possible even in the event of a rejection from the JPO due to mistranslation. When filing an application with the JPO through the PCT route, translation correction and amendment is of course possible and can be as broad in scope as the original text as well.