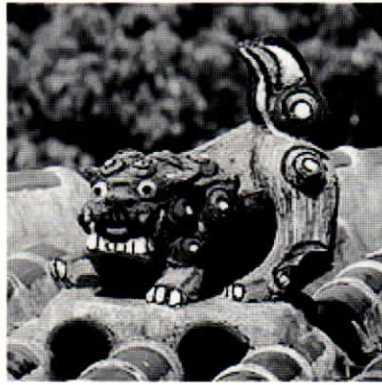


Conference Proceedings



Nineteenth International
Japanese/English Translation Conference

Okinawa, Japan
April 12-13, 2008

J-E Patent Translation

William Lise

**19th International Japanese/English Translation
Conference**

Okinawa, April 12-13, 2008

IJET-19 Okinawa

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What This Presentation is **Not**

- A patent translation workshop
- An introduction to products or services I sell.
- Anything more than a very brief overview of a market that I know quite well

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What I Will Cover

- Focus on Patent Translation for Filing
- Market Overview & Recent Trends
- Distinctive Types of Patent Translation
- Where and How to Start

Market Overview

- Types of patent translation
- Market Size
- Characteristics of the work
- Client demographics
- The patent translation food chain
- Trend away from translation brokering by *benrishi*
- Rates

Types of Patent Translation

- Translation for overseas filing
- Translation of laid-open patent applications (sometimes imprecisely referred to as “for-information” translation)
- Peripheral patent translation needs

Non-patent cited references

Documents arising from patent litigation in Japan

Market Size

- Filings from Japan in US alone are probably around 40,000 cases yearly.
- If the average patent specification is 7000 words, this makes the demand 280,000,000 words per year.
- The average price paid by a client is probably over 35 yen/word.
- The above makes the yearly market for just J-E translation for US filing close to 10 billion JPY.

The Image of Patent Translation

- Long sentences
- Difficult content
- Difficult to read manuscripts (blurry PDFs or copies of laid-open patent applications)

The Realities of Patent Translation (1)

- Complete manuscripts (no 差分 translation)
- Drawings provided (a client who does not provide you the drawings needs education)
- Intended to tell a complete story (to the examiner, initially; often to a court of law later)
- Long sentences, which can be broken up.
- Long claims, which cannot be broken up, but which, if written well, are not necessarily difficult to understand or translate.

The Realities of Patent Translation (2)

- Need to understand the subject matter (if you don't, you will be discovered very quickly).
- From what I have seen of TM, I do not believe that patent translation for filing is a good candidate for using TM. There is not enough repetition; if you work in your field of specialty, the dictionary functions become less attractive.
- Value-added (spelled: higher-paying) translation will likely mean that TM is more of a burden than an asset.

The Realities of Patent Translation (3)

- The rates obtainable are good.
- Patent translation is highly immune to the effects of fluctuations of the economy.
- Rarely need an “agency check” because so little of the for-filing work is done through agencies.

Client Demographics

- Patent firms (弁理士)
- Translation agencies
- Manufacturers and patent subsidiaries of manufacturers

Patent Translation Food Chain

Manufacturer → Benrishi (in-house translator)

Manufacturer → Benrishi → Translator

Manufacturer → Benrishi → Agency → Translator

Manufacturer → Overseas subsidiary → Translator
(oddly, sometimes in Japan)

Manufacturer → Overseas law firm →
Translator/agency

Manufacturer → Agency → Translator

Manufacturer → Translator

The Role of Japanese Patent Firms

- Generally have no personnel capable of filing patents overseas, and even when they do, the actual filing is almost always done by foreign patent counsel.
- Act as language facilitators between Japanese companies and foreign patent counsel, handling office actions and other correspondence. Offer advice, but this advice is not US legal advice.
- Sometimes select the foreign patent counsel.
- In addition to brokering translation services, they often act as brokers for the services provided by foreign patent counsel.

English Patent Specification “Creation Myth”

- English patent specifications are not translated; and in fact *cannot* be translated. They are “created” or “written” by 弁理士 by a mystical process available only to *benrishi*. Books written by *benrishi* generally support this myth.
- This is clearly nonsense.
- The creation myth protects the profitability of translation businesses run by *benrishi*.

Trend Away from Translation Brokering by *Benrishi*

- Recently some manufacturers are awakening to the fact that the English patent specification “creation myth” is just that, a myth.
- Major Japanese manufacturers have started to form patent firms and/or ramp up their in-house patent departments, one important goal being to cut 弁理士 out of the overseas filing and billing loop. Translators stand to gain from this trend.

Manufacturer Patent Organizations

- In-house patent departments of large manufacturers often have in-house *benrishi*, but these *benrishi* generally only manage outside patent firms, both in Japan and elsewhere, as opposed to handling prosecution themselves.
- Some firms that have formed patent subsidiaries. Many of these have no obvious presence to the outside world. Some are carefully guarded “secret” organizations, run by and for former patent or legal department employees.

Rates

- Rates depend on who (what) you are and where you are in the food chain.
- It is therefore meaningless to ask what the “standard rate” is for patent (or any other translation).
- *Benrishi* can generally demand the highest rates for translation and still take other fees for non-translation services.

Rates Paid to *Benrishi*

- *Benrishi* rates to clients range from around 30 yen to 50 yen. The JPAA formerly had a “recommended” rate equivalent to 55 yen per word but, perhaps having realized that such “recommendations” risk accusations of violating fair trade laws, they removed such recommended rates several years ago.
- For a *benrishi*, brokering translation is often a more profitable use of in-house personnel than domestic prosecution; and it is likely the most profitable part of overseas filing work.

How Much Can an Individual Demand?

- The rate range you can demand depends on where you are in the food chain and your sales skills.
- Where you are in the food chain depends in large part upon your sales skills.
- Agencies seldom pay more than 20–25 yen.
- Since *benrishi* act as translation agencies, their rates are similar to agencies but could be higher, because they can get higher rates from their clients than can agencies, who might in fact be selling to *benrishi*.
- Rates paid by manufacturers to individuals can be 30 yen or more. This is still considerably lower than most clients pay *benrishi* for precisely the same services.

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Distinctive Types of Patent Translation

- J–E Translation for filing overseas
- “For–information” translations (usually a mischaracterization) that includes translation of laid–open patent applications for the purpose of **invalidating** a patent that the client has been accused of infringing.
- Certified translations for use in litigation (including translation of non–patent documents)
- Other translation of non–patent documents related to patent prosecution or litigation.

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J-E Translation for Patent Filing Overseas

- Overwhelmingly proportion of this work is ordered and executed in Japan.
- Highly demanding in terms of knowledge of patent style.

“Non-filing” Patent Translation

- Probably a more appropriate than the term “for-information” patent translation.
- Translations often are used in litigation.
- In the US, translations often need to be certified by the translator. This is one of the few instances in which being certified as a J-E translator by the ATA can be an advantage.
- Translation approach is radically different from that taken in for-filing J-E translation.

Certified Translations

- A certifying letter from the translator is often required for US litigation.
- Recently, an attorney asked me if I would feel comfortable defending my certified translations at a deposition.
- While no official qualification is required, certification by the American Translators Association as a J-to-E translator looks good in the certification letter, and is one reason for paying yearly dues to maintain ATA membership (a requirement for stating that you are certified). This effectively is a royalty payment to enable me to continue to claim certification by the ATA.

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Non-Patent Document Translation

- Law firms sometimes require translation of non-patent documents.
- Typical classes of documents: Documents cited as prior art in patent applications and documents related to patent litigation in Japan.
- For the US, certification is sometimes required of these translation as well.

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Who Gets the Work From Clients?

- Mostly Japanese patent firms (特許事務所)
- Some translation agencies
- Some of the agencies specializing in patent translation and purport to be more than “mere” translation agencies.

Why Might a Client Not Give You Work? The Issue of Client Resistance

- Some manufacturers never thought that anyone but a *benrishi* could “create” a patent specification.
- You are not a company.
- You are a company.

Do You Want to Do This?

- Requirements

Patent translation is technical translation. It demands field-specific knowledge. If you don't have such knowledge, the ability to acquire it will do, but it will require a considerable investment in time.

- Patent style

Patent translation requires knowledge of and the ability to use correct patent style.

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Where and How to Start

- First step

Lise recommendation: In-house translation at a patent firm. There are two advantages: acquisition of knowledge and skills (proximity to patent professionals) and the ability to cite experience when going freelance. It appears that few patent translation clients (and certainly not the high-paying ones) want to invest time in training off-site translators, however.

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Where to Go for More Information

- Websites

Patent office websites offer not only a look at issued patents, but also easy access to Japanese-English pairs of patent specifications.

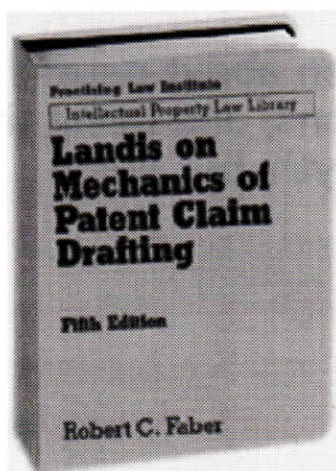
These include the JPO, USPTO, WIPO, and EPO websites.

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Landis on Mechanics of Patent Claim Drafting



The standard source for decades. Supplements are issued regularly.

Price: 309 USD.

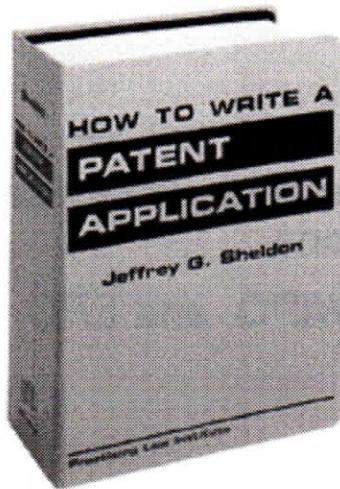
Available from Practising Law Institute (www.pli.edu)

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Sheldon, *How to Write a Patent Application*



Lots of procedural information not necessary for translation, but still a valuable resource.

Price: 390 USD.

Available from Practising Law Institute (www.pli.edu)

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Where to Go for More Information (2)

- Books on patent translation

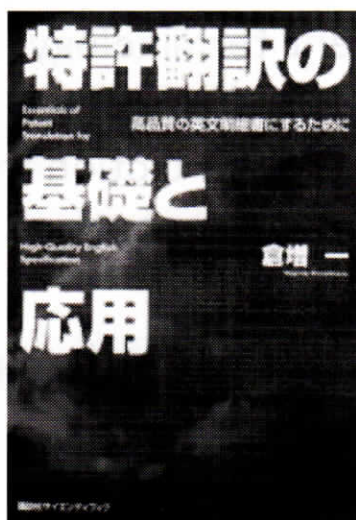
Almost no books have been written about patent translation, for several good reasons, one being the “patent specification creation” myth, but some books are starting to appear.

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倉増一『特許翻訳の基礎と応用』



One of a very rare breed of books- written about patent translation by an author and publisher admitting that the book is about translation.

Lots of good common-sense advice on issues seldom covered in other books.

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Mailing Lists

- The Patent Translation Mailing List
Underused mailing list populated by patent translators.
(http://finance.groups.yahoo.com/group/patent_translation/)
- JAT Mailing list (www.jat.org).
Also an underused list, at least for patent translation discussion. Perhaps there is a perception that such use would rob the Honyaku mailing list of content or should be directed to the Honyaku mailing list because of its larger membership.

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Dictionaries

- Dictionaries

Many books purporting to be patent terminology dictionaries are at best misguided, and at worst published not because of a need for the dictionary, but rather because of the stature or connections of the author.

I will shortly provide a list of dictionaries that might be helpful to patent translators.

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Any Questions?

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