



PREPARATION & PROSECUTION OF U.S. PATENT APPLICATIONS
TRANSLATION & INTERPRETING BETWEEN JAPANESE & ENGLISH

～実務に役立つ外国判例シリーズ②～

判例に踏まえた 米国向け請求項作成ワークショップ

～ 名詞の数、先行詞、冠詞～

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関西特許研究会 (KTK) 明治安田生命大阪梅田ビル 25階

25 September 2015

概要

1. 背景 特許性・侵害有無の加法の法則
2. 思考実験 減法の法則があれば、どうなる？
3. 米国控訴裁が広めるspecific exclusion説
4. specific exclusion説が適用された判例
5. 米国向け請求項作成ワークショップ

特許性・侵害有無の加法の法則

(移行語がcomprisingの場合)

§ 10:2.2 Rule of Addition

According to the Rule of Addition, the defendant, in general, will literally infringe the plaintiff's claim in an unexpired U.S. patent if the defendant makes, uses, or sells in the United States an apparatus, composition, or process having all the elements, compounds, or steps, respectively, specified in the plaintiff's claim and if the defendant "adds" other elements, compounds, or steps.¹

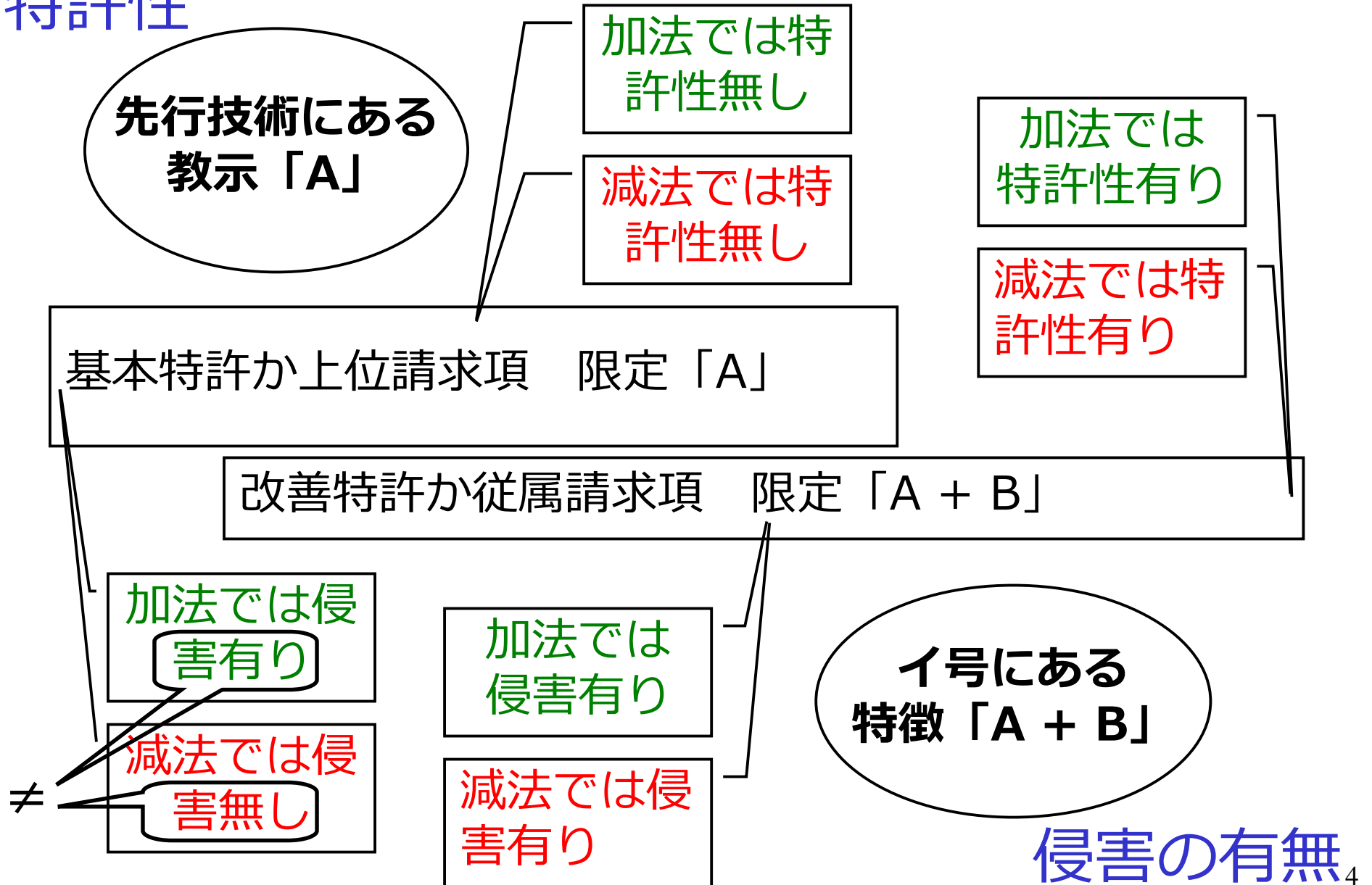
被告のイ号は原告の請求項の全ての限定を満たせば文言侵害となり、更なる要素をイ号に追加したとしても、侵害有りの判定に変わりはなく、侵害有りのままである。

出典: Hildreth, Ronald B. *Patent Law: A Practitioner's Guide*. Third Edition. New York: PLI Press, 1988.

思考実験 特許性と侵害の有無

6:50

特許性



思考実験 加法と減法の比較

6:53

項目	加法	減法
1	請求項に無い限定がイ号に有っても、 侵害有り認定に変わりはない	請求項に無い要素がイ号に有れば、 侵害有り→侵害無し
2	周辺限定主義の論理的裏付け	中心限定主義の論理的裏付け
3	短い請求項は範囲が広い	長い請求項は範囲が広い？
4	空白請求項が万有に、限定を足し加えると権利範囲が減る	空白請求項が皆無に、要素を足し加えると権利範囲を指定する
5	範囲を狭めるため、限定と言う	範囲を指定するため、要素という
6	従属請求項は、それを引用する上位請求項の全ての限定を含む	従属請求項は、それを引用する上位請求項の全ての要素を含む
7	上位請求項に特許性が有れば、その上位請求項を引用する従属請求項にも必ず特許性が有る	上位請求項に特許性が有れば、その上位請求項を引用する従属請求項にも必ず特許性が有る
8	従属請求項を侵害してれば、その従属請求項に引用されている上位請求項を 必ず侵害している	従属請求項を侵害してても、その従属請求項に引用されている上位請求項を 侵害しているとは限らない

思考実験 減法が呈する諸疑問

1. 特許性と侵害の有無が一致しなくなる
本来、何となく、審査の際の特許性基準が権利行使の際の侵害基準に
2. 基本特許と改善特許の関係が可笑しくなる
3. 侵害回避が簡単
テーブルに対する請求項を回避するには、そのテーブルに本を置けば良いのでは？
4. 発明と環境との区別が付かない
イ号の周囲に有るものを適当にイ号の一部と認定すれば、侵害無しの判決になるのでは？
5. 等々、裁判の判断でやりたい放題になるのでは？

米国控訴裁による specific exclusion説

antipatentの風向きで均等論をえぐるように働く...

出願人が明確に除外した権利範囲

...を論じる説

1994~2006年の
14個の判決に
specific
exclusion
がCAFCに取り上げ
られている

Case	Opinion Date	Opinion Author	Dissenting Opinion	Alleged Disclaimer in Specification or Claim?	Specific Exclusion Applied?
Dolly, Inc. v. Spalding & Evenflo Cos., 16 F.3d 394 (Fed. Cir. 1994).	2/8/94	Rader	N/A	Claim	Yes
Athletic Alternatives, Inc. v. Prince Mfg., Inc., 73 F.3d 1573 (Fed. Cir. 1996).	1/11/96	Michel	N/A	Claim	Yes
Wiener v. NEC Elecs., Inc., 102 F.3d 534 (Fed. Cir. 1996).	12/6/96	Rader	N/A	Claim	Yes
Eastman Kodak Co. v. Goodyear Tire & Rubber Co., 114 F.3d 1547 (Fed. Cir. 1997).	7/2/97	Rader	Lourie (in part)	Claim	Yes
Sage Prods., Inc. v. Devon Indus., 126 F.3d 1420 (Fed. Cir. 1997).	9/18/97	Rader	N/A	Claim	Yes
Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp., 149 F.3d 1309 (Fed. Cir. 1998).	6/30/98	Lourie	N/A	Claim	No
Moore, U.S.A., Inc. v. Standard Register Co., 229 F.3d 1091 (Fed. Cir. 2000).	9/22/00	Michel	Newman (in part)	Claim	Yes
SciMed Life Sys. v. Advanced Cardiovascular Sys., 242 F.3d 1337 (Fed. Cir. 2001).	3/14/01	Bryson	N/A	Specification	Yes
Senior Techs., Inc. v. R.F. Techs., Inc., 76 Fed. Appx. 318 (Fed. Cir. 2003).	9/17/03	Clevenger	N/A	Claim	Yes
Gaus v. Conair Corp., 363 F.3d 1284 (Fed. Cir. 2004).	4/1/04	Bryson	N/A	Specification	Yes
Novartis Pharms. Corp. v. Abbott Labs., 375 F.3d 1328 (Fed. Cir. 2004).	7/8/04	Prost	Bryson	Specification	Yes
Asyst Techs. Inc. v. Emtrak, Inc., 402 F.3d 1188 (Fed. Cir. 2005).	3/22/05	Bryson	N/A	Claim	Yes
Bicon, Inc. v. Straumann Co., 441 F.3d 945 (Fed. Cir. 2006).	3/20/06	Bryson	N/A	Claim	Yes
Cook Biotech Inc. v. ACell, Inc., 460 F.3d 1365 (Fed. Cir. 2006).	8/18/06	Prost	N/A	Claim	Yes

13/14個の判決では、specific exclusion有りと認定している (残り1個の判決では、別の説で均等論無し・侵害無しとの判決だった)

CAFCの解釈によると、多くの場合には請求項の記載そのものが specific exclusion だった

出典: Greene, Blake B. *Bicon, Inc. v. Staumann Co.: The Federal Circuit Specifically Excluded Claim Vitiation to Illustrate a New Limiting Principle on the Doctrine of Equivalents*. Berkeley Technology Law Journal. Volume 22, Issue 1, Article 9 (January 2007). <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1674&context=btlj>

Specific Exclusionという概念の紹介

1. **Specific exclusion**とは、「**出願人が明確に除外した権利範囲**」を意味する
2. 本来、**均等論を制限するため**に考案された説である
3. *Warner-Jenkinson v. Hilton Davis*事件 (USSC 1997) や *Sage Products v. Devon Industries*事件 (CAFC 1997) で論じられている**all-elements rule**に基づく**claim element vitiation** (**均等論の適用で請求項の或る要素が無意味となるほど薄く解釈されてはいけない**) とは概念が似ているが、**vitiation**とは異なり**exclusion**では、出願人の用語の選び方などによって、**出願人の意思で出願人が自ら権利範囲を除外した**とみなされていることがポイント*
4. 例えば、「**非金属**」という限定があれば、幾ら均等論を適用しようとしても「**金属**」のものに及ぶべきではない、「**左**」は「**右**」にならない、「**上**」は「**下**」にならない、等々
5. ここまで聞いて、とても**妥当な説に思われるでしょうか？**

* 米国で均等論を制限する説が論じられている判決については、この論文をご参照：典：高瀬泰治郎. 米国特許における均等論制限理論の適用とクレームドラフティングについて -均等制限におけるクレーム限定の重要性と予見性-. 知的財産県有所 (2005). http://www.iip.or.jp/summary/pdf/detail05j/17_21.pdf

Specific Exclusion 説自体を説く判例引用文

“[T]he concept of equivalency cannot embrace a structure that is specifically excluded from the scope of the claims.”

Dolly, Inc. v. Spalding & Evenflo Cos (CAFC 1994; emphasis added)

“[T]he patentee cannot now invoke the doctrine of equivalents to ‘embrace a structure that was specifically excluded from the claims’. ... A particular structure can be deemed outside the reach of the doctrine of equivalents because that structure is clearly excluded from the claims whether the exclusion is express or implied. ... because the scope of the claim was limited in a way that plainly and necessarily excluded a structural feature that was the opposite of the one recited in the claim, that different structure could not be brought within the scope of patent protection through the doctrine of equivalents.”

Scimed Life Systems v. Advanced Cardiovascular Systems (CAFC 2001; emphasis added)

“[I]n a binary choice situation where there are only two structural options, the patentee's claiming of one structural option implicitly and necessarily precludes the capture of the other structural option through the doctrine of equivalents. ... If ‘metallic’ were allowed to be the equivalent of ‘non-metallic,’ such approach would wholly vitiate the claimed ‘nonmetallic’ limitation and negate the ‘clear and binding statement to the public that metallic structures are excluded from the protection of the patent.’ ... [T]he patentee's choice of claim terms has plainly, necessarily, and implicitly excluded from the scope of the patent the embodiment it now seeks to capture through the doctrine of equivalents.”

Senior Techs., Inc. v. R.F. Techs., Inc. (CAFC 2003; emphasis added)

Specific Exclusionの危険性はどこにある (I) ?

時々、こういう例も見られる :

1. 請求項に記載されている「**単数**」のものが**記載**され、
2. これが**specific exclusion** (出願人が意図的で明確に複数個のものを除外したことを証明している) と認定され、
3. **イ号**に**複数個**のものが有るため、
4. **侵害無し**という判決になる。

Specific Exclusionの危険性はどこにある（II）？

ちよい待ち...

そうすると、このspecific exclusionという説では：

1. 均等論を制限しているに留めず、
2. 結果的に本来の文言侵害よりも狭く請求項を解釈する理屈付けとして働き、
3. いわば減法の法則のような考え方ではありませんか？
4. 即ち、追加のものをイ号に入れることによって、
侵害有り→侵害無し

Specific Exclusionの危険性はどこにある (III) ?

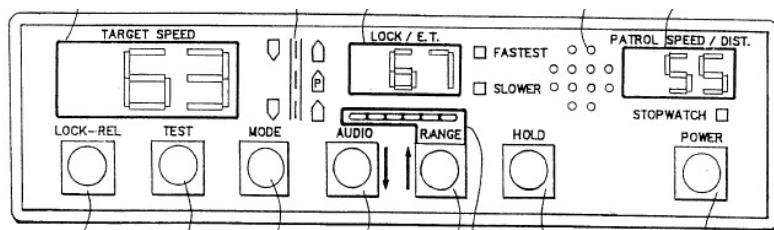
解釈・比較crosstalkで論理が可笑しくなる場合も...

1. 本来でしたら、**侵害の有無**を決めるには、下記**2段階**の作業を以下の**順**に行うべき：
 - a) **請求項を解釈**する
 - b) **イ号と比較**する
2. ...怪しい**減法っぽい**判例では、上記2段階の**はずの分析**が**グチャ々**となっていることが多い。
3. 例えば、判決文に「**“a” means “one and only one”**」とか、「**“a” means “one or more”**」のように、**イ号と比較する段階ではなく、単数冠詞「a」の意味自体を論じる**ことで**侵害の有無**を決めようとしている。

OR → XORと認定

“Kustom argues that the accused device **infringes literally** [because] performance of an **additional step** is irrelevant when the claimed steps are performed. ... (“**comprising**” **opens** a method claim to the inclusion of steps in **addition** to those stated in the claim). ... However, the accused traffic radar device does not merely practice an **additional** function or perform an **additional** step; it performs a function **explicitly moved outside the scope of the claims**, for the alternative “**or**” **excludes** devices that search **both** magnitude and frequency. ... The **open-ended transition “comprising”** **does not free the claim from its own limitations.**”

—*Kustom Signals v. Applied Concepts* (CAFC 2001; emphasis added)



米特許第5,528,246号の第1
請求項中、争点となった部分：
1. A method ... **comprising** the steps of ...
searching said components in memory for
the component that meets preselected
magnitude **or** frequency criteria

- 「Comprising」であるにもかかわらず、「OR」が排他的ORと認定、両ステップを行うイ号は侵害無し。
- 請求項に片一方のステップのみを記載していれば、侵害有りだったでしょうか？

請求項にある単数個が複数個を除外するよう 認定されたインターフェース事件

“In this case, the relevant independent claim does not recite a memory device having ‘a’ bit line. Instead, it recites a method comprising accessing a number of control gates and a bit line to activate a number of cells. The plain language of the claim clearly indicates that only a single bit line is used when accessing a number of cells. ... [N]othing in the text of Harari’s claim 63 suggests accessing more than one bit line when activating the number of memory cells. For example, step a) expressly distinguishes between the singular and plural by reciting ‘accessing a number of control gates’ while ‘accessing a bit line’ to activate ‘a number of memory cells.’ Step b) further reinforces the difference between singular and plural by reciting ‘subsequent to accessing said bit line, sensing the presence of at least one activated cell.’ And finally, step c) again distinguishes between singular and plural by applying ‘a first voltage to said bit line,’ while applying other voltages to the source and control gate of ‘at least said erased cell.’”

—Harari v. Lee (CAFC 2011; emphasis added)

Harariの米特許第出願09/056,398号の第63請求項中、争点となった部分：

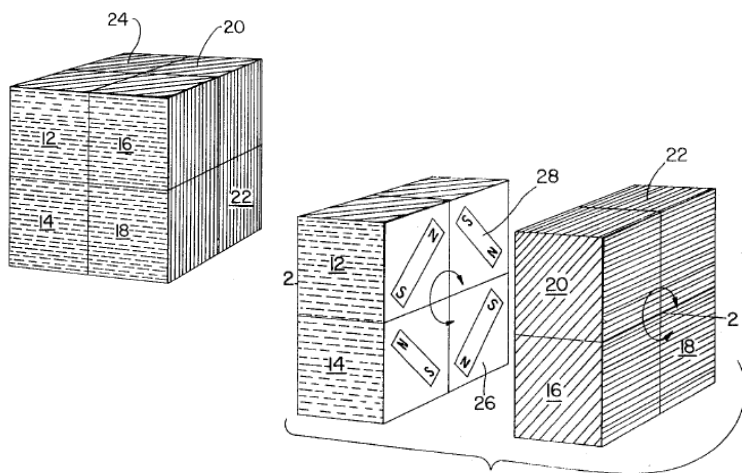
63. A method of treating at least one erased EEprom cell, comprising:

- a) accessing a number of control gates and accessing a bit line, thereby activating a number of memory cells, each of said memory cells having a source, a drain, and a control gate;
- b) subsequent to accessing said bit line, sensing the presence of at least one activated cell from said number of memory cells that is erased to a state other than one of at least two data states; and
- c) subsequent to sensing the presence of said erased cell, applying a first voltage to said bit line, a second voltage to said control gate of at least said erased cell, and a third voltage to said source of at least said erased cell, said first and second voltages being higher than said third voltage.

実はSpecific exclusionが広められた前の判例

“Moleculon counters that using the **transitional phrase** “which **comprises**” not only **opens** the claim to **additional steps**, but also opens the claim and its individual method steps to **additional structural elements**. ... The question before us is ... whether this step which recites engaging “eight cube pieces as a composite cube” reads on a step which engages more than eight cube pieces as in the 3x3x3 Rubik’s Cube or the 4x4x4 Rubik’s Revenge. ... While a **transitional term** such as “**comprising**” or, as in the present case, “which **comprises**,” does not exclude **additional unrecited elements, or steps (in the case of a method claim)**, we conclude that the **transitional phrase** does not, in the present case, affect the scope of the **particular structure recited within the method claim’s step.**”

—*Moleculon Research v. CBS* (CAFC 1986; emphasis added)

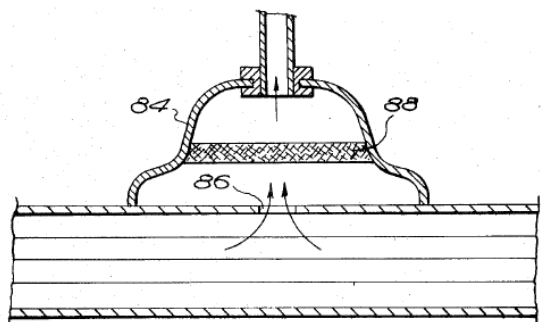


米特許第3,655,201号の第3請求項中、争点となった部分：

3. A method ... which **comprises** ... rotating a first set of cube pieces comprising four cubes about a first axis

「Comprising」を移行語にだけでなく、請求項本文中のあらゆる要素を紹介する毎に使われていれば、侵害有りだったでしょうか？

請求項にある単数個がイ号にある複数個を除外する 判例1



“[N]othing in the text of claim 1 suggests the use of more than one cup. Specifically, claim 1 refers to ‘a cup’ and ‘the cup’ repeatedly, suggesting that only one cup is involved. Indeed, rather than describing the process in terms of more than one cup, claim 1 specifically describes using the same cup repeatedly. ... Insituform also argues ... that ‘adding something to an infringement [i.e., more than one cup] does not avoid infringement.’ ...”

—*Insituform Technologies v. Cat Contracting* (“*Insituform I*”) (CAFC 1996; emphasis added)

米特許第4,366,012号の第1請求項中、争点となった部分：

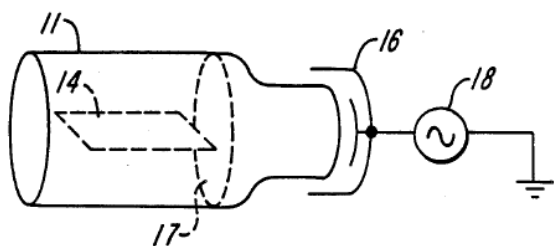
1. A method of impregnating with a curable resin an inner layer of resin absorbent material disposed in an elongate flexible tube having an outer layer formed by an impremeable [sic] film, the method comprising the steps of ...
 - (3) drawing through the window a vacuum in the interior of the tube downstream of said one end by disposing over the window a cup connected by a flexible hose to a vacuum source which cup prevents ingress of air into the interior of the tube while the tube is being evacuated, the outer layer of the tube being substantially impermeable to air,

...
 - (5) when the resin reaches the vicinity of the region of vacuum application, removing the cup and sealing the window,

請求項にある単数個がイ号にある複数個を除外する 判例2

“Of particular relevance for the claim dispute before this court, the article ‘a’ suggests a single chamber. ... Repeatedly the claim refers to ‘said chamber’ as it describes various portions of the apparatus. This term itself, ‘said chamber,’ reinforces the singular nature of the chamber. The claim does not place the sterilization zone vaguely within ‘a chamber,’ but within ‘said chamber.’ This language clarifies that only one chamber is in question.”

—*Abtox v Exitron* (CAFC 1997; emphasis added)



米特許第4,931,261号の第3請求項中、争点となった部分：

3. ... [a]pparatus for sterilization of medical devices and materials in a gas plasma **comprising**,
 (a) **a** metallic gas-confining **chamber** ... ;
 (b) ... into **said chamber** ..., and
 (c) ... within **said chamber volume** ... , and including ... within **said chamber** and ... the internal volume of **said chamber**

冠詞「**a**」を使ったのみならず、「**said**」とまで言ってしまったことを理由に、複数個を除外していると認定？！？！？！

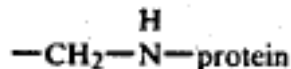
請求項にある単数個がイ号にある複数個を除外する 判例3

“Claim 11 specifically refers to ‘a terminal portion’; it does not refer to ‘any terminal portion’ or to ‘all terminal portions.’ While it is generally accepted in patent parlance that ‘a’ can mean one or more, see Robert C. Faber, Landis on Mechanics of Patent Claim Drafting 531 (3d ed. 1990) (‘In a claim, the indefinite article A or AN connotes “one or more.” ’), there is no indication in the patent specification that the inventors here intended it to have other than its normal singular meaning. ... We therefore conclude that ‘linkage to a terminal portion’ includes linkage only to ‘a terminal portion’ at one end of the polysaccharide. ... End-to-end crosslinking, consisting of protein linkages at both terminal portions of a polysaccharide, is inconsistent with the clear meaning of the expression ‘a terminal portion.’ Thus, end-to-end crosslinking is ... excluded from the claims.”

—*North American Vaccine v. American Cyanamid* (CAFC 1993; emphasis added)

米特許第4,356,170号の第11 請求項中、争点となった部分：

11. An antigenic-polysaccharide:protein conjugate wherein the polysaccharide and protein are covalently linked through a



linkage to a terminal portion of the polysaccharide without significant cross-linking, said antigenic polysaccharide having a MW above about 2000.

おまけ (specific exclusionと違いますが...) 化学分野によく使われる「レシピ・クレーム」 が非常に厳しく解釈された判例

“Under the court's new law, **table salt dissolved in water will not be an adequate description** of the composition for infringement purposes, since the sodium chloride molecule no longer ‘exists’: in dissolution the sodium and chloride ions will have broken their bonds to each other, in interaction with molecules of water.”

—Dissent by Judge Newman in *Exxon v. Lubrizol* (CAFC 1996; **bolding** added)

Exxon社の米特許第4,867,890号の第1請求項は長く「レシピ式」に書かれている:

1. A lubricating oil composition suitable as a crankcase lubricant in internal combustion engines comprising:

A. a major amount of lubricating oil;

B. a dispersing amount of lubricating oil dispersant selected from the group consisting of:

(1) ashless nitrogen or ester containing dispersant compounds selected from the group consisting of:

(a) oil soluble salts, amides, imides, oxazolines, esters, and mixtures thereof, of long chain hydrocarbon substituted mono- and dicarboxylic acids or their anhydrides;

(b) long chain aliphatic hydrocarbons having a polyamine attached directly thereto; and

(c) Mannich condensation products formed by condensing about a molar proportion of long chain hydrocarbon substituted phenol with from about 1 to 2.5 moles of formaldehyde and from about 0.5 to 2 moles of polyalkylene polyamine; wherein said long chain hydrocarbon group is a polymer of a C.sub.2 to C.sub.5 monoolefin, said polymer having a molecular weight of from about 700 to about 5000;

(2) nitrogen or ester containing polymeric viscosity index improver dispersants which are selected from the group consisting of:

(a) polymers comprised of C.sub.4 to C.sub.24 unsaturated esters of vinyl alcohol or of C.sub.3 to C.sub.10 unsaturated mono- or dicarboxylic acid with unsaturated nitrogen containing monomers having 4 to 20 carbons,

(b) copolymers of C.sub.2 to C.sub.20 olefin with C.sub.3 to C.sub.10 mono- or dicarboxylic acid neutralized with amine, hydroxy amine or alcohols, and

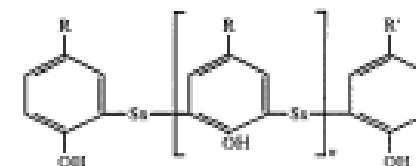
(c) polymers of ethylene with a C.sub.3 to C.sub.20 olefin further reacted either by grafting C.sub.4 to C.sub.20 unsaturated nitrogen containing monomers thereon or by grafting an unsaturated acid onto the polymer backbone and then reacting said carboxylic acid groups with amine, hydroxy amine or alcohol; and

(3) mixtures of (1) and (2); wherein when said lubricating oil dispersant (1) is present, then said dispersing amount of (1) is about 1 to 10 wt. %, and when said lubricating oil dispersant (2) is present, then said dispersing amount of (2) is from about 0.3 to 10 wt. %;

C. from about 0.01 to 5.0 parts by weight of oil soluble zinc dihydrocarbyl dithiophosphate wherein the hydrocarbyl groups contain from 1 to 18 carbon atoms;

D. an antioxidant effective amount, within the range of from about 5 to about 500 parts per million by weight, of added copper in the form of an oil soluble copper compound; and

E. a lubricating oil detergent additive which comprises at least one magnesium or calcium salt of a material selected from the group consisting of sulfonic acids, alkyl phenols, sulfurized alkyl phenols, alkyl salicylates and naphthenates, wherein said parts by weight are based upon 100 parts by weight of said lubricating composition and said weight % is based on the weight of said lubricating composition.



しかし、組成物の成分を記載するとき、エンジンなど使用中の状態が分かりづらく、原材料で特定することが一般的のでは？



PREPARATION & PROSECUTION OF U.S. PATENT APPLICATIONS
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米国向け請求項作成ワークショップ

～ 名詞の数、先行詞、冠詞～

米国弁理士 (姓) ピーターズ (名) ジェリー (Gerald T Peters)

関西特許研究会 (KTK) 明治安田生命大阪梅田ビル 25階

25 September 2015

MODEL US CLAIM FORMAT

7:43

- Preamble (前文)
Short. Title of invention is often enough. Maybe brief field of art to which invention pertains.
- Transition (移行語)
Usually “comprising”. Why take chances on untested language?
- Body (本文)
Introduce elements. State interrelationship between elements.

KISS* & “Clean” Claims Make Life Easier! ^{7:45}

A table comprising:

a platform; and

a leg;

wherein the leg is attached to the platform in perpendicular fashion with respect thereto.


A table comprising:

a platform;

a leg; and

a second platform;

wherein



どう思いますか？

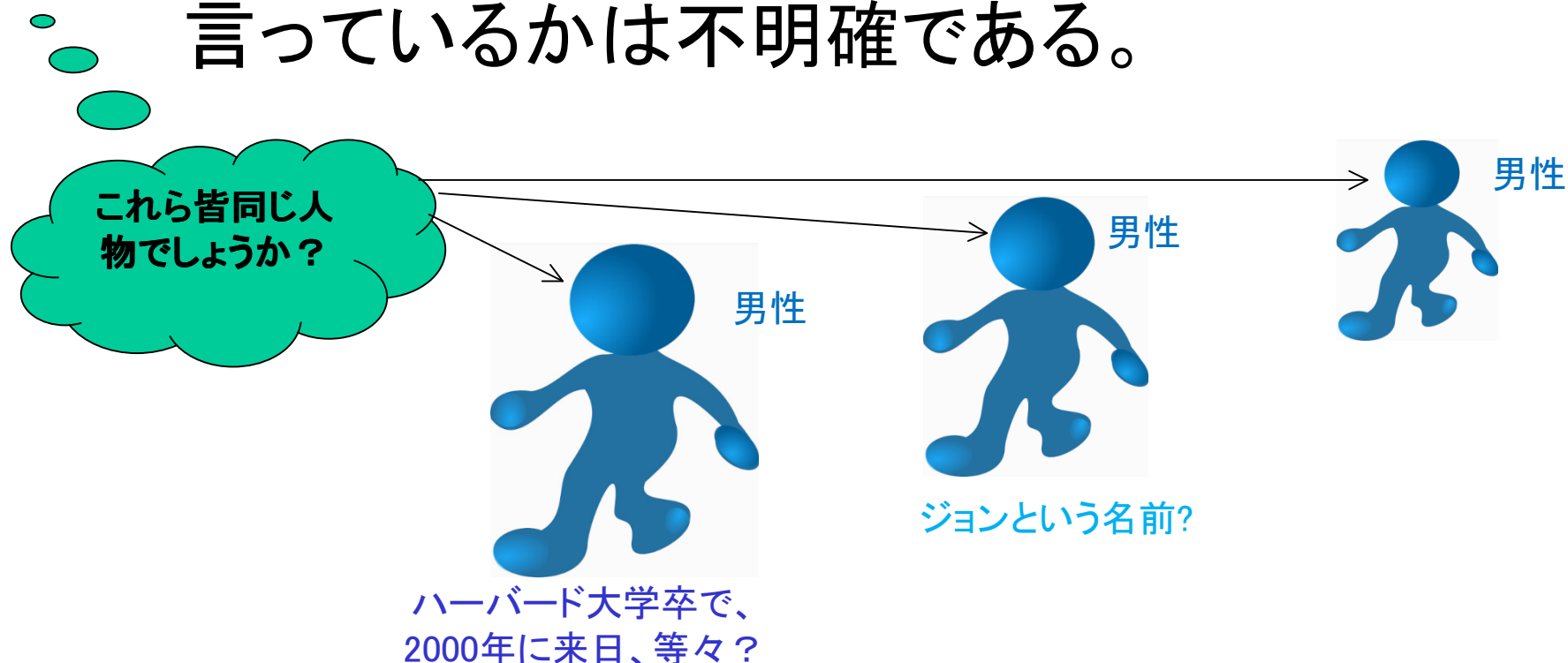
* KISS = 「Keep It Simple, Stupid」或いは「Keep It Simple, Silly」の略です。

人を紹介する場合に例えて考えよう

- ❖ 最初に例えば「**男性**」として紹介して
- ❖ 後に「**ジョンという名前の男性**」のように、上記紹介した者と区別付けて別の者を紹介しているようなとき*
- ❖ 「**ジョンという名前の男性**」も上記に紹介した「**男性**」の枠に入り得る場合
- ❖ 不明確とされる可能性があることが、よく米国にある現象です！

* ところで逆の場合はどうなる？即ち、最初に狭義で紹介し、後で広義が出て来る場合。

つまり、最初に「男性」として紹介して、後に「ジョンという名前の男性」のように上記紹介した者の枠に入り得る（入らないと言いきれない）者を言及すると、今回言っている「ジョンという名前」が、上記紹介した人物に更なる説明を付けているか、上記紹介した人物と区別を付けるために言っているかは不明確である。



間接的な紹介とはどういうこと？

...操作を行うユーザ*が使うシステムにおいて

...

サーバは、暗号を生成するための暗号生成用ユーザ識別子を、ユーザ毎*に関連付けて保存しておく記憶部を備え

...

前記サーバが発行した前記暗号生成用ユーザ識別子...

* ついでに、紫色文字に書かれている要素の数について、間接紹介と同様な問題になっており、ということが問題かは分かるでしょうか？

ANTECEDENCE

7:55

- Avoid indirect introduction of elements.
- Two strategies regarding number:
 - Traditional: a _____ → the _____
 - Modern: at least one _____ → the at least one _____
- At every noun, ask whether has been previously introduced (in current claim or in any claim from which current claim depends). If yes, then must say “the _____”.
- Therefore, where want to reserve possibility that new element is different from old element, new element must have unique name to distinguish from old element (like username or user ID).

ANTECEDENCE (cont.)

7:58

- Powerful but simple approach is to say:
 - “a first _____”
 - “a second _____”
 - “a third _____”
 - ...
- Can fine-tune by saying “a second _____ ,
different from the first _____,” to distinguish from
the case where the same element acts as both the
first _____ and the second _____.
- Can further fine-tune by claim differentiation.

ANTECEDENCE (cont.)

8:00

Common problems with claims sets originating in Japan:

- **No positive recitation of elements.**
Cure by using clean subparagraph format.
- **Indirect introduction of claim elements.**
(Same as above)
- **Ambiguous antecedence**
Cure by KISS* and consistent use of unique user-friendly element names. Element name should be short and sweet.
- **Inconsistent noun number and articles**
Cure by choosing traditional or modern approach (see slide 27) and using consistently.

* KISS = 「Keep It Simple, Stupid」或いは「Keep It Simple, Silly」の略です。

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ANTECEDENCE (cont.)

8:03

- Avoid indirect recitation. Positively recite elements.
- Give each element a *unique* name and use that name consistently.
- Introduce element first, before optionally describing what it is, what it does, or its relationship to other elements
- Divide body into two sections:
 - (1) Element list: *naming/introduction* (“comprising ...”)
 - (2) Wherein clauses: *subsequent recitations that add further limitations* (“wherein ...”).
- Skillfully handle similarly named elements (e.g., say “a first _____”, “a second _____”, etc.).
Anticipate confusion due to dependent claims.

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PRACTICAL EXAMPLES

8:05

- claim 1 (独立請求項)
 - ...高周波数帯域の信号を生成する信号生成装置と...を含む...
 - ... comprising ... a signal generating unit that generates a signal in a high-frequency band
- claim 3 (従属請求項)
 - 前記信号生成装置は、10 MHzより高い周波数の信号を生成することを特徴とする...
 - ... wherein the signal generated by the signal generating unit has a frequency that is greater than 10 MHz

- **【請求項1】(独立請求項)**

...熱媒体が冷却される第1熱交換器と、該第1熱交換器から導出された熱媒体が第1圧縮手段に導かれる流路と、を含む装置。

1. An apparatus comprising:

...

a first heat exchanger for cooling a heat transfer medium; and

a first flow passageway for guiding the heat transfer medium from the first heat exchanger to a first compression device.

- **【請求項2】(従属請求項)**

第1圧縮手段から導出されたガスが前記第1熱交換器に導かれる流路を更に含む請求項1記載の装置。

2. The apparatus according to claim 1 further comprising a second flow passageway for guiding a first gas from the first compression device to the first heat exchanger.

MORE PRACTICAL EXAMPLES (cont.) 8:10

- **【請求項3】(従属請求項)**

第2熱交換器から導出された熱媒体が膨張手段に導かれる流路を更に含む請求項2記載の装置。

3. The apparatus according to claim 2 further comprising a third flow passageway for guiding the heat transfer medium from a second heat exchanger to an expansion device.

- **【請求項4】(従属請求項)**

ガスが前記第1熱交換器に導かれる流路を更に含む請求項3記載の装置。

4. The apparatus according to claim 3 further comprising a fourth flow passageway for guiding a second gas to the first heat exchanger.

翻訳リスクを減らす対策

1. **忠実訳**に拘束される**ルートを使わず**、不正行為を避けながら**翻訳・編集作業**で問題をキャッチして修正する
2. **保険策**
 - a) **図面**（百聞は一見にしかず）
 - b) **incorporation by reference**（助けか邪魔か両説があるが）
 - c) **請求項内容**を本文で**やさしい言葉**に書き換える
 - d) **明細書中**に少なくとも**実施形態冒頭**で「(s)」等を使う。
3. **翻訳作業を兼ねて編集のメリット**も検討
 - a) **翻訳者からフィードバック**を求める
 - b) **タイプミス**などをキャッチ
 - c) **全文を対象とする面倒な訳文チェック**を無くすには、**信用できる翻訳者**を使い、**編集を込めた翻訳**をしてもらう