



SMOKING GUNS

Looking for evidence and overcoming hurdles in legal document review and translation

June 18, 2013 / Presenter: Gail Tanaka Burns

OVERVIEW OF THE DISCOVERY PROCESS

- × What is discovery?
- × How long does it take?
- × What types of cases does it involve?

DISCOVERY: THEN AND NOW

- × From manual to digital
- × Databases
- × e-discovery

DISCOVERY: FROM MANUAL TO DIGITAL



AUDIENCE QUESTION

- ✘ Please select the most appropriate answer from the choices below.
 - a. I conduct document review as a part of my translation work
 - b. I currently do not conduct document review but would like to take on such work

FUNDAMENTALS OF DOCUMENT REVIEW

- ✘ Obtain a broad picture of what the case involves
- ✘ Know what the expectation is
- ✘ Protective Orders/Retainers
- ✘ Obtain information on the technology
- ✘ Get training on the database or document review platform

FUNDAMENTALS OF DOCUMENT REVIEW (2)

- ✘ What will the case involve?
 - + What type of case is it?
 - + Who are the parties in the lawsuit?
 - + What is the timeline?
 - + Who are your key contacts?

FUNDAMENTALS OF DOCUMENT REVIEW (3)

- ✘ What is the expectation?
 - + Where will the document review take place?
 - + Will the review be conducted as a team?
 - + How many hours will you be expected to work per day/week?
 - + How will you get support?

FUNDAMENTALS OF DOCUMENT REVIEW (4)

- ✘ Protective Orders
- ✘ Retainers
- ✘ Agreements
- ✘ Conflicts check

PROTECTIVE ORDERS

**IN THE UNITED STATES DISTRICT COURT
FOR (NAME OF STATE JURISDICTION)**

Plaintiff, _____
vs. _____
CIV. ACTION NO. _____
Defendant.

STIPULATED PROTECTIVE ORDER

On this day the Plaintiff, _____, by counsel represented the following
WHEREAS, Plaintiff will prepare certain discovery requests to _____ seeking
information which the complaint consider to be proprietary, confidential business records, and/or trade
secrets.

WHEREAS, _____ has expressed a willingness to provide the proprietary information,
confidential business records and/or trade secrets ("Confidential documents and information") which would be
necessarily disclosed in complying with future discovery requests, provided that the Court enter an
appropriate protective order, and

WHEREAS, the Parties have agreed to the:

IT IS, THEREFORE, ORDERED AND ADVISED that the following procedure shall govern the
production, use and disposal of the confidential documents and information.

[Put in in and so forth]

EXHIBIT A

STATE OF _____ §
COUNTY OF _____ §
_____, being duly sworn, states that he or she resides at
_____, County of _____, State of _____
_____, that he or she has read and fully understands the
attached Stipulated Protective Order and agrees to comply with and be bound by the
provisions of said Stipulated Protective Order, and submits to the jurisdiction of this Court
for any proceedings with respect to said Order; that he or she will not discuss with or
divulge to persons other than those specifically authorized by this Stipulated Protective
Order, and shall not copy or use, except solely for the purposes of this action and for no
other purposes, any documents, materials or information obtained pursuant to said
Stipulated Protective Order except as expressly permitted by the Court. I will return all
confidential documents or information to counsel for _____ or to the
attorney from whom I received it at the conclusion of this action, and any obligations
concerning the confidentiality of the information and documents I receive will continue
even after the termination of this action.

_____ Affiant
SUBSCRIBED AND SWORN TO BEFORE ME, this _____ day of _____, 20____.

Notary Public

RETAINERS/AGREEMENTS

TRANSLATION SERVICES AGREEMENT

By this Translation Services Agreement ("Agreement"), [Client's Name] retains [Translator's Name] ("you")
as a translator for [Case Name] [Case No.]. [Client Name] understands that you have not performed any work for the
opposing party[ies], and that you have therefore not been privy to any confidential information belonging to the opposing
parties or their affiliates. You have agreed to provide translation and translation-related consultation services to us, as we
may request and direct and as you consent to during the course of this litigation. Your work may include summarizing
translations of applicable foreign language documents and you may be called to testify as a deposition, and, if necessary, at
trial.

As part of your retention as translator, [Client's Name] shall compensate you at your current
translation/consultation rate for services provided, including reimbursable costs and expenses that are submitted and
approved in connection with this matter.
[State document translation rate and hourly consultation rate.] [State any other stipulation, such as rates for rush translation
work or overtime consultation pay, etc.] We will expect billing to occur monthly.

Your consultations with [Client's Name] and others at their direction, expect for those matters made public as
a part of court proceedings, are to remain confidential and protected by attorney work product privilege. You will maintain
as confidential and not disclose (without prior written authorization) any confidential aspect of your translation and
consulting work on behalf of [Plaintiff] [Client], either during the course of or after the conclusion of the above-referenced
litigation. This Agreement, however, shall not restrict you from disclosing any information that (1) is known to you at the
time of disclosure, (2) has become publically known through no wrongful act of you, or (3) has been rightfully received by
you from a third party.

[So on and so forth]

Date: _____
[Translator's Counselor's signature]

Date: _____
[Client's signature]

FUNDAMENTALS OF DOCUMENT REVIEW (5)

- ✕ Obtain information on the technology
 - + Reference material
 - + Technical advice
 - + Taking notes
 - + Meetings
 - + Search engines

FUNDAMENTALS OF DOCUMENT REVIEW (6)

- ✘ Get training on the database or document review platform
 - + IT staff, helpdesk
 - + Foreign language support (fonts)
 - + Creating/searching folders
 - + Cheat sheets

EXAMPLE OF A CHEAT SHEET

CHEAT SHEET

Cheat sheet for [Name of person that will use the cheat sheet]

The case is [Name of the case taken from the Protective Order]

The technology in question is:

Describe the technology (use an applicable claim from a related patent or write down the explanation given by the Technical Advisor or knowledgeable attorney)

Types of documents that may be especially useful:

Agreements/Contracts (契約/協定)

Who are the parties of the agreement?
What is the date?
What is the term (from what date to what date)?
What documents are being disclosed?
Is there an indemnity clause (in other words, is one party holding the other party responsible for any damages caused by patent infringement)?

Specifications (仕様書)

Any sections that talk about (key elements of the technology)

Engineers' Notes (記録, 説明書)

List what key elements the engineers may be discussing or writing about in their notes

Meeting Notes

Meeting that talks about product development.
Meetings to discuss the technology in question
Meetings that talk about technology transfer.

Emails

Same as meeting notes

THE LINGUISTS ROLE IN LEGAL DOCUMENT REVIEW

- ✘ Bridge between cultures
- ✘ Educate the client
- ✘ Communicate with your client
- ✘ Create glossaries/cheat sheets/conversion charts
- ✘ Always be neutral

BRIDGE BETWEEN CULTURES

- ✘ Cultural specific information
 - + Tendencies
 - + Norms/standards
 - + Behavior

EDUCATE THE CLIENT/COMMUNICATION

- ✘ Realistic schedules
- ✘ Meetings
- ✘ Follow-up
- ✘ Corporate/law firm culture
- ✘ Contact person/backup
- ✘ Machine translation

CREATING GLOSSARIES/CHEAT SHEETS/CONVERSION CHARTS

- ✘ Terminology glossaries
- ✘ Acronyms
- ✘ Names
- ✘ Key word sheets
- ✘ Conversions

EXAMPLE OF AN ACRONYM GLOSSARY

GLOSSARY OF ACRONYMS	
FAACS	Automated Access Control System
ACK	Acknowledgment
API	Application Programming Interface
ARIB	Association of Radio Industries and Businesses
ATAP	Address Translation Protocol
ATAPI	ATA Parallel Interface (local computer interface used in CD-ROM drives)
ATAAC	Address Translation Access Code
BCC	Binary Code Decoding (digital encoding method)
CCITT	Consultative Committee
CFI	Compact Flash Interface
CRSI	Cross-Interface Read Station Code
CLV	Constant Linear Velocity
CPM	Control Protocol for Removable Media
CS	Control Signal
DAC	Digital to Analog Converter
DDP/FDDM	Dual Data Rate Synchronous Dynamic Random Access Memory
DDP/SD	Demultiplexer
DET	Device Enable Trigger, Digital Event Timer
DLV	Disk Layer Zero
DNA	Digital Video Network Alliance
DNS	Domain Name System
DOM	Domain
DSM	Digital Rights Management
DSP	Digital Signal Processing
DTPP	Digital Photo Protection
DVD	Digital Versatile Disc
ECC	Error Correction Code
EED	Electronic Data Interchange
EPP/PPCM	Electrically Erasable Programmable Read-only Memory
EIP	Executable and Linkable Format
EIPM	Executable Image Processor
EMMS	Embedded Multimedia Accelerator
EMS	Emergency Management Service
ENS	Electronic Signatures
EULA	End User License Agreement
FCC	Federal Communications Commission
FE	Focus error
FIE	Focused Beam
FIL	Film Load Detector
FRGA	Fast programmable Gate Array (fpga)
FS	Filesystem

ALWAYS BE NEUTRAL

- ✘ Only quote what is on the paper, nothing more and nothing less

FINDING THE EVIDENCE

- ✘ Bates Numbers
- ✘ Summary format
- ✘ Start broad and narrow down
- ✘ Document types
- ✘ Consider the source
- ✘ Look for patterns
- ✘ Create a timeline

AUDIENCE QUESTION

- ✘ What types of obstacles or challenges do you face when reviewing documents?
 - a. Language specific (word order, lack of subject, gender, acronym usage, plural vs. singular, colloquialisms, slang)
 - b. Communication with client or contact person
 - c. Deadlines (time restraints) or client expectations
 - d. Document-related problems (illegible text, poorly written document, poor quality copy)
 - e. Lack of knowledge in the subject matter

OVERCOMING HURDLES IN DOCUMENT REVIEW

- ✘ Volume and time
- ✘ Communication
- ✘ Language-related
- ✘ Document-related
- ✘ Technology

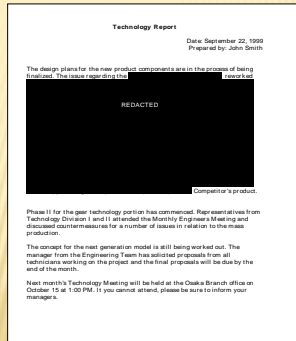
FINDING THE EVIDENCE, CONT

- ✘ Be patient and tenacious

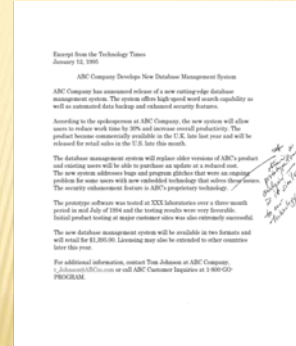
THE SMOKING GUNS

- ✘ Hidden pages/omitted pages/redactions
- ✘ Handwritten text
- ✘ E-mails
- ✘ Patents
- ✘ Preformatted documents
- ✘ Perspective

REDACTIONS



HANDWRITTEN TEXT



E-MAILS

From: Taro Suzuki [mailto:t.suzuki@MCCorp.com]
 Sent: Monday, December 16, 2008 10:57 AM
 To: Maki Takai [mailto:M.Takai@MCCorp.com], Takashi Takai [mailto:T.Takai@MCCorp.com], Susumu Ohno [mailto:S.Ohno@MCCorp.com]

The pricing strategy for the car accident has not been finalized. I would like to arrange a meeting with KYZ Company and CCC Company to discuss pricing issues with them so that we can reach a final decision.

Please arrange your schedule so that we can meet on either one of the following dates:
 Thursday, December 18, 2008 at 1:00 PM
 Friday, December 19, 2008 at 10:00 AM
 Friday, December 19, 2008 at 4:00 PM

Please reply and let me know what date works.

Best,
 _____ On Tue Dec 09 2008 02:38:56, Takashi Takai wrote:
 Takai,
 _____ On Mon Dec 08 2008 at 06:10:00, Yamauchi wrote:
 Takai,
 _____ On Mon Dec 08 2008 at 06:10:00, Yamauchi wrote:
 Thank you very much for agreeing to meet with me last week. I have our discussion with very productive. I am glad to enter the competitor pricing for that week.
 \$500 discount for Takai
 This report will be written and we are currently preparing to ship 1000 units each from that report to Takai.

Please let me know if you have any questions or need any clarification.
 It is important that we meet with KYZ Company and CCC Company so that we can be on the same page in terms of our pricing strategy.
 Can you contact the pertinent personnel at these two companies to arrange a meeting?
 I would also like to be in attendance and I will come prepared with a competitor analysis.
 Thank you in advance for your assistance.

Yamauchi

 Original Message
 From: Maki Takai [mailto:M.Takai@MCCorp.com]
 Sent: Monday, December 15, 2008 10:57 AM
 To: Taro Suzuki [mailto:t.suzuki@MCCorp.com], Takashi Takai [mailto:T.Takai@MCCorp.com], Susumu Ohno [mailto:S.Ohno@MCCorp.com]

Hi, Takai,
 I hope it is well with you.

I have completed the original research that you requested.
 Attached is an overview of the competitor pricing for 2008. Please treat this information as sensitive information.
 I will follow up with you early next week to see if you need anything else.
 Best regards,
 Yamauchi

MessageID:12/15/2008 09:48:00 AM
 From: Maki Takai [mailto:M.Takai@MCCorp.com]
 To: Taro Suzuki [mailto:t.suzuki@MCCorp.com], Takashi Takai [mailto:T.Takai@MCCorp.com], Susumu Ohno [mailto:S.Ohno@MCCorp.com]

PATENTS

Patent Application No. 2008-150000

Application No. 2008-150000

Applicant: Maki Takai

Inventor: Maki Takai

Priority Date: 2008-10-01

IPC Class: B60D 1/00

Abstract: A method for controlling a vehicle's steering system...

Claims: 1. A method for controlling a vehicle's steering system...

Background: The present invention relates to a method for controlling a vehicle's steering system...

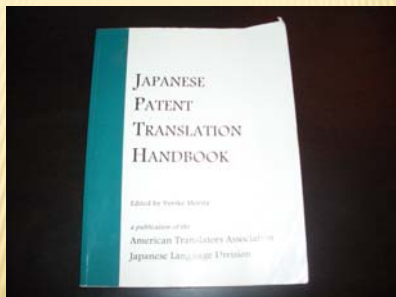
Drawings: The drawings show a schematic diagram of a steering system and a flowchart of the control method.

References: The following references are cited in the present invention:

Summary: The present invention provides a method for controlling a vehicle's steering system...

Conclusion: The present invention is described above.

PATENT HANDBOOK



PATENT BLOG

www.patenttranslations.wordpress.com

QUALIFIERS

The Plural form of Foreign Borrowed Words ("Katakana")

ENGLISH	JAPANESE
Title → Titles	タイトル → タイトル
Program → Programs	プログラム → プログラム

複 (fuku) = duplicate
数 (suu) = number

The Plural form of Nouns/Pronouns

ENGLISH	JAPANESE
Child → Children	子供 → 子供達
He → They	彼 → 彼等

A suffix such as ら (ra) or たち (tachi) is added.

両親 (Ryo-shin) = Parents
両 (ryo) = Both / 親 (shin or oya) = parent

EXAMPLE OF A PREFORMATTED DOCUMENT

File Number _____

ABC Company

研究報告書 / 技術報告書	
Research Report / Business Tech Report	
品名	
Subject	
品目	
Product Type	
品名	
Date	
品名	
Date of Report	
担当者	
Person in charge	
報告者	
Report written by	
目的	
Purpose	
概要 (課題と今後の予定)	
Summary (Issue and Action Items)	
キーワード	
Keywords	
技術的種類	
Type of Technological Concept	
部署	
Department	
件数	
Number of apps.	
承認	
Approved	
署名	
Signature	

SUMMARY

- ✘ Be inquisitive
- ✘ Know the red flags
- ✘ Remain neutral and be persistent
