

33-03 P U D T**Procedure for Handling a Situation Where a Person Is not
Appearing on the Designated Date**

1. Those who appear in court

(1) Those who may appear in oral proceedings are a party concerned (a representative for corporation), an agent, an intervener and an interpreter.

An example of an agent is shown below.

A. A patent attorney, a lawyer, a designated agent, etc. who has already taken procedures to become an agent before the JPO.

B. A patent attorney or a lawyer who brings a power of attorney

That's all for the desired appearance. When a party concerned clarifies unavoidable circumstances and a chief administrative judge admits such circumstances, an employee, etc. of said party concerned who brings a power of attorney is also accepted. This corresponds to an inventor who explains highly specialized technical matters, for example.

(2) In a case where a person who appears in court does not show a power of attorney and desires to appear in oral proceedings, when a chief administrative judge admits it is appropriate the appearance, the proceedings are conducted upon asking the other party's opinion and a power of attorney shall be submitted later. If there is no submission of a power of attorney, the statement made in court becomes invalid, thus such circumstances shall be clarified in a trial record.

(3) A person who may not become an appearance, he/she is considered as an audience.

The staff of a patent firm who do not have a qualification of a patent attorney, etc. may not be an appearance.

An employee who belongs to a corporation different from a corporation of a party concerned may not be an appearance.

2. When Not Appearing on the Designated Date

A person who is summoned to the JPO fails to appear without any legitimate reasons, he/she is subject to punishment by fines not exceeding of 100,000 yen (the Patent Act Article 203, the Utility Model Act Article 63, the Design Act Article 76, the Trademark Act Article 84).

3. When Both Parties Not Appearing on the Day of Oral Proceedings

When both parties do not appear on the day of oral proceedings, the oral proceedings may not be conducted substantially. In that case,

(1) When an examination of witness is not scheduled on the same date of oral proceedings, only a trial record of oral proceedings (→ 33-04) is prepared describing the fact that both parties are not appearing.

(2) When an examination of witness is scheduled on the same date of oral proceedings,

A. if a witness does not appear in court, apply the above (1).

B. if a witness appears in court, only an examination of witness may be conducted (the Patent Act Article 151, the Utility Model Act Article 41, the Design Act Article 52, the Trademark Act Articles 56(1), 68(4), Code of Civil Procedure Article 183). In this case, a chief administrative judge examines a witness mainly based on a document describing the examination matters submitted by a person who requests an examination of witness. As a result, a trial record of oral proceedings describing the fact that both parties did not appear in oral proceedings and an examination record of witness both are prepared.

4. When One of the Parties Not Appearing on the Date of Oral Proceedings

When one of the parties is not appearing on the date of oral proceedings, the oral proceedings is conducted in principle.

(1) When an examination of witness is not scheduled on the same date of oral proceedings, only a trial record of oral proceeding is prepared.

(2) When an examination of witness is scheduled on the same date of oral proceedings,

A. if a witness does not appear in court, apply the above 3. (1).

B. if a witness appears in court, an examination of witness may be also conducted (the Patent Act Article 151, the Utility Model Act Article 41, the Design Act Article 52, the Trademark Act Articles 56(1), 68(4), Code of Civil Procedure Article 183). As a result, a trial record of oral proceedings and an examination record of witness are both prepared.

In an examination of witness,

(A) When a party concerned on the side of requesting an examination of witness appears in court, such a party concerned mainly examines the witness.

(B) When a party concerned on the side of requesting an examination of witness does not appear in court, but the other party appears in court, an examination of witness is conducted in a similar manner of the above 3. (2) B. However, the other party is obviously given an opportunity of a cross-examination.

(Revised October 2015)