

35-02 P U D T**Guidelines for Trial Records of Examination of Evidence**

1. Trial records of examination of evidence are prepared by a trial clerk similar to trial records of oral proceedings (Patent Act Article 151 → Patent Act Article 147(1), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

Matters to be described in the trial records of examination of evidence (Enforcement Regulations of the Patent Act Article 57-5, Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(5)(6)).

- (1) Trial number
- (2) Names of administrative judges and a trial clerk
- (3) Names of parties themselves, an agent, an intervenor, an interpreter, a witness, an expert those who appeared in court
- (4) Date/time and location of the examination of evidence
- (5) Open or close to the public of the examination of evidence. If it is not open, that effect and the reasons therefor
- (6) Summary of statements of a witness, parties themselves and an expert
- (7) Whether or not a witness, parties themselves and an expert swore under oath, and reasons for not having a witness and an expert swear under oath
- (8) Results of inspection
- (9) Matters to be described by order of a chief administrative judge or by request of a party concerned or an intervenor
- (10) Other necessary matters

2. A panel forms the conclusions by materials obtained by the results of

examination of evidence using a means of proof (→ 34-01), namely contents of testimony or statements, expert opinions, contents of evidential documents, results of inspection of evidence, therefore, the trial records of examination of evidence which includes those materials is an essential document.

3. Points to Be Considered

(1) A form of trial records of examination of evidence is as Form 1. The manner of preparation of the records is similar to trial records of oral proceedings (→ 33-04), and a means of proof such as a witness shall be clarified.

(2) A document, photography, recording tape, etc. (for example, CD-R, DVD-R), or any other objects that are found to be appropriate by an administrative judges (a panel) may be cited in trial records, and be attached to trial records as a part of said records (Enforcement Regulations of the Patent Act Article 57-7 → Article 56, Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(5)(6)).

(3) The original, transcript or extract of documents used for the comparison of handwriting or an impression of seal shall be attached to trial records for proving authenticity of creation of documents (Enforcement Regulations of the Patent Act Article 61-8(1), Patent Act Article 151 → Code of Civil Procedure Article 229(1), Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(5)(6)).

(4) When a statement of a witness, etc. is recorded in a recording tape, etc., this recording tape may be replaced with trial records of examination of evidence if it is permitted by a chief administrative judge (Enforcement Regulations of the Patent Act Article 57-6, Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of Design Act

Article 19(8), Enforcement Regulations of the Trademark Act Article 22(5)(6)). In this case, the recording tape becomes trial records about a statement part of the witness. A party concerned or an intervenor may state an opinion when it is permitted by a chief administrative judge.

A written statement of a witness, etc. shall be prepared when it is requested by a party concerned or an intervenor before a transcript of a trial decision is served (the statement is merely an explanatory material using as reference for understanding the contents of said recording tape).

When a demand for trial is withdrawn, however, it is not necessary to prepare this statement.

4. Trial records of examination of evidence varies in types such as trial records of witness, trial records of parties themselves, trial records of expert, trial records of inspection.

5. Trial Records of Witness

(1) Fill prescribed matters in the items of a witness's name and address in Form 1, oath of the witness and a notice of penalty for false testimony from a chief administrative judge (Patent Act Article 151 → Code of Civil Procedure Article 201(1), A part of Rules of Civil Procedure Article 112 and so on), and whether other witnesses to be examined are in trial court. When an interpreter is present in court, this effect shall be entered in the form. If taking a measure for protecting a witness (→ 35-01 11.(1)~(3)), the followings shall be also entered in the form.

A. Attendant (Patent Act Article 151 → Code of Civil Procedure Article 203-2, Enforcement Regulations of the Patent Act Article 58-15-2)

State that such an action is taken, and a name of the attendant and the relationship between the attendant and the witness.

B. Video conference system (Patent Act Article 151 → Code of Civil Procedure

Article 204, Enforcement Regulations of the Patent Act Article 58-16(1)(2), etc.)

State that such an action is taken, and a place where a witness has appeared.

C. Measure of shielding

State that such an action is taken.

(2) When an examination of witness is made by request, enter examinations (questions) made in order (→ 35-04) and summary of the testimony (statements) of the witness.

When there are active interactions for limitations of the chief administrative judge on unprepared questions of parties and an objection against the limitation, it is often preferable a questions-and-answer style.

(3) A trial clerk and prepares a “draft of trial records” following (1) and (2), and a chief administrative judge complements or summarizes the “draft of trial records” if necessary and provides it for the trial clerk for reference in preparing trial records.

(4) In trial records, a trial clerk affixes the name and seal and a chief administrative judge affixes a seal of approval (Enforcement Regulations of the Patent Act Article 55(2), Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(5)(6)).

When a chief administrative judge has difficulty affixing a seal of approval, an associate administrative judge shall affix a seal of approval while appending a supplementary note about the reason therefor. If both administrative judges have difficulty affixing a seal, a trial clerk includes the records to that effect (Enforcement Regulations of the Patent Act Article 55(3), Enforcement Regulations of the Utility Model Act Article 23(12), Enforcement Regulations of the Design Act Article 19(8), Enforcement Regulations of the Trademark Act Article 22(5)(6)).

(5) Documents attached with trial records are shown below.

A. Oath with signature of a witness

When a witness may not sign, a trial clerk signs on behalf of a witness with a reason therefor and a witness presses a finger seal thereon.

B. When a chief administrative judge finds it appropriate, a note with a signature of a witness may cite as a part of trial records.

6. Trial Records of Parties Themselves

This case is similar to the item 5. except the following points.

A party concerned who swears under oath makes false testimony, different from a case of trial records of a witness, there is no sanction of imprisonment (civil fine of JPY100,00 or less).

7. Regarding Inspection and Copy of Trial Records Prepared by Recording Tape, etc.

“Trial Records” are provided in duplicate of a recording tape or a video tape.

8. Trial Records of Inspection

(1) Descriptions of trial records of inspection conducted in trial court are the same as descriptions in the item 5. and the item 6. In addition to a purpose of the inspection, the processes and results of the inspection may be included.

A. A purpose of inspection should be specified.

B. Depending on a purpose of inspection, the inspection is sometimes easily understood visually, and even in that case, do not omit necessary descriptions.

(2) Trial records of inspection of the scene shall include, besides (1), a place for inspection and an object for inspection, and shall require attached drawings to illustrate the object for inspection in principle. This is based on the request that an object of inspection should be identified objectively.

(3) Parties usually attend for inspection. In this case, it is requested opinions

or statements of both parties on the object of inspection, and a chief administrative judge inspects the object of inspection with other administrative judges, and they confirm the results.

When a chief administrative judge asks a question supplementary, since the question is asked to persons present on the scene, their address and name shall be described in the trial records.

(4) When there is a request of a witness in court (a witness on the scene) to explain an object of inspection, or a witness is examined ex officio, these procedures are processed according to the item 5.

(5) A result of the inspection shall include matters recognized and confirmed by a chief administrative judge based on the results of implementation of the inspection. when it is deemed necessary, a starting point, a direction, etc. are also included in the trial records in case of time, weather, a sketch, a photography, or a distance relationship, etc.

For a result of inspection, it is considered that a conclusion of a fact that can be immediately inferred from the inspection may be included.

(Revised December 2020)

Form 1

The First Trial Records of Examination of Evidence	
Trial No.	Invalidation No. 20XXX-800XXX
Date	
Place and	
Public Availability	Open to the public at Trial Court of JPO
Chief Administrative Judge	Mr. (Ms.)
Administrative Judge	Mr. (Ms.)
Administrative Judge	Mr. (Ms.)
Trial Clerk	Mr. (Ms.)
Parties, etc. Appeared in Court	Agent for Demandant Patent Attorney
	Agent for Demande Patent Attorney
	Witness
Evidence	As described below in the records Trial Records of Witness
Identification of Witness	
Name	
Address	
Occupation	
<p>A chief administrative judge explains the purport of oath and notifies the punishment if a witness makes false testimony, and has a witness read a written oath and make an oath.</p>	
Summary of Statement	
Agent of Demandant	
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Chief Administrative Judge	Administrative Judge of JPO XXXX
	Trial Clerk YYYY

(Revised June 2019)