

35-03 P U D T**Commission for Examination of Evidence by Questioning**

1. An examination of evidence by questioning may commission a district court or a summary court (Patent Act Article 150(6), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)). This procedure is based on the principle of indirectness (35-00 1.) and there is no direct examination to a witness and facts are determined only by trial records of examination (→ 5.). Therefore, this procedure should be adopted only to an exceptional case such as shown in 2.

2. A panel shall determine whether to commission, however, the commission shall be adopted on a limited basis such as the following cases.

(1) When all of the following conditions are satisfied

A. An object of inspection exists on in a local area

B. An object of inspection is difficult to carry to the JPO

C. There is a condition that a panel is difficult to visit a local area

(2) When a witness lives in a local area and cannot endure the situation such as being an old age, delicacy of health, and there is also a condition of the above (1) C.

(3) When an examination of evidence shall be carried in the whole country or particularly many locations, and it is found to be difficult to collect all evidence to the JPO and to visit all local areas in terms of cost and time for a panel.

(4) When it is predicted that sufficient conviction may be obtained only by a record of commission for examination since a creation of document, etc. is quite simply.

3. Matters for examination shall be carefully determined so that sufficient

conviction can be obtained and note the following points in particular for addressing a disadvantage in the item 1.

(1) Order of a witness (an expert, parties themselves) to be examined (→ 35-04)

(2) Clarity of contents of matters to be examined and their order

(3) In a case where matters for examination which can be testified either positive or negative and the subsequent matters for examination change in either positive or negative of the previous question, it should be clarified the subsequent question is made based on either positive or negative testimony of the previous matters for examination.

(4) Even if a matter for examination is similar in content, it is also necessary to repeat it by putting it in the appropriate part in the matters for examination by changing the expression as necessary.

4. A trial clerk proceeds as shown below according to an instruction of a chief administrative judge either by request or ex officio.

(1) Cost calculation and advance payment

Similar to the preparation procedures of an examination of witness (→ 35-01), calculate two times of costs for summons before a court (parties themselves, a witness, an expert), a travel expense, a daily allowance and an accommodation fee for a witness, and ask a person who requests the examination to pay the costs in advance.

(2) Determination of matters for commission

Matters for examination shall be determined for an examination of witness and an object of expert opinion or an object of inspection shall be determined for an expert opinion or an inspection, and in addition a content of commission shall be determined.

(3) Preparation for a written commission

A. A written commission for examination of evidence in Form 1 shall be

prepared and sent to a court of addressee under the name of chief administrative judge.

In this case, the general venue of persons who are examined as a witness and an expert shall be searched and note to determine a court of addressee.

For this written commission for examination of evidence, when a cost for examination is transferred from the JPO, add Form 2, and when a court of addressee issues an order of advance payment, add Form 3 both as a postscript.

B. Attached documents and objects (an object of expert opinion, an object of inspection) are described in a written commission as attached documents or a list of attachments. When a court of addressee sends the JPO the trial records which clarifies the content of examination of evidence, the JPO requests the court to return the attached documents and objects to the owner thereof (→ Form 2 or Form 3).

C. Required number of copies of documents stating matters for examination, matters for inspection and a purpose of inspection shall be added in a written commission as additional attached documents.

D. Sending of cost

When a cost required for commission for examination is sent, ask the Accounting Division of the JPO to send the cost (remote payment) to an officer in charge of receipts and disbursements of case other than annual revenue and expenditures of a court of addressee.

E. When a document is removed from the records and attached to a written commission, a written statement is bound where the removed document was originally located, stating the reason that the document is removed and sent to a court for commissioned examination of evidence.

5. Handling of Trial Records

When trial records of examination is sent to the JPO after examinations from a court of addressee (→ 4. (3) B), the records shall be bound for record-

keeping. The returned attached documents and objects are also bound to the records, or either bound to the original place or kept in the original storage.

6. A panel can treat records of commission for examination as materials for determination, similar to records of examination of evidence, but there is a reason to be cautious in determining matters for examination (→ 3.) since a conviction should be obtained only from writing.

7. An examination may be conducted also by a member of a panel who is designated as an authorized administrative judge without commissioning a court of addressee (Patent Act Article 151→ Code of Civil Procedure Article 195, Enforcement Regulations of the Patent Act Article 57, Coder of Civil Procedure Article 31, Authorized Administrative Judge → 35-11).

Form 1

Commission for Examination of Evidence

Date:

Addressed to: The Civil Division of Court

Trial and Appeal Dept., JPO

3-4-3 Kasumigaseki, Chiyoda-ku, Tokyo

Name of Chief Administrative Judge, JPO:

20XX, Trial No.

Address

Name of Demandant:

Address

Name of Agent:

Address

Name of Demande:

Address

Name of Agent:

For a Trial Case () between the above parties, based on the matters for examination in a separate sheet, we would like to commission the examination shown below.

Note

Witness Address:

Name:

Form 2

Please consider the examination that becomes more details than the content described in matters for examination in a separate sheet, follows the order shown below, and is made as a witness does not predict what will be examined later.

- 1.
- 1.

Attached documents

- 1. Exhibit A-X
- 2. Exhibit B-X

Please return the above attached documents after used.

A cost for examination based on the following calculation is in the process of being transferred to the accounting section of the Court from an officer in charge of receipts and disbursements of cash other than annual revenue and expenditures of the JPO.

1. Cost for parties summons on a designated date	Yen
1. Cost for witness summons	Yen
1. Dily allowance of witness	
Travel expenses	Yen
Accommodation fees	Yen
1. Cost for service of documents to JPO	Yen
Total	Yen

Form 3

Please issue an order of advance payment shortly for a cost for examination.

Please consider the examination that becomes more details than the content described in matters for examination in a separate sheet, follows the order shown below, and is made as a witness does not predict what will be examined later.

1.

1.

Attached documents

1. Exhibit A-X

2. Exhibit B-X

Please return the above attached documents when used.

A cost for examination based on the following calculation is in the process of being transferred to the accounting department of your government office from an accounting official with money in custody of JPO.

1. Cost for service of order of advance payment	Yen
1. Cost for parties summons to appear on a designated date	Yen
1. Cost for witness summons	Yen
1. Cost for service of documents to JPO	Yen
Total	Yen

(Revised June 2019)