

**35-04 P U D T**  
**Order of Examination of Witness**

1. Call of Incident, Roll Call

On a date of examination of witness, a chief administrative judge shall call an incident, and confirm the attendance of parties and their agents by taking a roll call.

If a witness has a reason not to be able to appear in court on the designated date, a witness shall report that effect with clarifying the reason (Enforcement Regulations of the Patent Act Article 58-4, 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)).

2. Establishing the Identity of Witness

A chief administrative judge asks questions to a witness such as a name, age, profession and address after comparing a writ of summons for a witness brought by a witness appearing before court with the original. When a witness appearing before court does not bring a writ of summons or when a writ of summons is not necessary to submit, a report card of appearance of a witness, etc. shall be entered.

When the descriptions in a writ of summons for a witness brought by a witness or a report card of appearance of a witness, etc., are different from a written request for examination of witness, a witness or parties shall be explained immediately. A relatively large number of differences are occurred in addresses when a name of the town or a lot number has been changed or when a place of temporary residence or a business location are described as address. As a result, when a witness is approved as a witness to be examined,

the proceedings are conducted after taking necessary measures such as ordering parties to amend a request for examination of witness or instructing a trial clerk to include a content of clarification in trial records.

### 3. Recitation of Oath

(1) An oath of witness shall be made before an examination starts. When there are special reasons, however, an oath may be made after an examination (Enforcement Regulations of the Patent Act Article 58-5(1), 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), Rules of Civil Procedure Article 112(1)).

(2) A chief administrative judge shall explain a witness before swearing under oath on a purport of oath, warning against punishment of false testimony (Patent Act Article 199, Utility Model Act Article 59, Design Act Article 72, Trademark Act Article 81) and cases where a witness may refuse to testify (Patent Act Article 151→Code of Civil Procedure Articles 196,197). Then, a chief administrative judge has all people in court stand up and has a witness recite the written oath containing a statement that “the witness swears to tell the truth according to the dictates of his/her conscience without hiding anything or adding anything” and sign this written oath (Enforcement Regulations of the Patent Act Article 58-5(2)~(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), Rules of Civil Procedure Article 112(2)~(5)).

(3) When a witness is not able to recite a written oath, a chief administrative judge shall have a trial clerk recite the written oath (Enforcement Regulations of the Patent Act Article 58-5(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), Rules of Civil Procedure Article 112(3)).

(4) If a witness is unable to communicate in Japanese, or is hard to hear or speak, and the court has an interpreter attend the examination (Patent Act Article 146→Code of Civil Procedure Article 154), said interpreter shall swear under oath as in the case of a witness (Patent Act Article 151→Code of Civil Procedure Articles 216, 201). If an interpreter makes a false interpretation, the crime of making a false interpretation is applied (Patent Act Article 199, Utility Model Act Article 59, Design Act Article 72, Trademark Act Article 81)

#### 4. Notification of Matters that Require Attention in Testimony, etc.

(1) (i) Speak clearly and slowly in testimony facing to a chief administrative judge, (ii) Speak only of his/her own experience and do not express his/her own opinions, (iii) Answer only what is asked, and (iv) A witness may refuse to testify about the personal confidentiality or against a witness himself/herself, but in this case the matters that require attention shall be notified such as being asked a reason for the refusal.

(2) When there are one or more than one witnesses, an examination is conducted in the predetermined order that is agreed with a person who requests the examination. If there is no prior agreement as to the order, the order shall be determined on the spot.

(3) A recording tape is usually used for a statement of a witness in the examination records. A chief administrative judge shall notify to that effect at the beginning.

#### 5. Separation of Witnesses

When there is one or more than one witnesses, an examination to witnesses is principally conducted separately and a chief administrative judge has the

witnesses to be examined later leave and wait in another room. If the chief administrative judge finds it necessary, however, the witnesses to be examined later may stay in court (Enforcement Regulations of the Patent Act Article 58-13, 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), Rules of Civil Procedure Article 120). When the chief administrative judge has the witnesses to be examined later stay in court, listen to opinions of both parties.

## 6. Order of Examination

An examination shall be conducted in the following order (Enforcement Regulations of the Patent Act Article 58-6, 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), Code of Civil Procedure Article 202(1), Rules of Civil Procedure Article 113). When a chief administrative judge finds it appropriate, however, the chief administrative judge may change the following order after hearing the opinion of the parties (Enforcement Regulations of the Patent Act Article 58-6 (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), Code of Civil Procedure Article 202(2)).

### (1) Direct examination

Examination by a party or an intervenor who requests an examination of witness on matters to be proved and related matters according to the matters for examination.

### (2) Counter examination

Examination on matters appeared on the direct examination and related matters and matters for credibility of testimony of a witness.

(3) Re-direct examination

Examination on matters appeared on the counter examination and related matters.

(4) Supplementary examination

Further examination by a party or an intervenor with permission of a chief administrative judge.

(5) Ex officio examination

A chief administrative judge may examine a witness personally whenever a chief administrative judge finds it necessary (Enforcement Regulations of the Patent Act Article 58-6(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), Rules of Civil Procedure Article 113(3)).

An associate administrative judge may examine a witness after informing an administrative judge of that effect (Enforcement Regulations of the Patent Act Article 58-6(4), 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), Rules of Civil Procedure Article 113(4)).

(6) Simultaneous examination

A chief administrative judge, when finding it necessary such as contradicting the testimony or statements, may order a simultaneous examination of a witness and another witness (Enforcement Regulations of the Patent Act Article 58-11, 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), Rules of Civil Procedure Article 118). When ordering a simultaneous examination, a chief administrative judge shall include that effect in the records. When

conducting a simultaneous examination, a chief administrative judge may examine the witnesses first.

#### 7. Restriction of Question

A chief administrative judge may restrict questions of parties by request or ex officio, when a chief administrative judge finds it inappropriate that the question is made on a matter other than those specified in the above item 6. (1)~(3), or when the question falls under a prohibited question (→35-05 2.) (Enforcement Regulations of the Patent Act Article 58-7(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), Rules of Civil Procedure Article 114(2)).

#### 8. Opposition from Parties

When a party requests an opposition with regard to permission or non-permission of a chief administrative judge for an examination of witness (→ 6.(4)) or with regard to restriction of questions as described in the above item 7., a panel shall immediately determine to accept or reject the request, and this series of events shall be entered into the records of examination of witness (Enforcement Regulations of the Patent Act Article 58-10(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), Rules of Civil Procedure Article 117(2)).

#### 9. Examination of Parties

(1) An examination of parties follows the same order of examination of witness. However, if a party makes a false statement after swearing an oath, the person is subject to punishment by a civil fine, different from the case of

an examination of witness (Patent Act Article 202→Article 151, Code of Civil Procedure Article 207(1), Utility Model Act Article 62, Design Act Article 75, Trademark Act Article 83).

(2) A chief administrative judge has a responsible to have a witness swear an oath in principle in an examination of witness, while it is at the discretion of a chief administrative judge whether parties swear an oath in an examination of parties, (Patent Act Article 151 →Code of Civil Procedure Article 207(1)). In practice, a chief administrative judge determines whether to have parties swear an oath at the discretion after asking the parties themselves about an intention of the oath.

(3) If parties themselves to be examined do not have an agent, a chief administrative judge examines the parties themselves.

(4) Each party is the subject of the procedures, therefore, even if a party himself/herself is examined after the examination of other parties or witnesses, a party himself/herself may stay in court during said other parties or witnesses are examined (Enforcement Regulations of the Patent Act Article 59-2), 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), Rules of Civil Procedure Article 127).

10. Statement of Expert (→35-12)

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