

35-06 P U D T

Inspection

1. General Idea of Inspection

Inspection is an examination of evidence where the nature or phenomena of things is directly inspected by the five senses of administrative judges and the result of the inspection is used as evidentiary materials. Inspection does not only involve the sense of vision, but also involves the sense of hearing, taste, smell, or touch as well. An object which is subject to inspection is an inspection object.

Inspection differs from oral or written evidence: the latter is evidence based on the statements or descriptions of someone's thoughts, whereas the former is what the panel obtains by the senses is provided to reference materials for the direct determination. Therefore, even if evidence takes the form of document, when descriptions of the document is not treated as a means of proof but the nature or condition, etc. of the document becomes grounds for forming a conviction of the panel, the evidence is not a document, but an object of inspection.

2. Request for Inspection

(1) Procedures of documentary evidence are applied *mutatis mutandis* (Patent Act Article 151→Code of Civil Procedure Article 232(1), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4), Rules of Civil Procedure Article 150, 151, →34-01 9.)

(2) A fact to be proved and an object of inspection shall be identified for requesting for inspection (Enforcement Regulations of the Patent Act Article 62, 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)).

In identifying an object of inspection, the mark Ken-Kou (Exhibit A), Ken-Otsu (Exhibit B), or Ken-Hei (Exhibit C) is added prior to the number in order of submission. The mark is used depending on whether a person who requests the inspection is a demandant, a demandee, or an intervenor.

(3) An explainer who indicates and explains an object of inspection is requested to clarify an inspection part and a purpose of inspection. The clarification shall be to the point and thus in practice a “Written Indication and Explanation of Object of Inspection” (Form 1) shall be submitted in advance. On the day of inspection, a chief administrative judge asks for clarification as appropriate to the explainer again, so that the opposite party may sufficiently understand the object of inspection. A chief administrative judge asks the opposite party to make an adverse opinion and the party who offers evidence to clarify against the adverse opinion, if necessary.

(4) In a case of an out-of-court inspection, a location is always specified to identify the object of inspection. A person who requests for inspection is necessary to indicate and explain the object on that location. It makes sure that a location of the object of inspection is clearly indicated in a document seeking for inspection (a request for inspection (Enforcement Regulations of the Patent Act Article 62), a demand for trial, a written reply, etc.). When an object of inspection is kept in a facility managed by a third party, an agreement of that person shall be obtained in advance.

(5) Determine that an inspection is carried out either in court, or out of court (on-site inspection) (→ 34-01).

(6) Designation of the date of inspection is similar to designation of oral proceedings (→ 33-01).

3. Inspection

(1) In many cases, an inspection is conducted on the same day of oral proceedings regardless of before or after the submission period of a written reply. Therefore, since oral proceedings are conducted prior to an inspection, it is preferable to confirm the relationships between facts to be proved and an object of inspection with the parties, and to confirm the progress of the inspection. The progress of the inspection may be asked to discuss between the parties as appropriate.

(2) For inspection, it is deemed that there is no reason not to open the public except the following cases:

A. when an inspection for undisclosed ex parte cases, or an inspection in a factory involving a trade secret,

B. when an inspection may disturb public order or morality, and

C. when an inspection may disturb an on-the-spot inspection.

(3) In inspection, an expert is ordered to attend an inspection in need of a special academic experiences, a request for examination of a witness or an expert is also file with an inspection, it is possible that an assistant for measuring or taking a photograph, or an engineer necessary for operating machine, etc. may be attended as a person involved in the case. A third party who attends an inspection for explanation of an object of inspection may be asked his/her opinion and explanation.

(4) When one of the parties or both parties do not appear in court, after confirming the attendance, an administrative judge notifies to the effect that a party A does not attend but an inspection will be conducted today. For example, in a case where an inspection is conducted ex officio, even if both parties do not attend, the inspection is conducted and trial records are prepared (Ex Officio Inspection → 8.)

(5) It is the most important issue how to describe a result of inspection in trial records. Therefore, a chief administrative judge explains a configuration specifically as instructing each part of the configuration and communicates precisely what a panel perceives so that a trial clerk can take the records easily.

4. Note for Conducting Inspection Out of Court (On-Site Inspection)

(1) For an inspection conducting out of court, when initiating an inspection, parties, intervenors, and agents who should be appeared in court, and other people concerned (those who are describing in the above (3)) shall be confirmed. People other than the above shall be moved out of the way of inspection. People who disturb an inspection on the inspection site or enters the inspection site without any business shall be ordered to leave or be taken an appropriate measure. A placing and a condition of an object of inspection in a location and if necessary, a temperature, humidity, brightness, weather, etc. shall be observed.

(2) An example of items to carry for an out-of-court inspection includes documents related to the subject case, a written oath, an order of advance payment, a seal of a chief administrative judge, blank papers, writing tools, a map, a magnet, a tape measure, a protractor, a thermometer, a camera, and a sound/image recording device.

(3) Immediately after arriving on the spot, go to a location of an object of inspection, contact an administrator of the object of inspection and conduct a preliminary inspection of the inspection site in advance. Have a meeting with the administrator of the object of inspection beforehand for a well-prepared inspection. Therefore, take into consideration of the time for preparation as described above on departure.

5. Examination of Expert or Witness After Inspection

This section is equivalent to 34-01, 35-01, 35-04, etc.

6. Preparation of Inspection Records (→ 35-02 8.)

An administrative judge describes in the trial records that the results obtained by the inspection following to the explanation and perceived by the five senses. To clarify the statements of parties and the results of inspection, design drawings, work drawings, photographs, sketches, maps or other appropriate materials may be attached to the inspection records to constitute a part of the trial records. When an inspection is conducted with oral proceedings or an examination of witness, an identification of an object of inspection, a purpose of inspection, an indication and explanation of the parties, a process of inspection, results of inspection may also include in trial records without preparing an inspection record in a separate sheet.

(Reference) The Training and Research Institute for Court Clerks “Procedures and Records of Inspection of Civil Case” (Housou-kai, pp300-311, Dec. 1975)

In describing the results of inspection, please note the following points.

- (1) Results report an objective recognition of the panel at that time.
- (2) Results should be described “Itemized description” for each matter necessary to be proved or for each matter to be clarified by the inspection.
- (3) A factual conclusion that can be inferred from the inspection (in that sense, a determination is added) may be described.
- (4) Conclusion applying the laws must be absolutely avoided (this shall be made by administrative judges in making a trial decision).
- (5) Descriptions of a distance relationship should possibly clarify a base point and a direction.
- (6) Note that a priority issue is different by a feature of each case
- (7) Avoid original expressions and use common names for a name of an object.

(8) If sketches or photographs are used for explaining results of the inspection, it just means drawings are used instead of letters. Therefore, it never means something else, but they just provide results of inspection.

Hence,

A. It is preferable a distance relationship is described in a drawing but omitted in a text.

B. A distance relationship is in metric. A drawing on a reduced scale is described if possible.

If necessary, others are also possible to include such as a cross section view of drawing, a three-dimensional sketch.

C. When using photographs, it should be clear what is the subject, the date of shooting, the time of shooting, or the weather when needed, etc. for each photograph.

7. Advance Payment of Cost

For an out-of-court inspection, travel expenses and accommodation fees for the JPO's employees who conduct an inspection (a panel and a trial clerk) shall be paid in advance by a person who requests for an inspection, or a person found to be appropriate by a panel when an inspection is conducted ex officio.

8. Ex Officio Inspection

When an inspection is conducted ex officio, the results of the inspection shall be notified to the parties and intervenors, and an opportunity to present their opinions shall be given by designating a reasonable period of time (Patent Act Article 150(5), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

【Form 1】 【Sample of Written Indication and Explanation】

Written Indication and Explanation of Object of Inspection

Date

To: Chief Administrative Judge, JPO

1. Trial number

Invalidation 20xx-80xxxx

2. Petitioner of Inspection

Address (Domicile)

Name (Appellation)

(Representative)

3. Agent

Address (Domicile)

Name (Appellation)

4. Demandee

Address (Domicile)

Name (Appellation)

5. Purpose of Inspection

To clarify the structure/the shape/the number of articles.

6. Matters to Be Clarified from Inspection

To clarify Ken-Kou No.1 has the following structures.

(1) ~ is attached to ~ so that it can be opened and closed.

(2) A mounting structure of (1) is ~.

⋮

(m) A nameplate is attached to ~.

(n) The nameplate has the description of ~ thereon.

7. Person who Indicates and Explains the Object of Inspection

Name

8. Object of Inspection and its Location

Object of inspection Ken-Kou (Exhibit A) No. 1

Location

9. Content of Indication and Explanation of Object of Inspection

A structure of Ken-Kou (Exhibit A) No. 1 will be explained along the following (1) ~ (n) with indicating the object of inspection.

(1) Explaining that ~ is attached to~ so that it can be opened and closed, and that it takes the state shown in “drawings and photographs ~” by opening and closing ~.

(2) ~

⋮

(n) ~.

(10) List of attached documents

(1) Drawings, Photographs

(2) Written Indication and Explanation of Object of Inspection

A duplicate ~ copy/copies

(Revised December 2020)