

35-09 P U D T

Actual Examples of Preservation of Evidence Cases

1. Petition Before a Demand for Trial Is Filed (→Patent Act Article 150(2), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4))

(1) Preservation of evidence case No. 1 of 1962 (Patent)

“Manufacturing Method of Instant Noodles”

- Gist of petition

A. A manufacturing method of the subject patent invention is a usurped application, and there is a risk that the right holder of the patent changes the manufacturing method implemented in the factory unless the evidence of such the method is preserved.

B. A request for an examination of witnesses (3 people) is filed for proving usurpation.

- A method for prima facie evidence

No written prima facie evidence is submitted but one of the witnesses is a foreigner who has a plan to return home soon and has applied the procedures for returning home.

- Decision

An examination is made only to a witness applying the procedures for returning home among the witnesses at a trial court of the JPO, and the petitions for other inspections and examinations of witnesses are not adopted.

Petition	July 11, 1962
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Decision	August 14, 1962
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Date	August 23, 1962
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(2) Preservation of evidence case No. 1 of 1967 (Utility Model)

“Foldable Legs for Furniture”

- Gist of petition

Sales of the object of inspection go back to the past, therefore it is difficult to clarify the facts after a request for an invalidation trial is filed.

- A method for prima facie evidence

A certificate of residence showing an age of a witness, etc. is submitted.

- Decision

The witness is not very old, and the evidence has already submitted to the JPO and there is no risk of loss. For this reason, a petition of preservation of evidence is not adopted.

(3) Preservation of evidence case No. 1 of 1968 (Patent)

“Storage Tube”

- Gist of petition

An oscilloscope using storage tubes has been used for 4 and half years, and it is unknown when it is replaced with a new one.

- A method for prima facie evidence

A report stating the above circumstances is submitted by an employee of the affiliated company of a petitioner.

- Decision

Regarding the on-site inspection and the purchasing time, history, etc. of the oscilloscope, a petition of examination of witness filed by a research assistant of the university who is one of the users is adopted.

2. Petition During Pendency of a Trial Case

(1) Preservation of evidence case No. 3 of 1964 (Utility Model)

“Phototypesetter”

- Gist of petition

There is some malfunction in the machine after using for years and the type of machine has become old. Therefore, the machine will be replaced with a new one soon.

- A method for prima facie evidence

A certificate of the owner of the machine stating the above conditions is submitted.

- Decision

A machine production number of the object of inspection, that of evidence for the related invalidation trial, and that of the certificate of the owner are all different. It is considered that it does not satisfy with substantial requirements for preservation of evidence, and the petition for preservation of evidence is not adopted.

(2) Preservation of evidence case No. 1 of 1968 (Utility Model)

“Bath Boiler”

- Gist of petition

It took 5 years after installation, thus there is a risk of disposal.

- A method for prima facie evidence

Some photographs showing the current conditions of the bath boiler are submitted. The time of installation is mentioned in a written acceptance of inspection of a company which is a proprietor of the company housing where the bath boiler is installed.

- Decision

A petition for the on-site inspection and an examination of 2 witnesses are adopted.

(3) Preservation of evidence case No. 2003-98001 (Patent)

“Multistage Compressor”

- Gist of petition

The object of inspection has been continuously used for 16 years. There is a risk if the object becomes unusable, it will be disposed immediately.

• Decision

Necessity of implementation of early inspection is accepted, and a petition of the on-site inspection is adopted.

(Revised Feb 2015)