

§ 1.673

37 CFR Ch. I (7-1-02 Edition)

agree in writing, the deposition may be taken in any place within the United States, before any person authorized to administer oaths, upon any notice, and in any manner, and when so taken may be used like other depositions.

(g) If the parties agree in writing, the affidavit testimony of any witness may be submitted without opportunity for cross-examination.

(h) If the parties agree in writing, testimony may be submitted in the form of an agreed statement setting forth how a particular witness would testify, if called, or the facts in the case of one or more of the parties. The agreed statement shall be filed in the Patent and Trademark Office. See § 1.653(a).

(i) In an unusual circumstance and upon a showing that testimony cannot be taken in accordance with the provisions of this subpart, an administrative patent judge upon motion (§ 1.635) may authorize testimony to be taken in another manner.

[60 FR 14531, Mar. 17, 1995]

§ 1.673 Notice of examination of witness.

(a) A party authorized to take testimony of a witness by deposition shall, after complying with paragraphs (b) and (g) of this section, file and serve a single notice of deposition stating the time and place of each deposition to be taken. Depositions to be taken in the United States may be noticed for a reasonable time and place in the United States. A deposition may not be noticed for any other place without approval of an administrative patent judge. The notice shall specify the name and address of each witness and the general nature of the testimony to be given by the witness. If the name of a witness is not known, a general description sufficient to identify the witness or a particular class or group to which the witness belongs may be given instead.

(b) Unless the parties agree or an administrative patent judge or the Board determine otherwise, a party shall serve, but not file, at least three working days prior to the conference required by paragraph (g) of this section, if service is made by hand or Express Mail, or at least 14 days prior to the

conference if service is made by any other means, the following:

(1) A list and copy of each document in the party's possession, custody, or control and upon which the party intends to rely at any deposition and

(2) A list of and a proffer of reasonable access to things in the party's possession, custody, or control and upon which the party intends to rely at any deposition.

(c) A party shall not be permitted to rely on any witness not listed in the notice, or any document not served or any thing not listed as required by paragraph (b) of this section:

(1) Unless all opponents agree in writing or on the record to permit the party to rely on the witness, document or thing, or

(2) Except upon a motion (§ 1.635) promptly filed which is accompanied by any proposed notice, additional documents, or lists and which shows good cause why the notice, documents, or lists were not served in accordance with this section.

(d) Each opponent shall have a full opportunity to attend a deposition and cross-examine.

(e) A party who has presented testimony by affidavit and is required to notice depositions for the purpose of cross-examination under § 1.672(b), shall, after complying with paragraph (g) of this section, file and serve a single notice of deposition stating the time and place of each cross-examination deposition to be taken.

(f) The parties shall not take depositions in more than one place at the same time or so nearly at the same time that reasonable opportunity to travel from one place of deposition to another cannot be had.

(g) Before serving a notice of deposition and after complying with paragraph (b) of this section, a party shall have an oral conference with all opponents to attempt to agree on a mutually acceptable time and place for conducting the deposition. A certificate shall appear in the notice stating that the oral conference took place or explaining why the conference could not be had. If the parties cannot agree to a mutually acceptable place and time for conducting the deposition at the conference, the parties shall contact an

administrative patent judge who shall then designate the time and place for conducting the deposition.

(h) A copy of the notice of deposition shall be attached to the certified transcript of the deposition filed under § 1.676(a).

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14532, Mar. 17, 1995]

§ 1.674 Persons before whom depositions may be taken.

(a) A deposition shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) Unless the parties agree in writing, the following persons shall not be competent to serve as an officer:

- (1) A relative or employee of a party,
- (2) A relative or employee of an attorney or agent of a party, or
- (3) A person interested, directly or indirectly, in the interference either as counsel, attorney, agent, or otherwise.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14533, Mar. 17, 1995]

§ 1.675 Examination of witness, reading and signing transcript of deposition.

(a) Each witness before giving an oral deposition shall be duly sworn according to law by the officer before whom the deposition is to be taken.

(b) The testimony shall be taken in answer to interrogatories with any questions and answers recorded in their regular order by the officer or by some other person, who shall be subject to the provisions of § 1.674(b), in the presence of the officer unless the presence of the officer is waived on the record by agreement of all parties.

(c) All objections made at the time of the deposition to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, the conduct of any party, or any other objection to the proceeding shall be noted on the record by the officer. Evidence objected to shall be taken subject to any objection.

(d) Unless the parties agree in writing or waive reading and signature by the witness on the record at the deposition, when the testimony has been transcribed a transcript of the deposi-

tion shall, unless the witness refuses to read and/or sign the transcript of the deposition, be read by the witness and then signed by the witness in the form of:

- (1) An affidavit in the presence of any notary or
- (2) A declaration.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14533, Mar. 17, 1995]

§ 1.676 Certification and filing by officer, marking exhibits.

(a) The officer shall prepare a certified transcript of the deposition by attaching to a transcript of the deposition a copy of the notice of deposition, any exhibits to be annexed to the certified transcript, and a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before commencement of testimony by the witness.

(2) The transcript is a true record of the testimony given by the witness.

(3) The name of the person by whom the testimony was recorded and, if not recorded by the officer, whether the testimony was recorded in the presence of the officer.

(4) The presence or absence of any opponent.

(5) The place where the deposition was taken and the day and hour when the deposition began and ended.

(6) The officer is not disqualified under § 1.674.

(b) If the parties waived any of the requirements of paragraph (a) of this section, the certificate shall so state.

(c) The officer shall note on the certificate the circumstances under which a witness refuses to sign a transcript.

(d) Unless the parties agree otherwise in writing or on the record at the deposition, the officer shall securely seal the certified transcript in an envelope endorsed with the style of the interference (e.g., *Smith v. Jones*), the interference number, the name of the witness, and the date of sealing and shall promptly forward the envelope to BOX INTERFERENCE, Commissioner of Patents and Trademarks, Washington, DC 20231. Documents and things