

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

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produced for inspection during the examination of a witness, shall, upon request of a party, be marked for identification and annexed to the certified transcript, and may be inspected and copied by any party, except that if the person producing the documents and things desires to retain them, the person may:

(1) Offer copies to be marked for identification and annexed to the certified transcript and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals or

(2) Offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the documents and things may be used in the same manner as if annexed to the certified transcript.

The exhibits shall then be filed as specified in § 1.653(i). If the weight or bulk of a document or thing shall reasonably prevent the document or thing from being annexed to the certified transcript, it shall, unless waived on the record at the deposition by all parties, be authenticated by the officer and forwarded to the Commissioner in a separate package marked and addressed as provided in this paragraph.

[49 FR 48455, Dec. 12, 1984; 50 FR 23124, May 31, 1985, as amended at 60 FR 14533, Mar. 17, 1995]

§ 1.677 Form of an affidavit or a transcript of deposition.

(a) An affidavit or a transcript of a deposition must be on opaque, unglazed, durable paper approximately 21.8 by 27.9 cm. (8½ by 11 inches) in size (letter size). The printed matter shall be double-spaced on one side of the paper in not smaller than 11 point type with a margin of 3.8 cm. (1½ inches) on the left-hand side of the page. The pages of each transcript must be consecutively numbered and the name of the witness shall appear at the top of each page (§ 1.653(e)). In transcripts of depositions, the questions propounded to each witness must be consecutively numbered unless paper with numbered lines is used and each question must be followed by its answer.

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(b) Exhibits must be numbered consecutively to the extent possible and each must be marked as required by § 1.653(i).

[60 FR 14533, Mar. 17, 1995]

§ 1.678 Time for filing transcript of deposition.

Unless otherwise ordered by an administrative patent judge, a certified transcript of a deposition must be filed in the Patent and Trademark Office within one month after the date of deposition. If a party refuses to file a certified transcript, the administrative patent judge or the Board may take appropriate action under § 1.616. If a party refuses to file a certified transcript, any opponent may move for leave to file the certified transcript and include a copy of the transcript as part of the opponent's record.

[60 FR 14533, Mar. 17, 1995]

§ 1.679 Inspection of transcript.

A certified transcript of a deposition filed in the Patent and Trademark Office may be inspected by any party. The certified transcript may not be removed from the Patent and Trademark Office unless authorized by an administrative patent judge upon such terms as may be appropriate.

[60 FR 14533, Mar. 17, 1995]

§§ 1.682-1.684 [Reserved]

§ 1.685 Errors and irregularities in depositions.

(a) An error in a notice for taking a deposition is waived unless a motion (§ 1.635) to quash the notice is filed as soon as the error is, or could have been, discovered.

(b) An objection to a qualification of an officer taking a deposition is waived unless:

(1) The objection is made on the record of the deposition before a witness begins to testify.

(2) If discovered after the deposition, a motion (§ 1.635) to suppress the deposition is filed as soon as the objection is, or could have been, discovered.

(c) An error or irregularity in the manner in which testimony is transcribed, a certified transcript is signed by a witness, or a certified transcript is