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 authenicated by the officer and fowarded 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.

(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

prepared, signed, certified, sealed, endorsed, forwarded, filed, or otherwise handled by the officer is waived unless a motion (§1.635) to suppress the deposition is filed as soon as the error or irregularity is, or could have been, discovered.

(d) An objection to the deposition on any grounds, such as the competency of a witness, admissibility of evidence, manner of taking the deposition, the form of questions and answers, any oath or affirmation, or conduct of any party at the deposition, is waived unless an objection is made on the record at the deposition stating the specific ground of objection. Any objection which a party wishes considered by the Board at final hearing shall be included in a motion to suppress under §1.656(h).

(e) Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of an administrative patent judge or the Board.

[49 FR 48455, Dec. 12, 1984; 50 FR 23124, May 31, 1985, as amended at 60 FR 14534, Mar. 17, 1995]

§ 1.687 Additional discovery.

(a) A party is not entitled to discovery except as authorized in this subpart.

(b) Where appropriate, a party may obtain production of documents and things during cross-examination of an opponent's witness or during the testimony period of the party's case-in-rebuttal.

(c) Upon a motion (§1.635) brought by a party within the time set by an administrative patent judge under §1.651 or thereafter as authorized by §1.645 and upon a showing that the interest of justice so requires, an administrative patent judge may order additional discovery, as to matters under the control of a party within the scope of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery. See §1.647 concerning translations of documents in a foreign language.

(d) The parties may agree to discovery among themselves at any time. In the absence of an agreement, a motion for additional discovery shall not be filed except as authorized by this subpart.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14535, Mar. 17, 1995]

§ 1.688 [Reserved]

§ 1.690 Arbitration of interferences.

(a) Parties to a patent interference may determine the interference or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of Title 9, United States Code. The parties must notify the Board in writing of their intention to arbitrate. An agreement to arbitrate must be in writing, specify the issues to be arbitrated, the name of the arbitrator or a date not more than thirty (30) days after the execution of the agreement for the selection of the arbitrator, and provide that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board. A copy of the agreement must be filed within twenty (20) days after its execution. The parties shall be solely responsible for the selection of the arbitrator and the rules for conducting proceedings before the arbitrator. Issues not disposed of by the arbitration will be resolved in accordance with the procedures established in this subpart, as determined by the administrative patent judge.

(b) An arbitration proceeding under this section shall be conducted within such time as may be authorized on a case-by-case basis by an administrative patent judge.

(c) An arbitration award will be given no consideration unless it is binding on the parties, is in writing and states in a clear and definite manner the issue or issues arbitrated and the disposition of each issue. The award may include a statement of the grounds and reasoning in support thereof. Unless otherwise ordered by an administrative patent judge, the parties shall give notice to the Board of an arbitration award by filing within twenty (20) days from the date of the award a copy of the award signed by the arbitrator or arbitrators. When an award is timely filed, the award shall, as to the parties to the arbitration, be dispositive of the issue or issues to which it relates.