

materials) of service of the requested materials.

(2) Unless previously served, or the Board orders otherwise, any exhibit cited in a motion or in testimony must be served with the citing motion or testimony.

(c) *Additional discovery.* A party may request additional discovery. The requesting party must show that such additional discovery is in the interests of justice. The Board may specify conditions for such additional discovery.

#### **§ 41.151 Admissibility.**

Evidence that is not taken, sought, or filed in accordance with this subpart shall not be admissible.

#### **§ 41.152 Applicability of the Federal Rules of Evidence.**

(a) *Generally.* Except as otherwise provided in this subpart, the Federal Rules of Evidence shall apply to contested cases.

(b) *Exclusions.* Those portions of the Federal Rules of Evidence relating to criminal proceedings, juries, and other matters not relevant to proceedings under this subpart shall not apply.

(c) *Modifications in terminology.* Unless otherwise clear from context, the following terms of the Federal Rules of Evidence shall be construed as indicated:

*Appellate court* means United States Court of Appeals for the Federal Circuit or a United States district court when judicial review is under 35 U.S.C. 146.

*Civil action, civil proceeding, action, and trial* mean contested case.

*Courts of the United States, U.S. Magistrate, court, trial court, and trier of fact* mean Board.

*Hearing* means:

(i) In Federal Rule of Evidence 703, the time when the expert testifies.

(ii) In Federal Rule of Evidence 804(a)(5), the time for taking testimony.

*Judge* means the Board.

*Judicial notice* means official notice.

*Trial or hearing* means, in Federal Rule of Evidence 807, the time for taking testimony.

#### **§ 41.153 Records of the United States Patent and Trademark Office.**

Certification is not necessary as a condition to admissibility when the evidence to be submitted is a record of the Office to which all parties have access.

#### **§ 41.154 Form of evidence.**

(a) Evidence consists of affidavits, transcripts of depositions, documents, and objects. All evidence must be submitted in the form of an exhibit.

(b) *Translation required.* When a party relies on a document or is

required to produce a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation must be filed with the document.

(c) An exhibit must conform with the requirements for papers in § 41.106 of this subpart and the requirements of this paragraph.

(1) Each exhibit must have an exhibit label with a unique number in a range assigned by the Board, the names of the parties, and the proceeding number in the following format: JONES EXHIBIT 2001, Jones v. Smith, Interference 104,999

(2) When the exhibit is a paper:

(i) Each page must be uniquely numbered in sequence, and

(ii) The exhibit label must be affixed to the lower right corner of the first page of the exhibit without obscuring information on the first page or, if obscuring is unavoidable, affixed to a duplicate first page.

(d) *Exhibit list.* Each party must maintain an exhibit list with the exhibit number and a brief description of each exhibit. If the exhibit is not filed, the exhibit list should note that fact. The Board may require the filing of a current exhibit list prior to acting on a motion.

#### **§ 1.155 Objection; motion to exclude; motion in limine.**

(a) *Deposition.* Objections to deposition evidence must be made during the deposition. Evidence to cure the objection must be provided during the deposition unless the parties to the deposition stipulate otherwise on the deposition record.

(b) *Other than deposition.* For evidence other than deposition evidence:

(1) *Objection.* Any objection must be filed within five business days of service of evidence, other than deposition evidence, to which the objection is directed. The objection must identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence.

(2) *Supplemental evidence.* The party relying on evidence to which an objection is timely filed may respond to the objection by filing supplemental evidence within ten business days of service of the objection.

(c) *Motion to exclude.* A miscellaneous motion to exclude evidence must be filed to preserve any objection. The motion must identify the objections in the record in order and must explain the objections.

(d) *Motion in limine.* A party may file a miscellaneous motion in limine for a ruling on the admissibility of evidence.

#### **§ 41.156 Compelling testimony and production.**

(a) *Authorization required.* A party seeking to compel testimony or production of documents or things must file a miscellaneous motion for authorization. The miscellaneous motion must describe the general relevance of the testimony, document, or thing and must:

(1) In the case of testimony, identify the witness by name or title, and

(2) In the case of a document or thing, the general nature of the document or thing.

(b) *Outside the United States.* For testimony or production sought outside the United States, the motion must also:

(1) *In the case of testimony.*

(i) Identify the foreign country and explain why the party believes the witness can be compelled to testify in the foreign country, including a description of the procedures that will be used to compel the testimony in the foreign country and an estimate of the time it is expected to take to obtain the testimony; and

(ii) Demonstrate that the party has made reasonable efforts to secure the agreement of the witness to testify in the United States but has been unsuccessful in obtaining the agreement, even though the party has offered to pay the expenses of the witness to travel to and testify in the United States.

(2) *In the case of production of a document or thing.* (i) Identify the foreign country and explain why the party believes production of the document or thing can be compelled in the foreign country, including a description of the procedures that will be used to compel production of the document or thing in the foreign country and an estimate of the time it is expected to take to obtain production of the document or thing; and

(ii) Demonstrate that the party has made reasonable efforts to obtain the agreement of the individual or entity having possession, custody, or control of the document to produce the document or thing in the United States but has been unsuccessful in obtaining that agreement, even though the party has offered to pay the expenses of producing the document or thing in the United States.

(c) The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence.

#### **§ 41.157 Taking testimony.**

(a) *Form.* Direct testimony must be submitted in the form of an affidavit