

§ 41.158

37 CFR Ch. I (7–1–13 Edition)

The proponent of the testimony must file the original as an exhibit.

(8) Any objection to the content, form, or manner of taking the deposition, including the qualifications of the officer, is waived unless made on the record during the deposition and preserved in a timely filed miscellaneous motion to exclude.

(f) *Costs.* Except as the Board may order or the parties may agree in writing, the proponent of the testimony shall bear all costs associated with the testimony, including the reasonable costs associated with making the witness available for the cross-examination.

§ 41.158 Expert testimony; tests and data.

(a) Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight. Testimony on United States patent law will not be admitted.

(b) If a party relies on a technical test or data from such a test, the party must provide an affidavit explaining:

- (1) Why the test or data is being used,
- (2) How the test was performed and the data was generated,
- (3) How the data is used to determine a value,
- (4) How the test is regarded in the relevant art, and
- (5) Any other information necessary for the Board to evaluate the test and data.

Subpart E—Patent Interferences

§ 41.200 Procedure; pendency.

(a) A patent interference is a contested case subject to the procedures set forth in subpart D of this part.

(b) [Reserved]

(c) Patent interferences shall be administered such that pendency before the Board is normally no more than two years.

[69 FR 50003, Aug. 12, 2004, as amended at 75 FR 19559, Apr. 15, 2010]

§ 41.201 Definitions.

In addition to the definitions in §§ 41.2 and 41.100, the following definitions apply to proceedings under this subpart:

Accord benefit means Board recognition that a patent application provides a proper constructive reduction to practice under 35 U.S.C. 102(g)(1).

Constructive reduction to practice means a described and enabled anticipation under 35 U.S.C. 102(g)(1) in a patent application of the subject matter of a count. *Earliest constructive reduction to practice* means the first constructive reduction to practice that has been continuously disclosed through a chain of patent applications including in the involved application or patent. For the chain to be continuous, each subsequent application must have been co-pending under 35 U.S.C. 120 or 121 or timely filed under 35 U.S.C. 119 or 365(a).

Count means the Board's description of the interfering subject matter that sets the scope of admissible proofs on priority. Where there is more than one count, each count must describe a patentably distinct invention.

Involved claim means, for the purposes of 35 U.S.C. 135(a), a claim that has been designated as corresponding to the count.

Senior party means the party entitled to the presumption under § 41.207(a)(1) that it is the prior inventor. Any other party is a *junior party*.

Threshold issue means an issue that, if resolved in favor of the movant, would deprive the opponent of standing in the interference. Threshold issues may include:

- (1) No interference-in-fact, and
- (2) In the case of an involved application claim first made after the publication of the movant's application or issuance of the movant's patent:
 - (i) Repose under 35 U.S.C. 135(b) in view of the movant's patent or published application, or
 - (ii) Unpatentability for lack of written description under 35 U.S.C. 112(a) of an involved application claim where the applicant suggested, or could have suggested, an interference under § 41.202(a).

[69 FR 50003, Aug. 12, 2004, as amended at 77 FR 46631, Aug. 6, 2012]