

Deposition and Other Interpreting for US Civil Litigation

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IJET-27 Conference
June 18-19, 2016

Your Speaker: The Past

- Russian language interpreter (in the late 1960s) based in Japan and riding on various intelligence-gathering platforms.
- Electrical engineer.
- 1976-1979: Branch manager of a US electronics firm in Japan.

Your Speaker: The Present

- Patent translator
- Interpreter for civil litigation involving Japanese entities

Scope

- Very brief introduction to depositions
- Skills required
- Anecdotal examples of what can happen
- The business aspects of interpreting

What is a Deposition?

- Part of discovery in US civil litigation.
- The examining of witnesses to discover facts and information known by the opposing party.
- Depositions occur before a trial.
- Often take longer than the trial itself.
- In patent cases, 95% of the time, there is no trial, because of a settlement of some type. there is no trial.

Depositions in Japan?

- Depositions are prohibited in Japan in accordance with interpretation of the US-Japan Consular Treaty.

So Where Are Depositions Actually Taken?

- In the US: usually at the office of a law firm involved in the litigation
- In Japan: “always” at the US Embassy or a US consulate
- In some other countries (e.g., Korea, Taiwan, Guam, Hawaii)

Types of Cases Involving Japanese

- Patent infringement (including ITC investigations related assignments) account for almost all of my cases)
- Contract disputes, employee/employer disputes, personal injury are a negligible proportion of the cases in which depositions are taken in Japan.

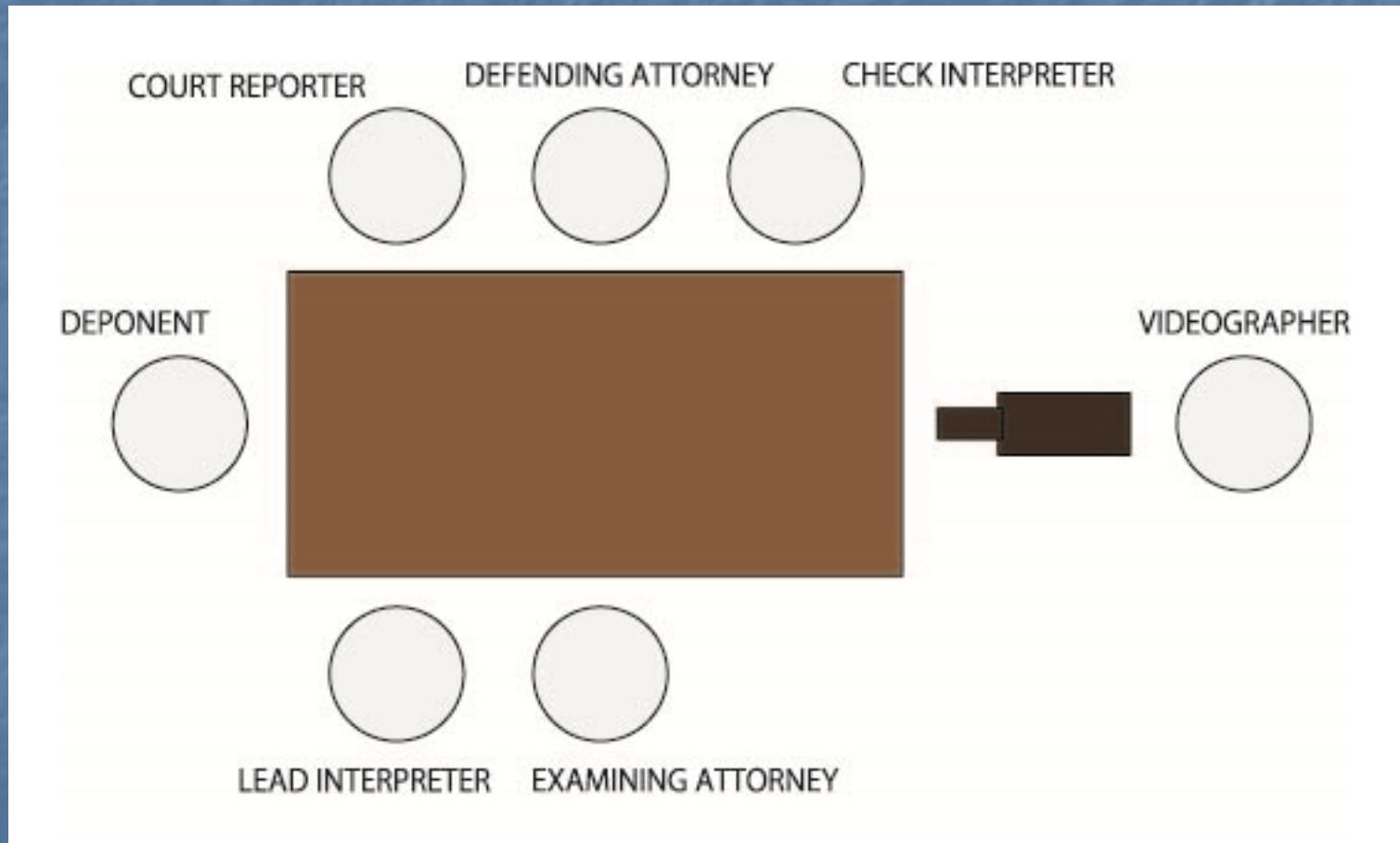
Who's in the Deposition Room? (Non-Speakers)

- Court reporter
- Videographer (optional)
- Party representative(s)

Who's in the Deposition Room? (Speakers)

- Attorney(s) for the plaintiff
- Attorney(s) for the defendant
- Witness (for either party)
- Lead interpreter
- Check interpreter

The Deposition Room



Real-Time “Translation”

- Commonly used in civil litigation.
- Provides a running display in real time of everything said in the deposition room in English.
- Programs such as LiveNote.
- Lead interpreter should have access to a computer screen.

Subject Matter Discussed

- Background questions (educational and work history)
- Organizational questions
- Substantive questions about the litigation
- Very little related to law
- Objections
- Colloquy between attorneys

Substantive Witness Examination

- Technical aspects of the witnesses company's products
- Procedural issues regarding filing for patents
- Matters related to profits related to accused products

Documents Presented to the Witness

- Lead interpreter will be lost without a document to follow, particularly if the examining attorney is to read any substantial language from a document.
- Ability to sight translate is important

Interpreter might be asked to sight translate things like this.

1. A light source having a planar main surface capable of emitting a white light which comprises a blue LED, an optical guide plate having a planar main surface and an edge face getting injection of the light from said blue LED, and an coating material of transparent resin or glass containing fluorescent materials positioned between said blue LED and said optical guide plate, whereby the fluorescent materials can be excited by absorption of a part of the blue light from the blue LED to emit fluorescence light and the fluorescence light can be mixed with a remaining part of the blue light to make a white light in said optical guide plate.

Skills and Knowledge Beyond Required

- Note-taking
- Knowledge of the civil litigation process
- Technical field-specific knowledge
- Knowledge of patents
- Ability to find court documents and patents independently

Problematical Expressions

- OXOX.... is it not?
- It is true that any good attorney can turn any sentence into a question by merely appending to the end thereof “is it not,” is it not?

Problematical Expressions

- Is it fair to say....?
- The above question has nothing to do with fairness

Problematical Expressions

- Did you ever review...
- Who do you report to...
- Are you familiar with...
- Could you give me a high-level description of

The Checking Interpreter

- Working for the Japanese entity or their US counsel
- Checks the interpreting of the lead interpreter and makes corrections or comments on the record.

Advantage of Being the Checking Interpreter

- Preparing witnesses for depositions
- Translation work generated by litigation
- Continuing non-litigation work from one of the parties to the litigation

The Deposition Difference

- Adversarial environment
- One side wants to ask questions and generally the other side wants to say as little as possible.
- Sensitive subject matter

Deposition Interpreting: The Market

- Demand: Maximum of three lead interpreters on any day in Japan (although the average actually working is probably not much more than 1.5 interpreters).
- About the same number of check interpreters

Deposition Interpreting: The Business

- Income (higher than most other interpreting, but the high-low span is about two:one)
- Need to establish conditions before agreeing to handle an assignment
- Sales opportunities (for both interpreting and translation)

Getting Paid

- 30 days net is normal when dealing with US law firms.
- Few US law firms honor these terms and some state up front that they are impossible.
- The above makes dealing with the Japanese party a valuable approach.

Cancellation Fees

- Absolutely required to maintain your freedom. Without the fees, the interpreter risks uncertainty and lost income.
- Needs to be in an up-front agreement
- Letter of engagement encompassing fees and other conditions is (or should be) standard

Typical Day (Check Interpreter)

- Meeting client and counsel at 0800 for breakfast—interpret
- 0900-1230 Morning deposition session (one break of about 109 minutes)
- Lunch (half spent interpreting)
- 1330-1700 Afternoon deposition session (one or two breaks of 10 minutes)
- Return with client to do additional prepping until 1930.

Getting Paid

- Establish who your client is (i.e., the person who is *paying* you)
- Need to have a method of contacting the entity that *pays* you. Post-assignment switching of the paying entity should light a yellow warning lamp.

Agencies

- Usually not close enough to the client to have reliable information on whether a job will even happen.
- Almost never add any value.

Sales Opportunities

- Direct contact with clients.
- Synergy between interpreting and translation.
- Opportunity to meet with Japanese manufacturers while working with US attorneys.

Use Your Strengths

- US Law firms want a clean transcript, and value native-level English.
- US Law firms (and their Japanese clients) value having an interpreter as a team member, seldom possible with an interpreter from an agency in Japan, who is constantly on the clock.
- Clients who have had problems with non-technically astute interpreters are prime targets for technically astute interpreters.

Being a Team Member

- Not going home at 5pm can payoff big later.
- Providing the client with a bit more than they thought they were purchasing can bring you rewards.
- Doing either of the above distinguishes you from the crowd of 9-to-5 on-the-clock agency interpreters the client might have come to expect.

The Takeaway

- Acquire knowledge and skills beyond interpreting skills.