

from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding. Relief through a protective order may include one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;
- (3) That the discovery may be had only upon such terms and conditions as the Board may impose to insure financial responsibility indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred;
- (4) That the discovery may be had only by a method other than that selected by the party seeking discovery;
- (5) That certain matters not be inquired into or that the scope of discovery be limited to certain matters;
- (6) That discovery be conducted with no one present except persons designated in the protective order;
- (7) That a deposition after being sealed be opened only by order of the Board;
- (8) That a trade secret or other confidential research development or commercial information not be disclosed or be disclosed only in a designated way; and
- (9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only upon direction or order of the Board.

If the motion for a protective order is denied in whole or in part, the Board may, on such terms and conditions as it deems just, enter an order requiring any party or person to provide or permit discovery. A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under §§ 1114.24(a), 1114.26(a), or 1114.31.

(d) *Sequence and timing of discovery.* Unless the Board upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise,

should not operate to delay any party's discovery.

(e) *Stipulations regarding discovery.* Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Board may:

- (1) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner and when so taken may be used like other depositions; and
- (2) Modify the procedures provided by these rules for other methods of discovery.

(f) *Service of discovery materials.* Unless otherwise ordered by the Board, depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto, shall be served on other counsel and parties, but shall not be filed with the Board. Any such materials, or portions thereof, should be appended to the appropriate pleading when used to support or to reply to a motion, or when used as an evidentiary submission.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

#### § 1114.22 Deposition.

(a) *Purpose.* The testimony of any person, including a party, may be taken by deposition upon oral examination.

(b) *Request.* A party requesting to take a deposition and perpetuate testimony:

- (1) Should notify all parties to the proceeding and the person sought to be deposed; and
- (2) Should set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition will be taken.

[61 FR 52713, Oct. 8, 1996]

#### § 1114.23 Depositions; location, officer, time, fees, absence, disqualification.

(a) *Where deposition should be taken.* Unless otherwise ordered or agreed to by stipulation, depositions should be taken in the city or municipality where the deponent is located.

(b) *Officer before whom taken.* Within the United States or within a territory

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or insular possession subject to the dominion of the United States, depositions should 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. Within a foreign country, depositions may be taken before an officer or person designated by the Board or agreed upon by the parties by stipulation in writing to be filed with the Board.

(c) *Fees.* A witness whose deposition is taken pursuant to these rules and the officer taking same, unless he be employed by the Board, shall be entitled to the same fee paid for like service in the courts of the United States, which fee should be paid by the party at whose instance the deposition is taken.

(d) *Failure to attend or to serve subpoena; expenses.* (1) If the party who filed a petition for discovery fails to attend and proceed with the taking of the deposition and another party attends in person or by representative pursuant to an order of the Board granting discovery the Board may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(2) If the party who filed a petition for discovery fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by representative because he expects the deposition of the witness to be taken, the Board may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(e) *Disqualification for interest.* No deposition should be taken before a person who is a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel or is financially interested in the proceeding.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

§ 1114.24 **Depositions; procedures.**

(a) *Examination.* Examination and cross-examination of witnesses should

proceed as permitted at a hearing and should be limited to the subject matter specified in the order granting discovery. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, should be noted by the officer upon the deposition. Evidence objected to should be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and shall transmit them to the officer, who shall open the sealed envelope, propound the questions to the witness, and record the answers verbatim.

(b) *Use of depositions.* At the hearings, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership, association or governmental agency (other than this Board, except in those instances where the Board itself is a party to the proceeding) which is a party, may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer or Board finds:

- (i) That the witness is dead; or
- (ii) That the witness is at a greater distance than 100 miles from the place of hearing or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or
- (iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or