

protect a party from annoyance, burden, or harassment.

(c) *Use as evidence.* Any matter admitted is conclusively established for the purpose of the pending action, unless the Board, on motion, permits withdrawal or amendment of the admission.

[73 FR 36258, June 26, 2008, as amended at 73 FR 60610, Oct. 14, 2008]

§ 22.14 Production of Documents, Electronically Stored Information, Other Tangible Things, or Entry Onto Land [Rule 14].

(a) *When documents, electronically stored information, other tangible things, or entry onto land may be requested.* After an appeal has been docketed by the Board and a complaint has been filed, any party may serve on any other party a request—

(1) To produce and permit the inspection, copying, or photographing of any designated documents or electronically stored information (including writings, papers, books, accounts, photographs, drawings, graphs, charts, recordings, and other data or data compilations), or other tangible things, not privileged, which are in his, her, or its possession, custody, or control and which are within the scope of discovery as described in § 22.8(b) of this part [Rule 8(b)]; or

(2) To permit entry onto designated land or other property in his or its possession or control for the purpose of inspecting, measuring, surveying, filming, or photographing the property or any designated object or operation thereon which is within the scope of discovery as described in § 22.8(b) of this part [Rule 8(b)].

(b) *Time, place, and manner.* The request shall specify the time, place, and manner of making the inspection and taking the copies and photographs. The Board may make an order that the inspection, copying, measuring, surveying, filming, or photographing shall be limited to certain matters; or the Board may make any other order which, in its discretion, it deems appropriate to protect the party from annoyance, burden, or harassment.

§ 22.15 Conferences and Orders [Rule 15].

(a) *Initial status conference.* As soon as practicable after the filing of the complaint and answer, the Board shall schedule an initial status conference to discuss the issues of the case, the procedures available under the Board's rules of resolution of the case, and a tentative schedule for such resolution, including the plan for possible discovery required by Rule 8(c), the possibility of alternative dispute resolution (see Rule 24), and the possibility of dispositive motions.

(b) *Status conferences and reports.* At any time during the appeal, the Board, upon its own initiative or upon the request of one of the parties, may call upon the parties or their attorneys or representatives to appear before the Board (or one or more members thereof) for a status conference to consider or report on whatever matters are necessary to aid in the disposition of the appeal. Such matters may include, for example, the simplification or clarification of issues, the necessity or desirability of amendments to the pleadings, agreements and rulings to facilitate discovery, progress reports during discovery, and pre-hearing procedures and scheduling. Status conferences may be conducted in person or by telephone, and the Board generally will make an order which recites the action taken at the conference(s). From time to time, the Board also may require one or more of the parties, either jointly or individually, to provide status reports concerning any matter that aids in the disposition of the appeal.

(c) *Rulings, orders, and directions.* The Board may make such rulings and issue such orders and directions as are necessary to secure the informal, expeditious, and inexpensive resolution of every case before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to the rules of this Board may be made on the motion of any party or on the initiative of the Board. The Board may also amend, alter, or vacate a ruling, order, or direction upon such terms as it deems appropriate. In making rulings and issuing orders and directions, the Board will take into consideration those Federal Rules of Civil Procedure

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and Federal Rules of Evidence which address matters not specifically covered herein.

[73 FR 60610, Oct. 14, 2008]

§ 22.16 Hearings [Rule 16].

(a) *Election of hearing or record submission.* Each party shall inform the Board, in writing, whether it elects a hearing or submission of the case on the record pursuant to § 22.17 of this part [Rule 17]. Such election shall occur no later than 15 days after the conclusion of discovery, unless the Board directs otherwise. In the event that only one party waives a hearing and submits its case on the record, the Board shall proceed with a hearing attended by the remaining parties.

(b) *Pre-hearing schedule.* (1) Within 30 days of the conclusion of discovery, the parties shall meet and confer and provide the Board with a joint proposed schedule for pre-hearing and hearing disclosures, submissions, and key events. In the absence of agreement, each party shall submit its own proposed schedule. The schedule shall address, at a minimum, deadlines for submitting the following:

(i) Dispositive motions, motions for summary judgment, and motions in limine, which allow sufficient time for the Board to resolve the motions before the hearing;

(ii) Pre-hearing briefs or statements of the case;

(iii) The identification of lay and expert witnesses for hearing, the general substance of testimony to be offered by each witness, and any depositions that will be used in lieu of witness testimony;

(iv) The exchange of expert reports and statements (if not done during discovery);

(v) Proposed stipulations of fact;

(vi) The exchange of hearing exhibit books;

(vii) The production of any additional documents to be used at the hearing that are not already part of the § 22.4 [Rule 4] file;

(viii) Objections to proposed evidence or § 22.4 [Rule 4] file submissions;

(ix) Date for conducting a pre-hearing conference;

(x) Dates and duration of the hearing; and

(xi) Any other matter necessary for resolution before the hearing.

(2) As soon as practicable after receipt of the parties' proposed schedule(s), the Board will issue an order establishing a schedule for pre-hearing submissions and events, taking into account the parties' proposed schedule, the nature of the case, and the scheduling needs of the Board.

(c) *Pre-hearing conference.* Prior to the hearing, the Board will conduct a pre-hearing conference to discuss such matters as may be necessary to conduct an orderly and efficient hearing. Objections to evidence may be resolved during the pre-hearing conference or at such other time as established by the Board.

(d) *Pre-hearing briefs.* At least 20 days before a scheduled hearing, each party shall file, in accordance with § 22.6(b) of this part [Rule 6(b)], a pre-hearing statement of the case, which shall include the party's legal and factual analysis of the relevant issues, and how the party intends to prove its case.

(e) *Location of hearing.* Hearings will be held at 441 G Street, NW., Washington, DC 20548, unless otherwise ordered by the Board. The Board will consider a request for a hearing at another location if compelling reasons are timely presented.

(f) *Notice of hearing.* The parties, or their counsel, will be given at least 15 days notice of the time and place of a hearing on the merits, provided that the parties may, with the approval of the Board, waive notice and fix a mutually satisfactory time for the hearing. Continuances will not be granted except upon written request and for good cause.

(g) *Nature of hearing.* Hearings may be held by one or more of the panel members of the Board and shall be as informal as may be reasonable and appropriate under the circumstances. Each party may offer the testimony of witnesses, who shall be subject to cross-examination by the opposing party, and such relevant and material evidence as they deem appropriate and as would be admissible under paragraph (h) of this section [Rule 16(h)], subject, however, to the sound discretion of the presiding Board member in supervising the extent and manner of