

A company sued a competitor in federal court, alleging that the competitor stole the company's trade secrets regarding its 3D printing technology. The company is concerned that discovery will lead to disclosure of its other trade secrets.

What is the most efficient strategy for the company to protect these trade secrets from disclosure?

- A. Assert that its trade secrets are privileged.
- B. File a motion for an ex parte temporary restraining order.
- C. Obtain a stipulation that limits the scope of discovery.
- D. Withhold information relating to its trade secrets.

## Explanation:

### Discovery stipulations

(FRCP 29)

#### Depositions

Parties may stipulate that depositions be taken:

- before any person
- at any time or place
- on any notice
- in any manner

#### Other discovery procedures

Parties may stipulate to modifications:

- limiting scope of discovery
- expanding limits set by other rules
- extending time to complete particular requests\*

**FRCP** = Federal Rule of Civil Procedure.

\*Court approval required if extension would interfere with deadlines for completing all discovery, hearing a motion, or trial.

Parties can use various [methods of discovery](#) to obtain nonprivileged information that is relevant and proportional to the needs of the case. The **broad scope of discovery** requires disclosure of **evidence that could be used at trial** *as well as* **information that may lead to the discovery of such evidence**. As a result, it is possible that discovery could lead to the disclosure of the company's other trade secrets.

To protect that information from disclosure, the company could confer with the competitor to reach an **agreement** that **modifies discovery rules and procedures**. FRCP 29 allows the parties to **stipulate** to modifications that:

- **expand the limits** imposed by rules governing discovery (eg, increase the number of [interrogatories](#) above 25)
- **extend the time** to complete particular discovery requests (eg, allow more than 30 days to respond to a [request for production](#)) *or*
- **limit the scope** of discovery (eg, bar discovery of certain materials—as the company seeks to do here).

A stipulation would be **more efficient and less expensive** than pursuing a motion to obtain a court order to modify the scope of discovery. Therefore, a stipulation is the most efficient strategy to prevent disclosure of the company's other trade secrets.

**(Choice A)** Trade secrets are *not* privileged, so this assertion could not be used to protect that information.

**(Choice B)** The company could file a motion for an ex parte temporary restraining order (TRO) to protect its other trade secrets from disclosure. But that would not be the most *efficient* strategy since an ex parte TRO generally remains in effect for only 14 days or until a preliminary-injunction hearing can take place—whichever occurs first.\*

\*An ex parte TRO automatically remains in effect for 14 days unless that time period is (1) shortened by the court or (2) extended by the court for good cause or based on the adverse party's consent.

**(Choice D)** Since the company's other trade secrets are likely discoverable, they cannot be withheld without a stipulation or court order that limits the scope of discovery.

**Educational objective:**

Discovery stipulations between the parties are an efficient way to modify discovery rules and procedures. They can be used to (1) expand the limits imposed by discovery rules, (2) extend the time to complete particular discovery requests, or (3) limit the scope of discovery.

**References**

- Fed. R. Civ. P. 29 (discovery stipulations).
- 23 Am. Jur. 2d Depositions and Discovery § 10 (2019) (explaining stipulations regarding discovery).