

Decision and Order and the current due dates for the briefs.”¹ Respondent stipulates to the extension due to the intervening holidays, but does not agree that the complexity of the legal issues requires briefing extensions.

Based upon the Initial Decision and Complaint Counsel’s submission, the Commission believes a short extension of time is appropriate. The Commission therefore grants this part of Complaint Counsel’s motion.

Extension of Word Limitation

Complaint Counsel also seeks leave of the Commission to exceed by 4,000 words the 18,750 word count limitation for briefs set forth in Commission Rules 3.52(b)-(c), 16 C.F.R. § 3.52(b)-(c). The Commission does not believe such leave is appropriate at this time. The word count limitation prescribed in the Commission Rules affords parties ample opportunity to provide the Commission with information sufficient to aid it in deciding issues and preparing opinions and orders. As set forth in Commission Rule 3.52(k), 16 C.F.R. § 3.52(k), “Extensions of word count limitation are disfavored, and will only be granted where a party can make a strong showing that undue prejudice would result from complying with the existing limit.” This showing has not been made here.

¹ Complaint Counsel’s Motion at 1.

In support of its request, Complaint Counsel claims that the Initial Decision raised complex legal issues relating to the application of *Noerr-Pennington* immunity and the jurisdiction of the Commission over substantial issues of patent law. Further, Complaint Counsel simply asserts “that an additional 4,000 words for the appeal brief will prevent the undue prejudice that would result if the brief was limited to 18,750 words.”² Respondent, though not opposing the request for the extension of word count limitation, does not agree that additional words are necessary for these briefs. Even assuming that the issues that it will be required to resolve are complex, the Commission believes that Complaint Counsel has failed to show that 4,000 additional words will make the issues less complex or will provide the Commission with additional information that would assist it in reaching its conclusions. Moreover, Complaint Counsel has failed to explain how undue prejudice would result. For these reasons, Complaint Counsel’s argument falls well short of overcoming the Commission’s unfavorable view of word count extensions. The Commission therefore denies the motion for extension of word count limitation beyond that prescribed by the Commission Rules of Practice.

With regard to both requests, the Commission notes that it would like to see this matter proceed expeditiously. Doing so will require the parties to exercise a high degree of discipline and focus in presenting the issues required for the Commission’s resolution of this matter. Parties should govern themselves accordingly.

² Complaint Counsel’s Motion at 4.

For the foregoing reasons, upon consideration of Complaint Counsel's Motion For Extension Of Time And To Enlarge The Word Limits For The Appeal Briefs,

IT IS ORDERED THAT (1) Complaint Counsel shall file their initial brief on appeal from the Initial Decision by January 14, 2004, and (2) Complaint Counsel's appeal shall be deemed perfected "by the timely filing of an appeal brief," for purposes of Commission Rule 3.51(a), 16 C.F.R. § 3.51(a), if Complaint Counsel file their initial brief on appeal by that date;

IT IS FURTHER ORDERED THAT Respondent shall file their answering brief by February 27, 2004; and

IT IS FURTHER ORDERED THAT Complaint Counsel's request for extension of the word count limitation be, and it hereby is, denied.

By the Commission.

Shira Pavis Minton

Acting Secretary

ISSUED: