

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____)
In the Matter of)
)
Impax Laboratories, Inc.,)
a corporation,)
)
Respondent.)
_____)

Docket No. 9373

**ORDER EXTENDING TIME FOR FILING INITIAL
DECISION PURSUANT TO COMMISSION RULE 3.51**

Federal Trade Commission (“FTC”) Rule of Practice 3.51(a) provides that “[t]he Administrative Law Judge shall file an initial decision within 70 days after the filing of the last filed initial or reply proposed findings of fact, conclusions of law and order . . .” 16 C.F.R. § 3.51(a). The last reply proposed findings and conclusions and briefs were filed February 7, 2018. Pursuant to Rule 3.51, therefore, the Initial Decision would be issued on or before April 18, 2018. FTC Rule 3.51(a) further provides that “[t]he Administrative Law Judge may extend [this time period] by up to 30 days for good cause.” 16 C.F.R. § 3.51(a).

The record requiring review and analysis in this matter is voluminous. Over 1,250 exhibits were admitted. The parties submitted 3,066 proposed findings of fact (1,492 by Federal Trade Commission Complaint Counsel (“Complaint Counsel”) and 1,574 by Respondent Impax Laboratories, Inc. (“Impax” or “Respondent”). The parties’ proposed findings of fact and conclusions of law, replies to proposed findings of fact and conclusions of law, post-trial briefs, and reply briefs total 2,869 pages.


The Commission’s Complaint alleges that that a reverse payment settlement agreement between Impax and Endo Pharmaceuticals Inc. (“Endo”) was an anticompetitive agreement in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (“FTC Act”). Complaint ¶¶ 1, 3, 102. The Complaint alleges that, through a settlement agreement entered into June 2010, Impax, a generic drug manufacturer, agreed to abandon its legal challenge to patents held by Endo for a branded drug manufactured by Endo (Opana ER) and to forego launching its generic version of Opana ER until January 2013, in exchange for a large, unjustified “reverse payment” from Endo. Complaint ¶¶ 1, 3. In its Answer, Respondent denied most material allegations in the Complaint and further asserted ten affirmative defenses, including that the challenged conduct had substantial procompetitive justifications, benefited consumers, and

avoided infringement of valid patents; and that the procompetitive justifications outweigh any alleged anticompetitive effects. Answer at 21.

Thirty-seven witnesses testified, either live or by deposition. Complaint Counsel called four expert witnesses and one rebuttal expert witness and Respondent called three expert witnesses. The expert witnesses opined on many areas including economics, negotiations, and pharmaceutical business development. This is the FTC's first administrative enforcement action against an alleged reverse payment patent settlement agreement since the Supreme Court's decision in *FTC v. Actavis*, 133 S. Ct. 2223 (2013).

Based on the foregoing, good cause exists to extend the deadline for filing the Initial Decision in this matter by up to 30 days, to May 18, 2018.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: April 6, 2018

Notice of Electronic Service

I hereby certify that on April 06, 2018, I filed an electronic copy of the foregoing Order Extending Time for Filing Initial Decision Pursuant to Commission Rule 3.51, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
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Washington, DC, 20580

Donald Clark
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I hereby certify that on April 06, 2018, I served via E-Service an electronic copy of the foregoing Order Extending Time for Filing Initial Decision Pursuant to Commission Rule 3.51, upon:

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