

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



Commissioners: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

ORIGINAL

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

DOCKET NO. 9373

COMPLAINT COUNSEL'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO
FILE A REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DECISION

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Dated: August 28, 2017

On August 3, 2017, Complaint Counsel filed a Motion for Partial Summary Decision. The motion seeks an order holding that Respondent Impax Laboratories, Inc.'s patent-related affirmative defenses are not cognizable. Such an order would shorten the trial, allowing the parties to focus on relevant issues rather than on Respondent's non-cognizable patent defenses.

Respondent's opposition to this motion was originally due on August 17, 2017. On August 14, the Commission granted Respondent a two-week extension until August 31. Order Granting Respondent's Motion for Extension of Time, Aug. 14, 2017. Thus, Complaint Counsel's reply is now due five business days later, on Monday, September 11. Because this short window falls over a holiday weekend, and because Respondent has indicated it will file a lengthy opposition, Complaint Counsel seeks a brief, four-day extension of its reply deadline to Friday, September 15. Respondent does not oppose this extension.

There is good cause for the Commission to extend Complaint Counsel's reply deadline. *See* 16 C.F.R. § 4.3(b). First, Complaint Counsel's short reply window now falls over the Labor Day weekend holiday and while we are preparing expert rebuttal reports. *See Anhanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1260 (9th Cir. 2010) (good cause for extension where plaintiff was required to file response in eight-day period that included Labor Day weekend). Second, Respondent now has four weeks to prepare its opposition, and it has indicated in its filings that its brief will be extensive. *See* Respondent's Motion and Memo for Extension of Deadline Opposing CC's Motion for Summary Decision at 4, Aug. 8, 2017 (explaining that Respondent would not be able to prepare its opposition in two weeks because of "Complaint Counsel's efforts to rewrite the rule of reason, the novelty of certain of the legal issues involved, [and] the extensive factual record"). Fairness dictates that Complaint Counsel should have sufficient time to fully address all of the issues Respondent raises. Finally, Respondent does not

oppose the requested extension and will suffer no prejudice from it, as it affects none of Respondent's deadlines.

For these reasons, Complaint Counsel respectfully requests that the Commission extend the deadline for Complaint Counsel's Reply in Support of its Motion for Summary Decision to September 15, 2017.

Respectfully submitted,

Dated: August 28, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2017, I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
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The Honorable D. Michael Chappell
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I also certify that I delivered via electronic mail (FTP) a copy of the foregoing documents to:

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Dated: August 28, 2017

By: /s/ Rebecca E. Weinstein
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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

August 28, 2017

By: /s/ Rebecca E. Weinstein
Attorney

Notice of Electronic Service

I hereby certify that on August 29, 2017, I filed an electronic copy of the foregoing Complaint Counsel's Unopposed Motion for Extension of Time to File a Reply in Support of Its Motion for Summary Decision, with:

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I hereby certify that on August 29, 2017, I served via E-Service an electronic copy of the foregoing Complaint Counsel's Unopposed Motion for Extension of Time to File a Reply in Support of Its Motion for Summary Decision, upon:

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