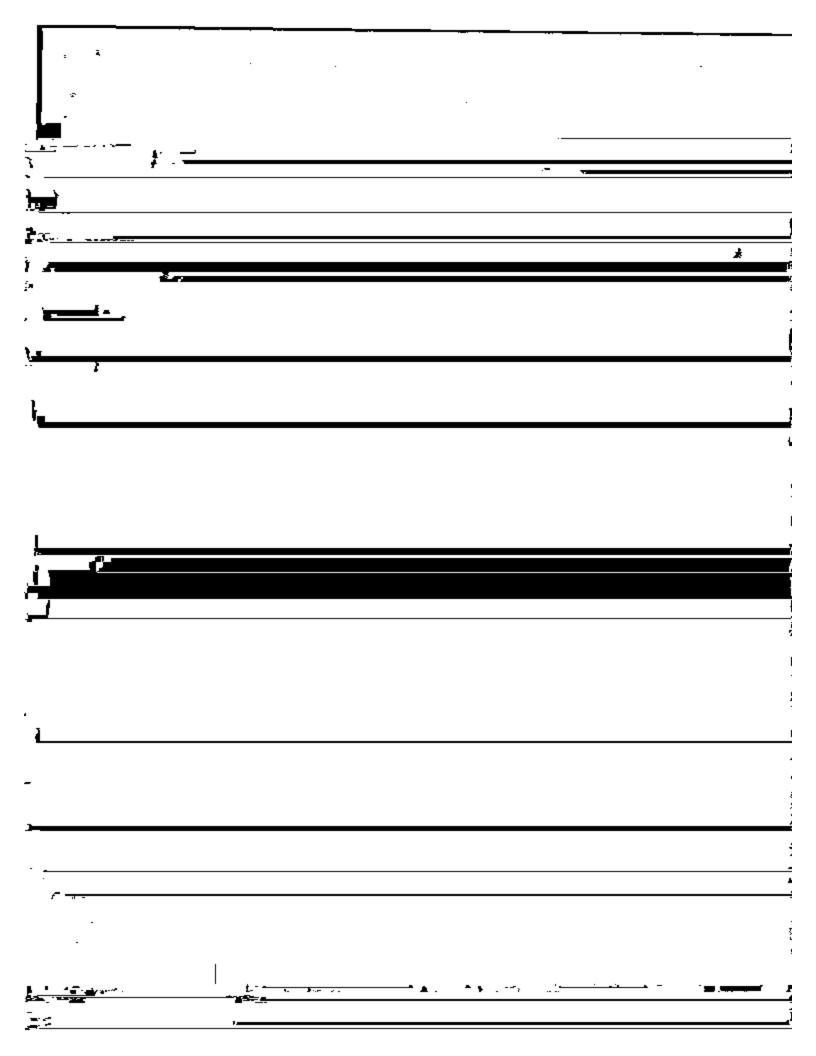
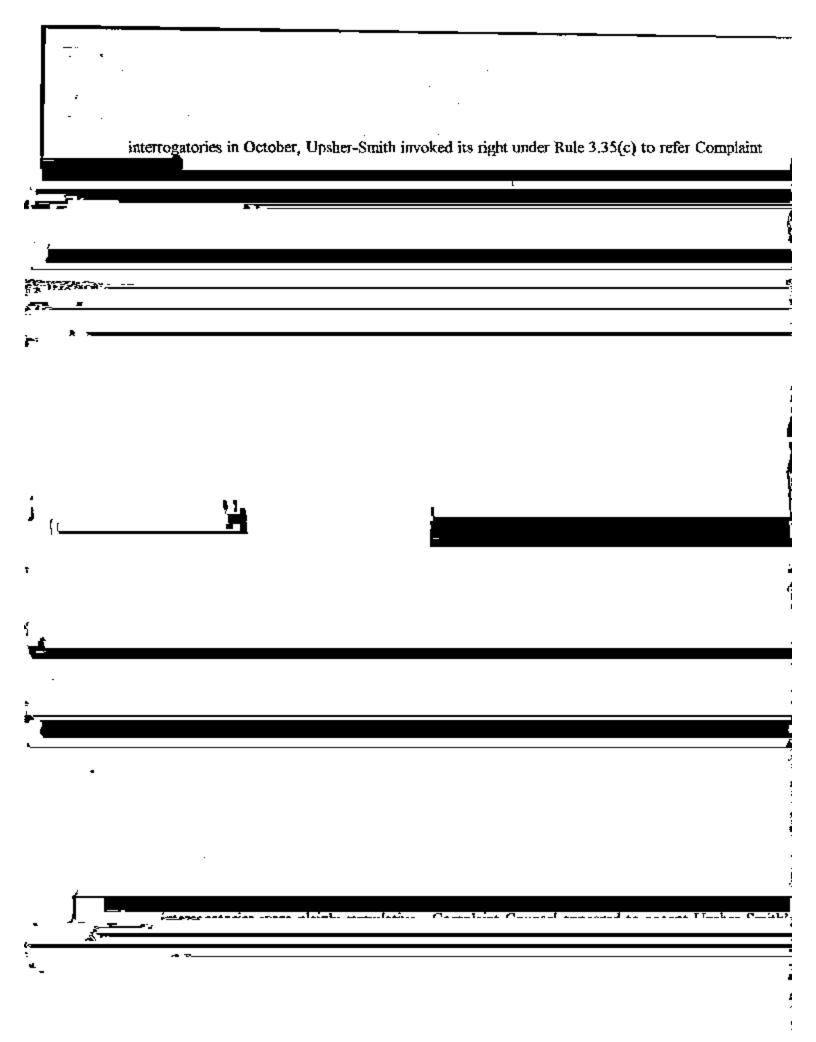
UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION



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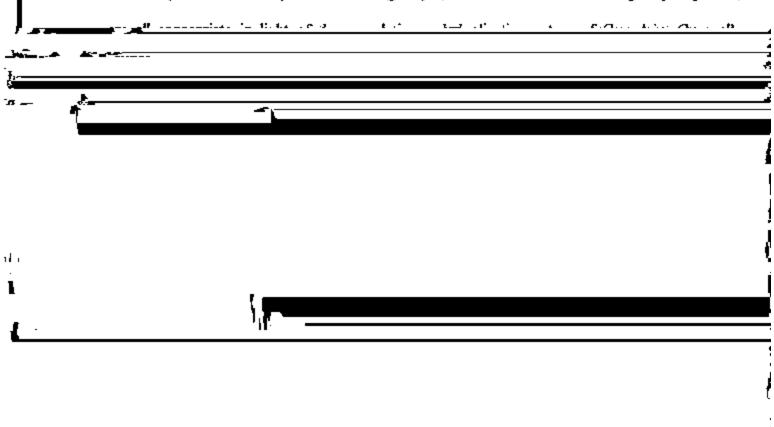


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	"	discovery sought is "cumulative or duplicative," a party has already had ample opportunity to	o
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Counsel's motion focused on, seeks information that Complaint Counsel previously acquired during both fact discovery as well as expert discovery. Upsher-Smith's initial response to Interrogatory 4 appropriately indicated that the information sought had already been provided to Complaint Counsel in "Upsher-Smith's and Schering-Plough's expert reports and the testimony of lan Troup, Denise Dolan, Philip Dritsas, Paul Kralovec, Victoria O'Neill, Mark Robbins, and others, including individuals yet to be deposed." Upsher-Smith Interrog. Resp. No. 4.1

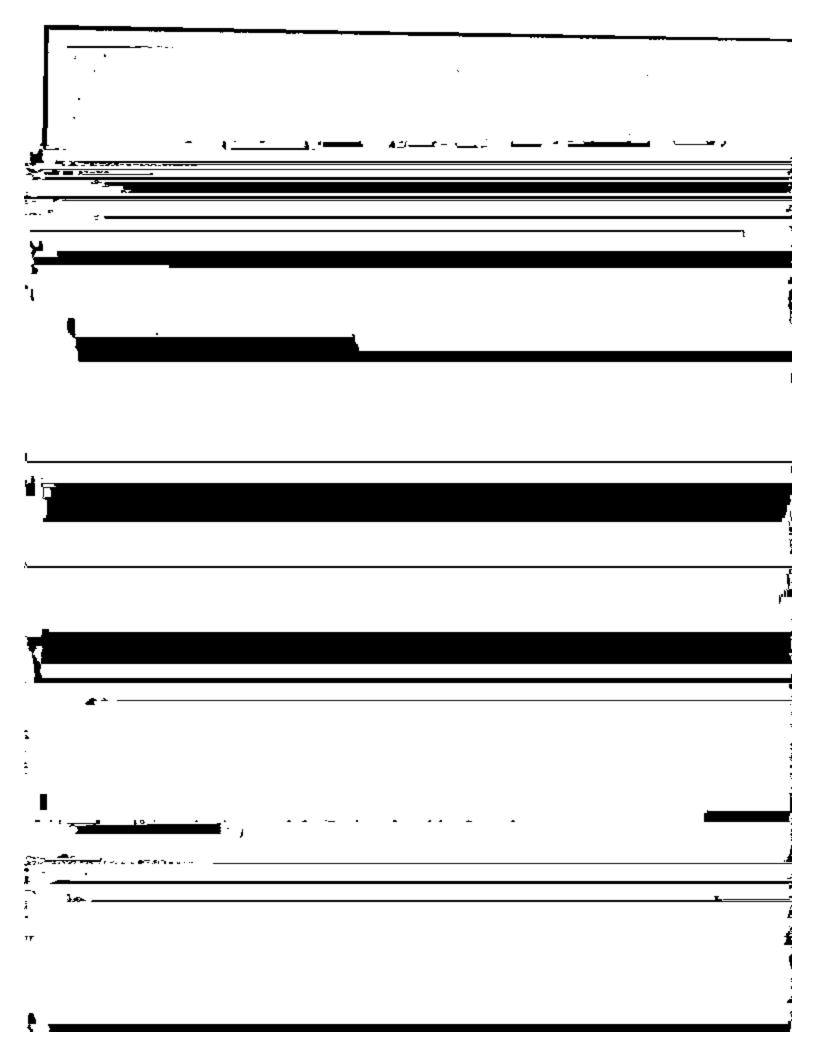
Upsher-Smith's response to Interrogatory 4, as well as the other interrogatory responses,



					
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essence, Complaint Counsel are attempting to argue that no matter what Upsher-Smith provides to Complaint Counsel pursuant to Rule 3.35(c), those documents will be insufficient because Complaint Counsel will have to review those documents to determine what facts in those **E**1

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follows ⁶ :	
Upsher-Smith properly outlined a specific and detailed objection to Interrogato	ry 2 as
Complaint Counsel's Interrogatory 2. The text of the interrogatory is:	
Upsher-Smith finally, does not intend to provide any additional information rela	rted to

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evidence." Id. at *4 - *5. The ments of extensive requests for admission have been previously

best"), and respondent Upsher-Smith propounded no requests precisely due to the extent of the

Request No. 78: Under the Schering/Upsher Agreement, the phrase "any other sustained release microencapsulated potassium chloride tablet" could include a sustained release microencapsulated potassium chloride tablet that did not infringe

The trial in this action will commence in nearly two weeks' time. Further time and energy should not be expended by the parties or Your Honor for Requests that fail to comply with the November 2d Order. Turning to the specific grounds of Complaint Counsel's motion only لغدانا بالمنابعات المنابعات الممانية فالتنافية والمنابعات الماسية المالية الم

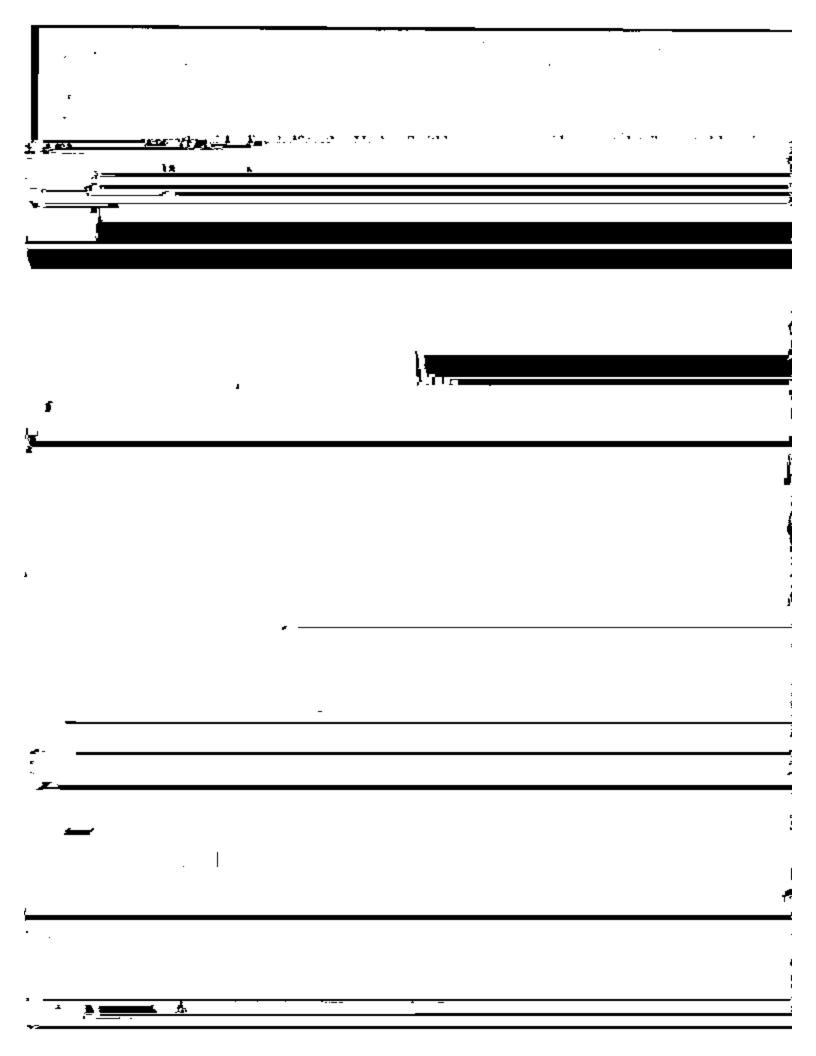
executive distraction for many years? At bottom, what constitutes a "win" in such a complex patent litigation is a highly subjective matter. It is also a fundamental point of difference between Respondents and Complaint Counsel.

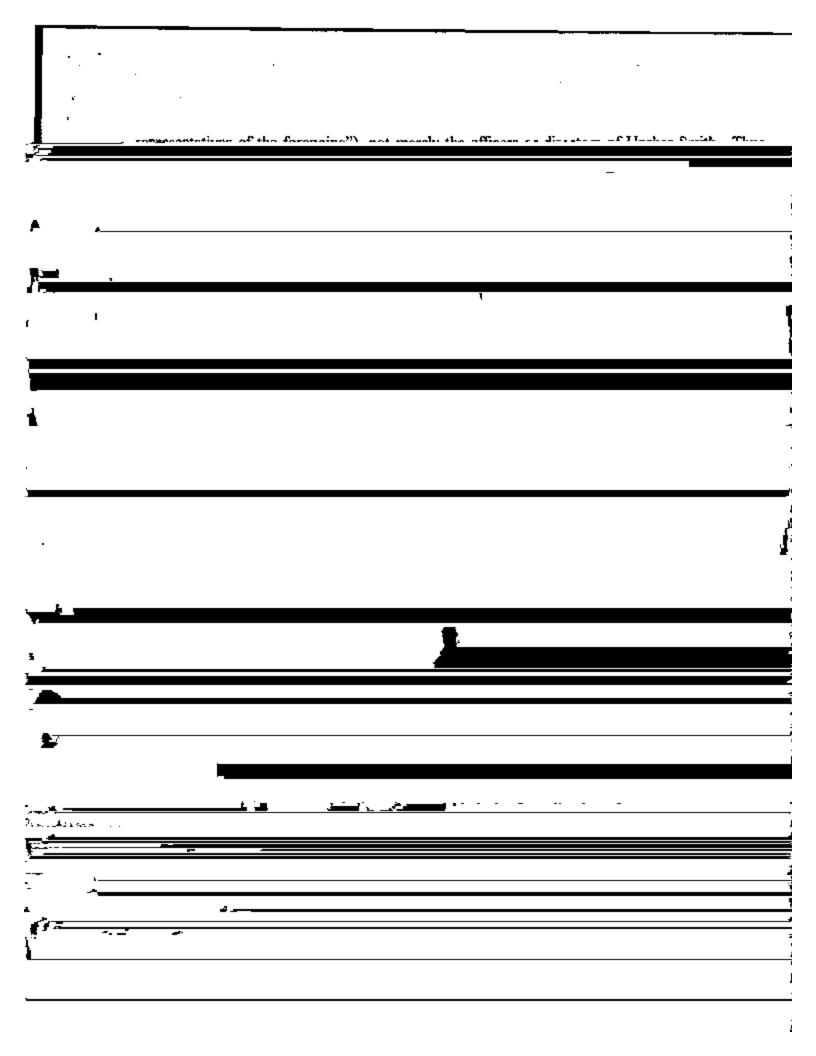
The term "possibility" is also vague. Any "possibility"? A remote "possibility"? An unrealistic "possibility"? Even a de minimus "possibility"? If, as Complaint Counsel's memorandum suggests (at 8), the request means any "possibility" — no matter how remote — then the question is purely argumentative, and theoretical, and hardly constitutes an attempt to

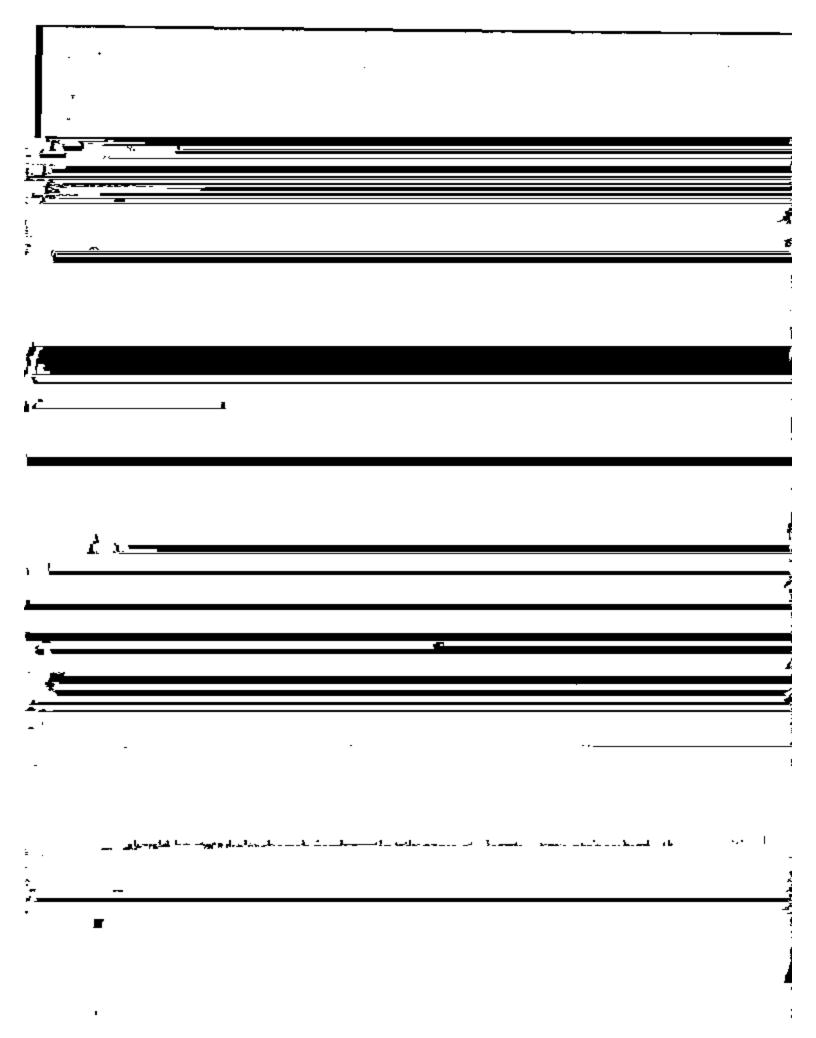
simply not the sort of "peripheral or undisputed fact" (Order at 2, emphasis supplied) for which the Request would be proper.11

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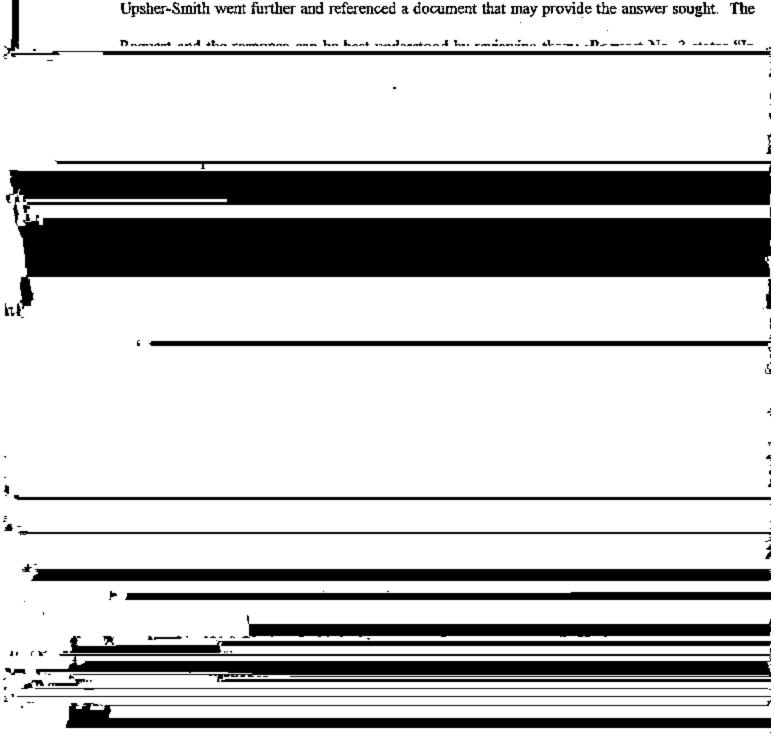




7. Referrals to Documents Were Proper

In Request 3 of the Initial Requests, despite objecting to and denying the Request,

Upsher-Smith went further and referenced a document that may provide the answer sought. The



CONCLUSION

For the reasons stated herein, Your Honor should deny Complaint Counsel's Motion to Compel in its entirety.

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CONCLUSION For the reasons stated herein, Your Honor should deny Complaint Counsel's Motion to

UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
Schering-Plough Corporation, a corporation,		
Upsher-Smith Laboratories, a corporation,) Docket No. 9297	
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ATTACHMENT A



ATTACHMENT B

REDACTED