

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

08 14 2017
587851

Commissioners: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney



In the Matter of)

Impax Laboratories, Inc.,)
a corporation,)

Respondent)
_____)

DOCKET NO. 9373

**COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT IMPAX
LABORATORIES, INC.'S MOTION FOR EXTENSION OF DEADLINE FOR
OPPOSING COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION**

Bradley S. Albert
Deputy Assistant Director

Charles A. Loughlin
Chief Trial Counsel

Daniel W. Butrymowicz
Alpa D. Davis
Nicholas A. Leefer
Synda Mark
Lauren Peay
J. Maren Schmidt
Eric M. Sprague
Jamie Towey
James H. Weingarten
Rebecca E. Weinstein
Attorneys

Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., NW
Washington, DC 20580
Telephone: (202) 326-2114
Email: cloughlin@ftc.gov

Dated: August 14, 2017

On August 3, 2017, Complaint Counsel filed a Motion for Partial Summary Decision.¹

The motion seeks an order holding that Respondent

matter, then in its answer to the complaint on February 7, 2017, and again during the scheduling conference on February 16, 2017. Presumably, Impax understood the legal arguments underlying its patent defenses when it put them in its answer and described them at the scheduling conference. There is no reason it needs almost a month to put those arguments into an opposition brief.

Impax's assertions about the "extensive factual record" in this cas

the Commission's rules provide, there are no intervening holidays, and its counsel's availability is not an issue.

Impax has not demonstrated any cause—let alone good cause—for almost doubling the time for its response beyond the fourteen days provided for in the Commission's rules.

II. Impax's Requested Extension Will Unfairly Prejudice Complaint Counsel.

Complaint Counsel filed its Motion for Partial Summary Decision well in advance of the hearing date—before fact discovery was even closed—so that the parties and the Administrative Law Judge

that preparation time. It would make a Commission decision on Complaint Counsel's motion due just before trial.²

The Commission's Part III rules reflect a careful policy to foster the efficient and expeditious resolution of matters before the Commission. The Commission's rule providing fourteen days' time for opposing motions for summary decision, 16 C.F.R. § 3.24(a)(2), is an important part of that effort. Impax's requested extension would undermine that policy.

CONCLUSION

For these reasons, Complaint Counsel respectfully requests that the Commission deny Respondent Impax Laboratories, Inc.'s Motion for Extension of Deadline for Opposing Complaint Counsel's Motion for Summary Decision.

Respectfully submitted,

Dated: August 14, 2017

/s/ Charles A. Loughlin

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 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
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW
Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail (FTP) a copy of the foregoing documents to:

Edward D. Hassi
Michael E. Antalics
Benjamin J. Hendricks
Eileen M. Brogan
O'Melveny & Myers, LLP
1625 Eye Street NW
Washington, DC 20006
ehassi@omm.com
mantalics@omm.com
bhendricks@omm.com
ebrogan@omm.com

Anna Fabish
Stephen McIntyre
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071
afabish@omm.com
smcintyre@omm.com

Counsel for Respondent Impax Laboratories, Inc.

Dated: August 14, 2017

By: /s/ Rebecca E. Weinstein
Attorney

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 14, 2017

By: /s/ Rebecca E. Weinstein
Attorney

Complaint

Chuck Loughlin
Attorney
Federal Trade Commission
cloughlin@ftc.gov
Complaint

Eileen Brogan
O'Melveny & Myers, LLP
ebrogan@omm.com
Respondent

Alpa D. Davis
Attorney
Federal Trade Commission
adavis6@ftc.gov
Complaint

Lauren Peay
Attorney
Federal Trade Commission
lpeay@ftc.gov
Complaint

James H. Weingarten
Attorney
Federal Trade Commission
jweingarten@ftc.gov
Complaint

Rebecca Weinstein
Attorney
Federal Trade Commission
rweinstein@ftc.gov
Complaint

I hereby certify that on August 14, 2017, I served via other means, as provided in 4.4(b) of the foregoing Complaint Counsel's Opposition to Respondent's Motion for Extension, upon:

Markus Meier
Attorney
Federal Trade Commission
mmeier@ftc.gov
Complaint

Michael Antalics
O'Melveny & Myers, LLP
Respondent

Benjamin Hendricks
O'Melveny & Myers, LLP
Respondent

Edward Hassi
O'Melveny & Myers, LLP
Respondent

Anna Fabish

O'Melveny & Myers, LLP
Respondent

Stephen McIntyre
O'Melveny & Myers, LLP
Respondent

Rebecca Weinstein
Attorney