

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



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In the Matter of )  
 )  
Schering-Plough Corporation, )  
a corporation, )  
 )  
Upsher-Smith Laboratories, )  
a corporation, )  
 )  
and )  
 )  
American Home Products Corporation, )  
a corporation. )  
\_\_\_\_\_)

Docket No. 9297

**ORDER GRANTING JOINT MOTION FOR EXTENSION OF TIME**

By Joint Motion For Extension of Time filed on March 6, 2002, Complaint Counsel, respondent Schering-Plough Corporation ("Schering"), and respondent Upsher-Smith Laboratories, Inc. ("Upsher-Smith") have jointly requested, pursuant to Commission Rule 3.51(a), an extension of the deadline for the initial decision for 60 days.


Rule 3.51(a) requires that initial decisions be filed within one year following the issuance of the complaint. The complaint in this matter was issued on March 30, 2001, and the current deadline for the initial decision is Monday, April 1, 2002. Rule 3.51(a) allows the Administrative Law Judge to extend the one-year deadline for up to 60 days, upon a finding of extraordinary circumstances.

The parties assert that extraordinary circumstances do exist in this case. The unusually broad scope of this matter, which challenges two separate agreements, contributes to the extraordinary circumstances. Complaint Counsel and Respondents state that they must have adequate time to prepare proposed findings of fact and conclusions of law and that the Court must have adequate time to consider the post trial briefs and the record and write the initial decision. There have already been seven weeks of trial, over 30 witnesses have testified, thousands of exhibits have been admitted, and there are currently over 7,600 pages of trial transcript. This substantial record must be thoroughly reviewed.

The scheduling orders issued in this case tightly controlled discovery and set January 23, 2002 as the date for commencement of the hearing. Although discovery was completed in an orderly and timely manner and the trial did begin on January 23, 2002, the trial is still ongoing and is not anticipated to conclude until late March. Commission Rule 3.46 sets forth very specific requirements for post trial briefs. The parties must be allotted sufficient time to file their proposed findings of fact, conclusions of law, and order in conformance with Commission Rule 3.46. Therefore, it would not be feasible to file an initial decision by April 1, 2002.

For the above stated reasons, extraordinary circumstances exist for extending the filing date of the initial decision for 60 days. The Joint Motion is GRANTED. The initial decision will be filed no later than May 31, 2002.

ORDERED:

  
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D. Michael Chappell  
Administrative Law Judge

Date: March 14, 2002