

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of

UNION OIL COMPANY OF CALIFORNIA,
a corporation.

Docket No. 9305

PUBLIC

COMPLAINT COUNSEL'S MOTION FOR EXTENSION OF TIME AND
TO ENLARGE THE WORD LIMITS FOR THE APPEAL BRIEFS;
EXPEDITED CONSIDERATION REQUESTED

Counsel Supporting the Complaint with stipulation of Respondent Union Oil Company of California respectfully requests that the Commission grant Complaint Counsel until January 14, 2004, to file its initial appeal brief pursuant to Rule 3.52(b), and grant Respondent until February 27, 2004, to file its answering brief pursuant to Rule 3.52(c). Complaint Counsel respectfully submits that an extension of time is appropriate due to the complexity of the matters at issue and the federal holidays intervening between the service of the Initial Decision and Order and the current due dates for the briefs. While Respondent does not agree that the alleged complexity of the matters at issue support such an extension, Respondent has no objection to Complaint Counsel's request due to the intervening holidays and has stipulated to an extension for both the appeal brief and the answering brief.

Counsel Supporting the Complaint with the stipulation of Respondent also seeks leave of

the Commission to exceed the word count limitation provided under the Rules 3.52(b)-(c) for both the appeal brief and answering brief. Complaint Counsel requests an expansion of the word limit for each of these briefs by 4,000 words to 22,750 words. Counsel Supporting the Complaint respectfully submits that an extension of the word count is appropriate due to the complexity of the matters at issue. Although extensions of word count limitations are “disfavored,” Complaint Counsel believes the circumstances here meet the test for such extensions, that is, “undue prejudice would result from complying with the existing limit.” Rule 3.52(k). Specifically, Complaint Counsel believes the 18,750 word count limitation prevents it from fully and adequately addressing the complex legal issues raised in the Initial Decision relating to, among other things, the application of Noerr-Pennington immunity and the jurisdiction of the Commission over substantial issues of patent law. While Respondent does not agree that a need exists for exceeding the word limit established by the Rules of Practice, Respondent has no objection to Complaint Counsel’s request and has stipulated to the request for an expansion of the word count limitation for both the appeal brief and the answering brief.

Counsel Supporting the Complaint further requests expedited consideration of this motion. Early resolution will assist the parties in making best use of the time and resources available to prepare fully the issues for consideration by the Commission.

In support of its requests for an extension of time and for an expansion of the word count limitation, Complaint Counsel states the following:

PROCEDURAL HISTORY

1. The Administrative Complaint in this matter was issued on March 4, 2003.
2. Respondent Union Oil Company of California filed two motions to dismiss pursuant to Rule 3.22(e) of the Commission's Rules of Practice on April 2, 2003. The first motion sought dismissal of the Complaint based on immunity under Noerr-Pennington. Complaint Counsel filed its opposition on April 21, 2003. By Order dated August 25, 2003, the Administrative Law Judge ordered the parties to file supplemental briefs. Respondent filed its reply brief on September 9, 2003. Complaint Counsel filed its sur-reply brief on September 26, 2003.
3. Respondent's motion seeking dismissal of the Complaint for failure to make sufficient allegations that Respondent possesses or dangerously threatens to possess monopoly power was also filed on April 2, 2003. Complaint Counsel filed its opposition on April 21, 2003.
4. Administrative Law Judge D. Michael Chappell filed an Initial Decision and Order on November 25, 2003, dismissing all allegations in the Complaint. The Initial Decision and Order was served on the parties on November 26, 2003.
5. On December 2, 2003, Complaint Counsel filed a Notice of Appeal.

REQUEST FOR EXTENSION OF TIME

6. Pursuant to Rule 3.52(b) the appeal brief is due on December 29, 2003. Pursuant to Rule 3.52(c) the answering brief is due thirty days later, on January 28, 2004. Complaint Counsel with stipulation of Respondent respectfully request an extension of time to January 14, 2004, for the filing of an appeal brief, and to February 27, 2004 for the filing of an answering brief.
7. In the Initial Decision, the Administrative Law Judge ruled on two separate motions to

dismiss that Counsel Supporting the Complaint contends raise distinct and complex legal issues. Additional time is necessary to respond appropriately to the legal issues raised in the Initial Decision.

8. The Initial Decision and Order was served on November 26, 2003, one day prior to the Thanksgiving holiday. The time allotted for briefing will also encompass abbreviated work weeks for the Christmas holiday on December 25, 2003, and New Year's holiday on January 1, 2004. Counsel Supporting the Complaint with the stipulation of Respondent respectfully requests that additional time be granted for briefing to enable counsel to observe these holidays.

9. Respondent does not agree that an extension is necessary due to the complexity of the legal issues; but is willing to stipulate to such an extension due to the intervening holidays.

REQUEST FOR LEAVE TO EXCEED WORD COUNT LIMITATION

10. The Initial Decision addressed and resolved two separate motions to dismiss, which Complaint Counsel contends encompass distinct and complex legal issues. Complaint Counsel submits that additional words are necessary to respond fully and appropriately to the legal issues raised in the Initial Decision.

11. Compliant Counsel submits that an additional 4,000 words for the appeal brief will prevent the undue prejudice that would result if the brief was limited to 18,750 words.

12. Respondent does not agree that the additional words are necessary, but Respondent does not oppose the request for expansion of the word count limitation and stipulates to the request for leave to exceed the word count limitation for both the appeal brief and answering brief by 4,000 words.

CONCLUSION

For the foregoing reasons, Counsel Supporting the Complaint with the stipulation of Respondent respectfully requests that the Commission extend the due date for the appeal brief to January 14, 2004, and for the answering brief to February 27, 2004. Further, Counsel Supporting the Complaint requests leave to file appeal and answering briefs exceeding the word limit in the Commission's Rules of Practice by 4,000 words to a limit of 22,750 words, and Respondent stipulates to joining in this request. Complaint Counsel respectfully requests expedited consideration of this motion.

Respectfully submitted,

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December 5, 2003

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BEFORE FEDERAL TRADE COMMISSION**

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[PROPOSED] ORDER

Upon consideration of Complaint Counsel's Motion for Extension of Time and to Enlarge the Word Limits for the Briefs, it is hereby ORDERED that the motion is GRANTED.

IT IS HEREBY ORDERED that Complaint Counsel's appeal brief is due January 14, 2004.

IT IS FURTHER ORDERED that Respondent's answering brief is due February 27, 2004.

IT IS FURTHER ORDERED that Complaint Counsel is granted leave to file an appeal brief not to exceed 22,750 words.

IT IS FURTHER ORDERED that Respondent is granted leave to file an answering brief not to exceed 22,750 words.

It is so ORDERED.

By the Commission.

Issued: December ____, 2003

CERTIFICATE OF SERVICE

I, Elizabeth J. Grimm, hereby certify that on December 5, 2003:

I caused one original and two copies of Complaint Counsel's Motion for Extension of Time and to Enlarge the Word Limits for the Appeal Briefs to be served upon the following person by hand delivery:

Office of the Secretary
U.S. Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580

I caused two copies of Complaint Counsel's Motion for Extension of Time and to Enlarge the Word Limits for the Appeal Briefs to be served upon the following person by hand delivery:

The Honorable D. Michael Chappell
Administrative Law Judge
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

I caused copies of Complaint Counsel's Motion for Extension of Time and to Enlarge the Word Limits for the Appeal Briefs to be served upon the following persons by facsimile and Federal Express delivery:

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