

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



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In the Matter of)

Schering-Plough Corporation,)
a corporation,)

Upsher-Smith Laboratories, Inc.)
a corporation,)

and)

American Home Products Corporation,)
a corporation.)
-----)

Docket No. 9297

MOTION OF ALL PARTIES TO REVISE SCHEDULING ORDER

Complaint counsel, respondent American Home Products Corporation (AHP), respondent Schering-Plough Corporation (Schering), and respondent Upsher-Smith Laboratories, Inc. (Upsher), hereby move the Court to enter the attached proposed Revised Scheduling Order.

The principal purpose of the proposed Revised Scheduling Order is to lengthen the periods of time devoted to preparation of remaining expert reports and expert discovery. The effect of lengthening the period of expert work is to postpone subsequent deadlines, including the date for commencement of the hearing.

Counsel for the parties have conferred and concur in the belief that the proposed revisions to the Scheduling Order are both necessary and appropriate, for a number of reasons. First, the events of September 11 disrupted schedules and work for some period of time and are likely to have continuing consequences, particularly with respect to travel for

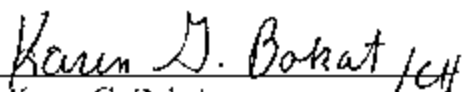
witness and expert meetings and depositions. Second, the scope of this matter is unusually broad, because the complaint challenges two separate agreements involving three respondents. Finally, a longer period of time for expert discovery is appropriate given the number of experts designated to testify in this matter.

Counsel for the parties are mindful of Commission Rule 3.51(a), which requires this Court to issue its initial decision no later than one year after issuance of the administrative complaint, which in this case was March 30, 2001. Counsel for the parties are also mindful that Rule 3.51(a) requires the Court to issue its initial decision within ninety days after closing the hearing record, and that the Court may well wish to utilize a full ninety days after closing the record to review the record and prepare its initial decision. We respectfully suggest that if the proposed delay of the trial date makes issuance of an initial decision within one year of issuance of the complaint infeasible, extraordinary circumstances exist to justify an extension of the initial decision deadline. The extraordinary circumstances include the events of September 11, which disrupted and delayed the parties' pretrial work, and the unusually broad scope of this matter, which challenges two separate agreements involving three respondents.

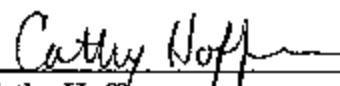
Because it is uncertain whether the Court will have the opportunity to rule on this Motion prior to September 25, the parties also hereby stipulate that the September 25, 2001 deadline for filing motions for summary decision and for issuing document requests, requests for admission, interrogatories, and subpoenas duces tecum is extended to October 2, 2001, as

reflected in the attached proposed Revised Scheduling Order.

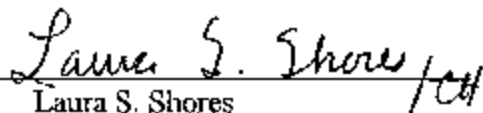
Respectfully submitted,

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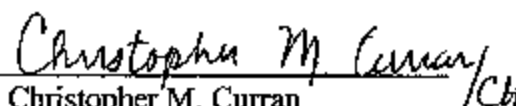
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Dated: September 21, 2001

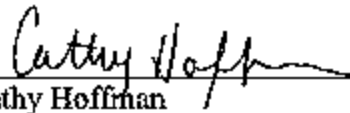
CERTIFICATE OF SERVICE

I hereby certify that this 21st day of September, 2001, I caused an original, one paper copy and an electronic copy of Motion of All Parties to Revise Scheduling Order to be filed with the Secretary of the Commission, that two paper copies were served by hand delivery upon the Honorable D. Michael Chappell, Administrative Law Judge, and that the following persons were served with one paper copy by hand delivery:

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Cathy Hoffman

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REVISED SCHEDULING ORDER

October 2, 2001	Deadline for filing motions for summary decision.
	Deadline for issuing document requests, requests for admission, interrogatories and <i>subpoenas duces tecum</i> .
October 8, 2001	Respondents' Counsel provide expert witness reports.
October 25, 2001	Deadline for filing responses to motions for summary decision.
November 1, 2001	Close of discovery, other than discovery permitted under Rule 3.24(a)(4) and depositions of experts.
November 8, 2001	Deadline for filing replies on motions for summary decision.
November 15, 2001	Complaint counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit rebuttal expert reports on behalf of Respondents.
December 14, 2001	Deadline for depositions of experts (including rebuttal experts).

- December 19, 2001 Exchange, and serve courtesy copy on ALJ, final proposed witness and exhibit lists, including designated testimony to be presented by deposition, and a brief summary of the testimony of each witness. The final proposed witness list may not include additional witnesses not listed in the preliminary or revised preliminary witness lists previously exchanged unless good cause is shown.
- December 20, 2001 Status conference to report on discovery and settlement negotiations.
- December 24, 2001 Exchange copies of exhibits (except for demonstrative, illustrative or summary exhibits).
- January 2, 2002 Deadline for filing motions *in limine* and motions to strike.
- Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- Exchange, and serve courtesy copy on ALJ, objections and designations in response to any designated deposition testimony and objections to final exhibit lists.
- January 4, 2002 Exchange proposed stipulations of law, facts, and authenticity.
- January 9, 2002 Deadline for filing responses to motions *in limine* and motions to strike.
- Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- January 11, 2002 Exchange responses to proposed stipulations of law, facts, and authenticity.
- January 15, 2002 File pretrial briefs identifying the legal matters, supported by legal authority, and factual matters to be decided by the Administrative Law Judge.
- Exchange demonstrative, illustrative or summary exhibits.
- January 17, 2002 File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- January 18, 2002 Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue,

N.W., Washington, D.C. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. All trial exhibits will be admitted or excluded.

January 22, 2002 Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

All "Additional Provisions" of the Court's May 3, 2001 Scheduling Order shall remain in place.

SO ORDERED:

D. Michael Chappell
Administrative Law Judge

Dated: _____

