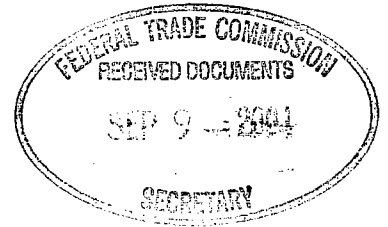


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of )  
)  
)

UNION OIL COMPANY OF )  
CALIFORNIA, )  
Respondent. )

DOCKET NO. 9305

**REVISED SCHEDULING ORDER**

Following a scheduling conference held on September 8, 2004, and based on the request of Complaint Counsel for two weeks to prepare its pre-trial brief and of Respondent for two weeks to respond and prepare its pre-trial brief, the Scheduling Order in this matter is hereby revised as follows:

- September 22, 2004 - Motions *in limine* based on the July 6, 2004 Opinion.
- September 23, 2004 - Complaint Counsel files pre-trial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- October 7, 2004 - Respondent's Counsel files pre-trial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.

Complaint Counsel's and Respondent's pre-trial briefs shall also provide legal authority on the following issues:

- the proper standard of proof to apply in a case where fraud is alleged;
- whether an omission constitutes a misrepresentation or a deliberate misrepresentation; and
- the authority of an administrative agency and of a federal district court to order the remedy sought by the government, to expressly include any and all case law regarding the

authority to order a party to cease and desist its enforcement of valid patents based on misconduct other than misconduct before the United States Patent and Trademark Office.

Complaint Counsel's and Respondent's pre-trial briefs shall also provide a list of all disputed issues alleged in the Complaint that have been litigated in any other court or forum and the current status thereof.

- September 29, 2004 - Responses to motions *in limine*.
- October 1, 2004 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. Exchange objections to the designated testimony to be presented by deposition and counter designations.
- October 4, 2004 - Exchange proposed stipulations of law, facts, and authenticity.
- October 12, 2004 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- October 13, 2004 - 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. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded to the extent practicable.
- October 19, 2004 - 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.

#### **ADDITIONAL PROVISIONS**

All additional provisions set forth in the April 9, 2003 Scheduling Order remain in effect. In addition, the following provisions are ordered:

A. All motions must attach a draft order containing the proposed relief. All such attachments must be titled "Proposed Order" instead of simply "Order." In no event shall a party

file a pleading that is titled "Order."


B. Oppositions to applications for issuance of subpoenas commanding a person to attend and give testimony at the adjudicative hearing shall be due within three business days. (See April 9, 2003 Scheduling Order, Additional Provision, no. 13).

C. The parties shall provide each other 48 hours ahead of time, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

D. Expert witnesses may testify in terms of opinion or inference and give supporting reasons therefor without first testifying to the underlying facts or data. However, experts shall be required to disclose the underlying facts or data, if requested on cross-examination. F.R.E. 705.

E. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and may not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

ORDERED:

  
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D. Michael Chappell  
Administrative Law Judge

Date: September 9, 2004