

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BAXTER HEALTHCARE CORPORATION,)	
)	
)	
Plaintiff,)	
)	C.A. No. 18-303-RGA
v.)	
)	
HOSPIRA, INC. and ORION CORP.,)	
)	
Defendants.)	

**DEFENDANTS’ MOTION FOR 14-DAY EXTENSION OF TIME TO FILE THEIR
RESPONSE TO PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendants Hospira, Inc. and Orion Corp. (collectively, “Defendants”) respectfully move for a 14-day extension of time to file their response to the April 24, 2018, motion for judgment on the pleadings (D.I. 16-17) filed by Plaintiff Baxter Healthcare Corporation (“Baxter”). Defendants’ response is currently due on May 8. If granted, the extension would move the deadline for Defendants’ response to May 22. This is Defendants’ first request for an extension for their response brief.

Pursuant to District of Delaware Local Rule 7.1.1, counsel for Defendants conferred with counsel for Baxter regarding the extension request. Baxter opposes the extension.

Good cause exists for Defendants’ request for extension, as set forth below. *See* Federal Rule of Civil Procedure 6(b)(1).

1. This suit arises out of Baxter’s submission of an Abbreviated New Drug Application seeking approval for a ready-to-use dexmedetomidine product. Baxter seeks approval prior to expiry of the Orange Book-listed patents for Hospira’s dexmedetomidine product, Precedex[®]. (E.g., D.I. 1 at 11-13.) Baxter filed this declaratory judgment suit on February 22, 2018. (*Id.*)

2. Baxter contends this suit must be expedited, and apparently no extensions of any kind be granted, because Baxter needs resolution of this suit to launch its dexmedetomidine product. (*E.g.*, D.I. 18 at 1-3.) This contention fails for several reasons.

3. First, any urgency that Baxter now feels is a product of its own making. For over one-and-a-half years, since July 22, 2016, Baxter was statutorily permitted to bring this declaratory judgment action, but elected not to do so. *See* 35 U.S.C. § 355(j)(5)(C) (permitting ANDA applicant to file declaratory judgment suit if patent holder does not bring suit within forty-five days of receiving notice of ANDA seeking approval prior to patent expiry). Defendants should not be forced to make up time that Baxter itself wasted.

4. Second, a modest two-week extension is appropriate to allow Defendants to adequately respond to Baxter's dispositive motion. Baxter's motion seeks to dispose of this entire case on the pleadings, raising issues regarding the requirements for induced infringement under the Hatch-Waxman framework and appropriate material for consideration with respect to a motion for judgment on the pleadings. (*See, e.g.*, D.I. 17 at 11-18.) It contains five Exhibits totaling over 200 pages, including a Declaration from Baxter's Director of Marketing that Baxter will not even permit Defendants' in-house counsel to view. (D.I. 17 at Ex. 5.) Given the motion's volume and import, it is unsurprising that, after Defendants filed their Answer and Counterclaim, Baxter took five weeks to respond to the Counterclaim and file its motion. (*See* D.I. 10, 16.) Defendants should be permitted at least a commensurate four weeks to prepare its response, rather than the default two weeks generally provided under the Local Rules for responses to motions.

5. Third, it is irrelevant that Defendants have previously litigated the patents-in-suit in other cases against other ANDA applicants. Defendants must respond to the specific arguments

Baxter raises in its motion for judgment on the pleadings, which have not been previously adjudicated by a court.

6. Finally, Defendants have already made clear that they do not assert against Baxter the three patents forming the “regulatory conundrum” that Baxter claims is blocking its market entry. (*See* D.I. 18 at 4.) This case, and Defendants’ response brief, will address Baxter’s infringement of the ‘867 patent, which does not affect whether Baxter can receive final FDA approval to launch its product.

WHEREFORE, Defendants respectfully request the entry of an order extending the time by fourteen days, from May 8 to May 22, for them to submit their response to Baxter’s motion for judgment on the pleadings.

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