

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

UPM-KYMMENE OYJ , et al.,

Defendants.

Civil No.: 03 C 2528

Filed: April 15, 2003

Judge: Hon. James B. Zagel

Magistrate

Judge: Hon. Michael T. Mason

PRELIMINARY INJUNCTION HEARING
SCHEDULING AND CASE MANAGEMENT ORDER

The Court hereby ORDERS as follows:

1. Response to the Complaint. The United States having filed its Complaint and Motion for a Temporary Restraining Order and Motion for a Preliminary Injunction on April 15, 2003, defendants shall file their answers to the Complaint and responses to the United States' Motion for a Preliminary Injunction no later than April 28, 2003.

2. Discovery Period Excluding Expert Witness Discovery. The period for all fact discovery shall begin upon entry of this order by the Court, and shall be completed by May 21, 2003. The parties shall target their discovery efforts to evidence necessary for presentation at the preliminary injunction hearing.

3. Expert Witness Disclosures. The plaintiff shall serve its expert disclosures under Rule 26(a)(2) on or before May 19, 2003. The defendants shall serve their expert disclosures under Rule 26(a)(2) on or before May 22, 2003. The plaintiff's rebuttal disclosure, if any, shall

be served on or before May 24, 2003. At least two days before being deposed, each of the experts may supplement their disclosures to address evidence obtained after May 15, 2003. Notwithstanding any of the foregoing, both sides' experts shall have 7 days to respond to any econometric analyses included in the disclosure of the opposing expert. The parties shall not be required to exchange drafts of expert disclosures. The depositions of the experts shall take place in the same sequence as the expert disclosures and shall take place prior to May 29, 2003.

4. Witness Lists The plaintiff shall serve its list of all witnesses to be offered at the hearing no later than May 5, 2003. The defendants shall serve their list of all witnesses to be offered at the hearing no later than May 7, 2003. The parties may designate experts responsive to experts designated by the opposing side no later than May 10, 2003. Each side will be permitted to depose any witness that will be presented live by the other side notwithstanding any other provision of this Order.

5. Duration of Depositions In accordance with Rule 30(d)(2) of the Federal Rules of Civil Procedure, all pre-hearing depositions are limited to one day in length. The noticing party shall confer with the opposing side regarding the provision of adequate time for examination of the witness by all parties. The parties and non-parties, if applicable, may stipulate to additional time for individual depositions. Absent stipulation otherwise, the duration of depositions provided for in this Order may be modified only by order of this Court for good cause shown.

6. Limit on Written Discovery Each party shall propound no more than 10 document requests under Rule 34 of the Federal Rules of Civil procedure to another party. All

document requests shall be responded to and responsive documents produced within 5 days after service. No interrogatories or requests for admissions shall be permitted.

7. Production of Pre-complaint Materials By 5:00 p.m. on ~~il~~ ~~2~~ plaintiff shall produce to defendants all non-party documents and affidavits provided to plaintiff during its investigation pursuant to the terms of the Stipulated Protective Order. By 5:00 p.m. on April 25, 2003, defendants will produce to plaintiff all non-party documents and affidavits provided to defendants during plaintiff's investigation.

8. Exchange of Deposition Designations. The parties shall exchange (page and line number) designations of deposition testimony to be offered ~~at~~ the preliminary injunction hearing no later than May 21, 2003, except for depositions taken after May 17, 2003, which shall be exchanged by May 23, 2003. Each party must provide counter designations of deposition testimony no later than May 27, 2003. Rebuttal and fairness designations applicable solely to counter designations and objections to any designations or counter designations and shall be exchanged not later than May 29, 2003.

9. Exchange of Exhibits and Exhibit Lists. No later than May 23, 2003, the parties will exchange numbered sets of all exhibits that the parties anticipate introducing, compiled in numerical order in notebooks and with lists of the exhibits itemizing each exhibit by date and Bates number (if applicable) and a brief description. Such lists will be compiled in an agreed upon electronic format capable of being sorted by exhibit number, chronological order, and Bates-stamp alphabetical and numerical order. No later than May 28, 2003, the parties will exchange any objections to the exhibits to be offered by the other side and designate those

materials that shall be designated confidential for the purpose of the preliminary injunction hearing pursuant to the provisions of the Stipulated Protective Order.

10. Service of Pleadings and Discovery on Other Parties. The plaintiff and defendants shall serve all pleadings and discovery requests, including Rule 45 subpoenas for documents, on the other parties (to a person, or persons, designated by the other parties) by hand, e-mail or facsimile (and also by overnight mail if attachments are not transmitted by e-mail or facsimile). Electronically transmitted pleadings and discovery requests not sent also by overnight mail, shall also be served by hand or first-class mail. To minimize burdens on non-parties, any documents produced to a party by a non-party, pursuant to a Rule 45 subpoena for documents, shall be copied by the party that issued the subpoena and served by hand on the other side or sent by overnight delivery to outside counsel within 1 business day after receipt of the documents and at least 2 days before any deposition of the producing party.

11. Nationwide Service of Subpoenas. Good cause having been shown in view of the geographic dispersion of potential witnesses and the urgency of this action, the parties are permitted, pursuant to 15 U.S.C. § 23, to issue subpoenas that may run into any other district requiring witnesses to attend this Court. Subpoenas may be served by commercial overnight delivery. Non-parties may be required to provide testimony or documents under subpoena within 7 calendar days. Non-parties shall serve any objections to subpoenas more than 3 calendar days before the return date.

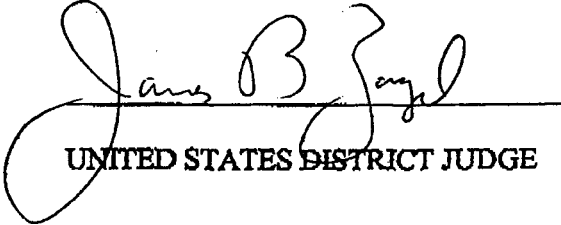
12. Preliminary Injunction Hearing The preliminary injunction hearing will begin on June 2, 2003, or June 9, 2003, depending on the Court's schedule.

13. Issues Remaining to Be Resolved. The parties have currently failed to reach agreement on several issues, pending their receipt of additional information on April 25, 2003, including (1) whether, (a) as plaintiff contends, there should be a reasonable limit on the number of depositions taken by each side during the agreed upon four-week pre-hearing discovery period above the ten permitted without leave of Court by Fed. R. Civ. P. 30(a)(2)(A), or (b), as defendants contend, there should be no pre-set limit on the number of depositions during this period; (2) whether there should be a limit on the number of Rule 45 document subpoenas that each side may serve on non-parties; (3) the admissibility of investigative depositions and pre- and post-complaint affidavits; and (4) the length of time for each side to present evidence and argument at the hearing and whether there should be a limit on the number of witnesses that each side will be allowed to present. In addition, the parties may seek the Court's resolution of (1) whether defendants are obligated to produce all materials and data files supporting analyses provided to plaintiff by defendants during the investigation, (2) whether UPM Kymmene will make additional documents and employees in Finland available to plaintiff in this country before the preliminary injunction hearing, and (3) whether plaintiff is obligated to provide Brady-type exculpatory information to defendants. The parties shall continue to seek agreement on all of these issues. By April 29, 2003, the parties shall file a stipulation containing any agreements they have reached on these issues and submissions on any of these issues that remain unresolved for resolution by the Court at its earliest convenience.

13. Modification of this Order. This Order shall control the subsequent course of this action, unless modified by *agreement* of the parties and approved by the Court or modified by the Court to prevent manifest injustice.

IT IS SO ORDERED.

DATED; April 23, 2003



UNITED STATES DISTRICT JUDGE