

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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2013 APR 30 PM 3:08

In re FIFRA Section 6(b) Notice of Intent)
to Cancel Registrations of, and Notice of) FIFRA Docket No. 661
Denial of Applications for, Certain)
Rodenticide Bait Products)

**MOTION FOR LEAVE TO FILE A REPLY CONCERNING RECKITT'S MOTION
FOR AN EXPEDITED DETERMINATION THAT EPA'S EXISTING STOCKS
DECISION IS WITHIN THE SCOPE OF THE HEARING**

Reckitt Benckiser LLC ("Reckitt" or "the Company") requests leave to file a reply in support of its Motion for an Expedited Determination that EPA's Existing Stocks Decision is Within the Scope of the Hearing ("Motion"). The Rules of Practice, 40 C.F.R. § 164.60, give this Tribunal discretion to grant Reckitt's motion for leave to reply. 40 C.F.R. § 164.60(c) ("... such decision shall await the answering papers *and reply papers if permitted.*" (emphasis added)). A reply is appropriate in this case.

In its response to Reckitt's Motion, EPA has made new arguments not included in the Agency's Notice of Intent to Cancel Registrations of, and Notice of Denial of Applications for, Certain Rodenticide Bait Products ("NOIC"), 78 Fed. Reg. 8123 (Feb. 5, 2013). Reckitt believes that fairness requires that it have an opportunity to respond before this Tribunal reaches its decision on the Motion. Reckitt seeks leave to file a reply brief in order to address the following arguments, none of which were made in the NOIC: (1) EPA's contention that the language of Section 6 of FIFRA somehow authorizes EPA to exclude existing stocks determinations from a Section 6 hearing; (2) EPA's argument regarding the role of EPA prosecutorial staff and the

NOIC in shaping the scope of a Section 6 cancellation hearing; (3) EPA's argument regarding the ALJ's lack of authority to determine the scope of a Section 6 cancellation hearing; (4) EPA's argument concerning the relevance of existing stocks in a Section 6 hearing; and (5) EPA's extensive discussion of the merits of its existing stocks decision.¹ All of these arguments were raised for the first time in EPA's brief and therefore a reply is appropriate. Reckitt requests seven days from the date of this Tribunal's ruling on this motion to file its reply.

Prior to filing this motion, the undersigned contacted EPA as to the relief requested herein. EPA said that at this time it opposes the motion and intends to file a response to it.

Dated: April 30, 2013

ARNOLD & PORTER LLP



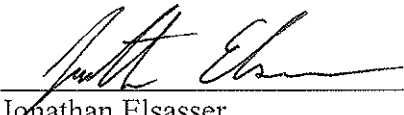
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¹ Reckitt did not intend to address the merits of the existing stocks decision at this time but believes that EPA's discussion requires a response.

In the Matter of Reckitt Benckiser LLC, et al., FIFRA Docket No. 661

CERTIFICATE OF SERVICE

I certify that the foregoing Motion for Leave to File a Reply Concerning Reckitt's Motion for an Expedited Determination that EPA's Existing Stocks Decision is Within the Scope of the Hearing, dated April 30, 2013, was served at the addresses listed below in the manner indicated.


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Dated: **April 30, 2013**

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