

Nos. 2011-17357, 2011-17373

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**SMITHKLINE BEECHAM CORPORATION D/B/A
GLAXOSMITHKLINE,**

Plaintiff-Appellee/Cross-Appellant,

v.

ABBOTT LABORATORIES,

Defendant-Appellant/Cross-Appellee,

Appeal From The United States District Court For The
Northern District of California
In Case No. 4:07-cv-05702-CW, Judge Claudia Wilken

**OPPOSITION TO MOTION FOR 30-DAY EXTENSION OF TIME TO
PETITION FOR REHEARING AND FOR REHEARING EN BANC**

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OPPOSITION TO MOTION FOR EXTENSION OF TIME

On January 21, 2014, this Court issued a published opinion finding for Plaintiff-Appellee and Cross-Appellant SmithKline Beecham Corporation d/b/a GlaxoSmithKline (“GSK”), reversing and remanding for a new trial. On January 22, 2014, Defendant-Appellant and Cross-Appellee Abbott Laboratories (“Abbott”) filed a motion for a 30-day extension of time to petition for rehearing and rehearing en banc (“Motion”). Dkt. 85-1. GSK respectfully opposes this Motion.

GSK opposes the Motion because GSK does not believe that Abbott’s offered reasons justify any delay, let alone an extension that would give Abbott more than triple the amount of time that parties ordinarily have to file a petition for rehearing or rehearing en banc. The events giving rise to this case occurred over a decade ago and this lawsuit was filed in 2007. Dkt 20-1, at 5-6. After extensive discovery, motion practice, and an attempt by Abbott to end the case with a petition to this Court for a writ of mandamus, trial occurred and a verdict was returned in March of 2011. *Id.* at 7, 69. After a mixed verdict, both parties appealed. *Id.* at 1.

Regular briefing occurred from February through July of 2012. Dkt. 14-1; Dkt. 20-1; Dkt. 39-1; Dkt. 42-1. On July 31, 2013, after the United States Supreme Court issued its opinion in *United States v. Windsor*, this Court directed the parties

to file supplemental briefs addressing the effect of *Windsor* on issues in this case. Dkt. 62. On August 14, 2013, the parties filed supplemental briefs and oral argument was held on September 18, 2013. Dkt. 71-1; Dkt. 73-1.

The timeline of this case demonstrates that Abbott has had more than enough time to evaluate its decision and options. The supplemental briefing covered the very basis for the opinion in this case and the relief granted; there were no surprises. This litigation should continue to proceed, not be continuously delayed. Accordingly, GSK respectfully opposes Abbott's Motion.

Dated: January 23, 2014

Respectfully submitted,

IRELL & MANELLA LLP

By: /s/ Brian J. Hennigan
Brian J. Hennigan

Attorneys for Plaintiff-Appellee and Cross-Appellant SmithKline Beecham Corporation
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9th Circuit Case Number(s)

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