

cross-examination will be prejudiced by denial of the request or that oral cross examination is the most effective and efficient means to clarify the matters at issue." Bayer's request for cross-examination lacks justification. The parties have spent an enormous amount of time and resources amassing the docket in this hearing, and developing a comprehensive evidentiary record. Given the huge amount of information already in the evidentiary record Bayer's request fails to articulate why alternative means, such as post-hearing briefing, are insufficient for a full and true disclosure of the facts and why Bayer believes that either: (a) it would be prejudiced by denial of its request for cross-examination; or (b) that oral cross-examination is the most effective and efficient means to clarify the issues. Bayer's request merely provides the names of twenty-seven (27) CVM witnesses and the estimated time for cross-examination of each witness; it fails to demonstrate why cross-examination of twenty-seven (or even one) CVM witnesses is justified.² The request for cross-examination filed by Bayer suggests that Bayer did not even consider the standard but rather indiscriminately sought permission to conduct cross-examination. And, of the twenty-seven CVM witnesses that Bayer seeks to cross-examine, Bayer has planned only one to two hours to cross-examine nineteen CVM witnesses (including four witnesses residing in Europe),³ thus signaling there are few issues that could possibly be in contention and that they can likely be addressed in ways other than through cross-examination. Accordingly, CVM respectfully

² Without any justification from Bayer, CVM should not be required to bear the costs of presenting twenty-seven of its witnesses for cross-examination.

³ CVM points out that, of the twenty-seven witnesses that Bayer seeks to cross-examine, seven currently live in Europe.

requests reconsideration of the ALJ's April 15, 2003, Order.

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Enrofloxacin Hearing
Docket No: 00N-1571

CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing Center for Veterinary Medicine's Motion for Reconsideration of the Order issued on April 15, 2003, was hand delivered this 15th day of April, 2003 to:

Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane (Room 1061)
Rockville, MD 20852

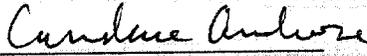
I also certify that a copy of this Motion has been hand delivered and e-mailed, this 15th day of April, 2003 to:

The Office of the Administrative Law Judge
Food and Drug Administration
Room 9-57, HF-3
5600 Fishers Lane
Rockville, MD 20857

I also certify that a copy of this Motion was e-mailed and mailed by First Class U.S. mail, this 15th day of April, 2003, to:

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