Order granting respondent's appeal from hearing examiner's order excluding from six subpoenas certain data relating to competitive mechanical systems of braking employing friction materials.

ORDER GRANTING INTERLOCUTORY APPEAL

This matter is before the Commission upon respondent's appeal pursuant to § 3.17(f) of the Commission's Rules of Practice from

six orders of the hearing examiner, filed November 24, 1965, limiting the areas of inquiry under subpoenas *ad testificandum* issued on behalf of the respondent. The orders appealed from involve Clevite Corporation, Massey-Ferguson, Inc., Galion Iron Works & Mfg. Company, General Electric Company, Cincinnati Shaper Company and Sperry-Rand Company. Complaint counsel has filed a brief opposing the appeal.

The precise question is whether or not it was error for the examiner to exclude from the area of inquiry matter concerning alleged competition among mechanical systems employing "friction materials" to transmit, convert and retard motion and other systems which assertedly perform the same functions. Respondent asserts that the examiner's exclusion of the "competing systems" evidence was solely due to his determination that such evidence is not relevant. It is claimed that no suggestion was made that such inquiries would be unduly burdensome or that they would unduly delay the proceeding.

The hearing examiner, as we have pointed out in a previous order in this matter, has a broad discretion in the matter of discovery and that, except by a clear showing of an error in that discretion, the Commission will sustain him in his rulings. (Order Denying Appeal from Denial of Applications for Depositions and Subpoenas, issued September 1, 1965 [p. 1169 herein].) In this instance, though the relevance of the information sought is in controversy, where delay is apparently not an issue, where only six depositions already authorized are involved and where the request concerns only a limited extension of the areas to be covered in the scheduled depositions, we believe the examiner was unduly strict in his rulings. Accordingly,

It is ordered, That respondent's appeal from the examiner's orders filed November 24, 1965, be, and it hereby is, granted.

It is further ordered, That the hearing examiner, as to the authorized depositions herein, grant the respondent's request to inquire into the subject of "competing systems," provided that this will not result in a delay in the hearings now set to begin no later than January 4, 1966.

ALLEGHANY PHARMACAL CORP. ET AL.

Docket 7176. Order, Dec. 10, 1965

Order denying motion requesting that two individual respondents be omitted from the amended complaint charging false advertising of the drug "Hungrex."