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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

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IN RE COPAXONE 40 MG) C.A. No. 14-1171-GMS
CONSOLIDATED CASES) (CONSOLIDATED)

- - -

Wilmington, Delaware.
Tuesday, September 27, 2016
9:00 a.m.
Day 2 of Bench Trial

- - -

BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

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- - -

1 THE COURT: Please, take your seats. Over the
2 course of the evening -- I understand you have some issues
3 you want to discuss with me -- please e-mail Mr. Buckson, so
4 he can e-mail me, and I will be in the office, in chambers
5 in time to be out here at 8:30, because I think it was only
6 when we came out to chat that we were informed you had some
7 issues. That cuts into our time, which I am going to take
8 away from you.

9 What are the issues?

10 THE COURT: Mr. Figg.

11 MR. FIGG: Good morning, Your Honor.

12 There is an issue regarding plaintiffs'
13 infringement expert, Dr. Wynn, who is scheduled to testify
14 today.

15 We have had correspondence back and forth over
16 the last couple of days with the plaintiffs on this.

17 The issue is this, Dr. Wynn, as I say, is one of
18 the primary plaintiffs' witnesses on the infringement issue.
19 But the plaintiffs also included in his expert testimony
20 information about obviousness, namely, his view on the
21 secondary factors.

22 THE COURT: Counsel, if there are seats in the
23 well, that's where I prefer you sit. That's an
24 accommodation to you. Really, you are not my jury. So go
25 back to the well, please. I know those seats are more

1 comfortable, I get that.

2 MR. FIGG: Your Honor, we asked them if they
3 intended to have Dr. Wynn talk about obviousness during the
4 infringement case or if they intended to recall him.

5 They said they wanted to talk about obviousness
6 during their infringement case and they reserve the right to
7 recall him. We don't think that's appropriate. The Court's
8 schedule in the pretrial order that everybody has agreed to
9 is very clear. They put on their infringement case, and we
10 respond to their infringement case. We put on our
11 obviousness case, they respond to our obviousness case.
12 They put on their secondary factors case.

13 THE COURT: We talked about this. Right?

14 MR. FIGG: Yes. Our point -- we are respectful
15 of Dr. Wynn's schedule. I understand that he wants to get
16 done and leave today. That is fine. But they should make
17 the choice. Either they elicit the anticipatory obviousness
18 testimony today and live with it or they put their
19 obviousness case on when they are supposed to in the
20 schedule. I don't think they should have it both ways.

21 THE COURT: Okay.

22 Mr. Ware.

23 MR. WARE: Your Honor, I think that's a fair
24 point. What I have said is, first of all, the testimony
25 from Dr. Wynn with respect to secondary considerations will

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