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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HOSPIRA, INC.,)	
)	
Plaintiff,)	Docket Nos. 16 C 651
)	17 C 7903
vs.)	
)	
FRESENIUS KABI USA, LLC,)	Chicago, Illinois
)	July 16, 2018
Defendant.)	10:17 a.m.

VOLUME 1A
TRANSCRIPT OF PROCEEDINGS - Bench Trial
BEFORE THE HONORABLE REBECCA R. PALLMEYER

APPEARANCES:

For the Plaintiff:	JENNER & BLOCK LLP BY: MR. BRADFORD P. LYERLA MR. YUSUF ESAT MR. AARON A. BARLOW MR. REN-HOW H. HARN MS. SARA T. HORTON 353 North Clark Street Chicago, Illinois 60654
For the Defendant:	SCHIFF HARDIN LLP BY: MR. IMRON T. ALY MR. JOEL M. WALLACE MS. TARA L. KURTIS MR. KEVIN M. NELSON 233 South Wacker Drive, Suite 6600 Chicago, Illinois 60606
	SCHIFF HARDIN LLP BY: MR. AHMED M.T. RIAZ 666 Fifth Avenue, 17th Floor New York, New York 10103
Also Present:	Mr. Michael P. Bauer, Hospira Mr. Ryan Daniel, Fresenius Kabi Mr. Ali Ahmed, Fresenius Kabi

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Court Reporter:

FRANCES WARD, CSR, RPR, RMR, FCRR
Official Court Reporter
219 S. Dearborn Street, Suite 2144D
Chicago, Illinois 60604
(312) 435-5561
frances_ward@ilnd.uscourts.gov

1 THE CLERK: 16 C 651, Hospira versus Fresenius Kabi
2 USA; and 17 C 7903, Hospira versus Fresenius Kabi USA, for
3 bench trial.

4 MS. HORTON: Good morning, your Honor.
5 Sara Horton for plaintiff.

6 THE COURT: Good morning.

7 MR. ALY: Good morning.

8 Imron Aly for Fresenius Kabi.

9 THE COURT: Good morning.

10 Okay. I think we are ready to go.

11 Do you want to make some very brief, like
12 five-minute, opening statements? Then we can start hearing
13 evidence.

14 MR. ALY: Your Honor, I have about a 20-minute
15 opening statement, if that will be all right.

16 THE COURT: I can live with 20 minutes.

17 MR. ALY: All right. And there is one issue to
18 raise before that, because it's a witness timing issue.

19 That is, we had a subpoena to one of the inventors
20 Hospira controlled, Dr. Robert Cedergren. And we are told he
21 is not here today. Hospira told us yesterday that he
22 wouldn't be here today.

23 It may work out. The odds are it will work out,
24 because of the timing and the shortened day today, but it's
25 not something I would have gambled with, with a federal

1 subpoena out there. So we wanted to raise it, because we
2 don't want to be in a situation of having to call a witness
3 and not having him here.

4 THE COURT: What's the explanation for the witness
5 not complying with the subpoena, just out of curiosity?

6 MR. LYERLA: Your Honor, this is my fault, and I
7 will take the blame.

8 We have had conversations back and forth about
9 these subpoenas. We have subpoenaed two of their witnesses.
10 They have told us one of people we have subpoenaed on their
11 side is not going to be available at all this week, somebody
12 who is still employed by them.

13 Now, as to Dr. Cedergren, he does not work for
14 Hospira. He hasn't worked for Hospital in ten years. We are
15 trying to accommodate a nonparty witness.

16 So we originally had scheduled him, I believe, for
17 Wednesday, because we thought we would call him in our case.
18 They told us that they wanted to call him in their case.

19 We said, can you guarantee Monday, that you will
20 call him on Monday? And we could not get confirmation that
21 they would call him on Monday.

22 So I just looked at the witnesses and looked at
23 what was going to happen today, looked at the fact that we
24 are starting a little bit later. We are ending a little bit
25 early today. And it became obvious to me that he wasn't

1 going to make the stand today, So I told him to come
2 tomorrow. And I promised Mr. Imron he would be available
3 first thing tomorrow. And I don't know why that should be a
4 problem. And I predict it won't be a problem.

5 THE COURT: I am sure it's not.

6 Let's move on.

7 MR. ALY: Your Honor, may it please the Court?

8 THE COURT: Sure.

9 MR. ALY: We will introduce our client
10 representatives as well.

11 Mr. Ali Ahmed and Mr. Ryan Daniels are from
12 Fresenius Kabi, in court today.

13 THE COURT: Good morning.

14 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

15 MR. ALY: Your Honor, we have all heard the saying,
16 don't reinvent the wheel. That's what this case is about.

17 Here you will see on Slide 2 -- and I have got
18 copies, if you would like me to hand them up, but I am just
19 going to go through them for now -- that Hospira will show
20 you a bottle, and that's what this case is about.

21 It's not about the drug. That's old. It's not
22 about the formula the drug comes in. That's old.

23 The claims here are about a glass vial that's
24 sealed, that contains dexmedetomidine and salt water. The
25 name of that drug is Precedex.

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