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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 17, 2018
Defendant.	)	1:36 p.m.

VOLUME 2B  
TRANSCRIPT OF PROCEEDINGS - Bench Trial  
BEFORE THE HONORABLE REBECCA R. PALLMEYER

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Also Present:

Mr. Michael P. Bauer, Hospira  
Mr. Ryan Daniel, Fresenius Kabi  
Mr. Ali Ahmed, Fresenius Kabi

1 (Proceedings heard in open court:)

2 THE COURT: Okay. I'll ask the witness to resume the  
3 witness stand, and we'll proceed with further direct  
4 examination.

5 (Witness resumes witness stand.)

6 THE COURT: All right. You're welcomed to proceed,  
7 Mr. Aly.

8 MR. ALY: Thank you, Your Honor.

9 THE WITNESS: All right.

10 JAMES E. KIPP, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

11 DIRECT EXAMINATION (Resumed)

12 BY MR. ALY:

13 Q. All right. Dr. Kipp, before the break, we talked about  
14 some references CSHP and Fanikos about ready to use; is that  
15 right?

16 A. Correct.

17 Q. Now, in the prior art for dexmedetomidine, in particular,  
18 were hospitals already trying to make their own premixes?

19 A. Yes, in fact, they were.

20 Q. How do you know that?

21 A. Well, there's a reference by Cain, which I talk about in my  
22 opening report.

23 Q. Let's look at JTX16. Who is the author of the article?

24 A. The author is James Gordon Cain, M.D.

25 Q. And what publication is it in?

1 A. This is in "International Trauma Care."

2 Q. What is the date of the publication?

3 A. Okay. The date of the publication is 2007.

4 Q. Now, if we can go back to the title in the first page,  
5 Dr. Cain is obviously an M.D.

6 Why does that matter to a POSA?

7 A. Well, again, as I say, a POSA would want to understand how  
8 the products -- how the company's products are being used, what  
9 the end -- who the end customer is to decide -- to decide what  
10 desirable features one should have in their products.

11 Q. What is the Cain article about?

12 A. Well, the Cain article is about -- well, as the title says,  
13 the use of dexmedetomidine and Hextend, which is a form of  
14 hetastarch, which is a plasma expanding solution, hydroxyethyl  
15 starch. And so he's talking about the use in trauma care.

16 Q. What does the Cain reference teach about using a  
17 ready-to-use formulation?

18 A. Okay.

19 Q. I'm sorry. Let me ask a different question.

20 What does the Cain reference teach about using a  
21 premixed solution?

22 A. It teaches a premixed solution in that Dr. Cain has used  
23 prefilled syringes at a concentration of 4 micrograms per mil  
24 that are already mixed and available in prefilled syringes for  
25 use in the operating room.

1 Q. Let's look at page 2 on the right-hand column, bottom of  
2 the first paragraph, "At This Author's Institution."

3 What is Dr. Cain explaining in the article happens at  
4 his hospital?

5 A. Okay. So as you can see on this excerpt, he has the  
6 hospital pharmacy provide -- providing prefilled syringes or  
7 premixed syringes of dexmedetomidine, 10 milliliter syringes  
8 with 4 micrograms per milliliter for use as both a component in  
9 the balanced anesthetic and in preventing post-anesthesia  
10 agitation and delirium.

11 Q. What would a POSA take away from the Cain disclosure?

12 A. Well, I mean, this just strengthens the point I made  
13 earlier that it's desirable to have a ready-to-use premix form  
14 of dexmedetomidine available for use.

15 Q. Now, as of the prior art 2012, were there other commercial  
16 products that were ready to use, already diluted?

17 A. Well, yes, there were.

18 Q. Which one?

19 A. Well, one would be Dexdomitor.

20 Q. Let's look at DTX288. What is Dexdomitor?

21 A. Okay. Dexdomitor is a veterinary product. But, again, the  
22 patents-in-suit only disclose a subject, not necessarily a  
23 human. So this would be applicable as a ready-to-use product  
24 that does not require further dilution.

25 Q. What year was Dexdomitor published and available?

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