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

HOSPIRA, INC. Plaintiff, v. FRESENIUS KABI USA, LLC, Defendant.	C.A. No. 1:16-cv-00651 C.A. No. 1:17-cv-07903 (Consolidated) Hon. Rebecca R. Pallmeyer

FRESENIUS KABI'S REPLY POST-TRIAL BRIEF

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In its response, Hospira chose to ignore claim 8 of the '049 patent—the pH claim—even though it was one of only two claims Hospira asserted at trial. As to claim 6 of the '106 patent—the stability claim—Hospira contests only the "about 2%" limitation. Hospira raises several new arguments not part of the trial nor based on trial testimony. Yet it has no response to the fact that all data sets at 4 µg/mL, plus Dr. Ogenstad's statistical analysis, confirmed that the "about 2%" stability limitation is an inherent property. The "about 2%" limitation would also have been reasonably expected from the published prior art or from Farmos's IND. Finally, Claim 6 is not enabled if the 2% property is not inherent, and is not enabled to its full scope.

I. THE ASSERTED CLAIMS WERE OBVIOUS

A. The Public Prior Art Demonstrates Claim 6 Would Have Been Obvious

Hospira concedes a POSA would be motivated to combine the public prior art to make a ready-to-use version of Precedex in glass. Fresenius Kabi also showed both that the "about 2%" limitation is inherent and was reasonably expected, and either of those is enough to prove obviousness. In response, Hospira's formulation expert, Dr. Linhardt, said nothing about obviousness except the possibility of oxidation under non-real-world conditions. If there were anything more to Hospira's attorney arguments, Dr. Linhardt would have addressed them.

1. The "About 2%" Limitation Is Inherent For 4 µg/mL

The Court may rely on all available evidence to find a property inherent, regardless of source or date. Hospira addressed none of the cases Fresenius Kabi cited for this proposition. FK Br. at 16-17. Even Hospira's cited case states "that the patent itself" can prove inherency. *PAR Pharm., Inc. v. TWi Pharm., Inc.*, 773 F.3d 1186, 1195 (Fed. Cir. 2014). Hospira's reliance on *Millennium Pharmaceuticals, Inc. v. Sandoz, Inc.*, 862 F.3d 1356 (Fed. Cir. 2017), is misplaced. The Federal Circuit's "inventor's own path" analysis addressed whether it would have been obvious to use mannitol to create a ***new compound***, not questioning the "natural result" of

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