

UNITED STATES DISTRICT COURT

for the  
Northern District of Illinois

Hospira, Inc. )  
 )  
 v. ) Case No.: 16-cv-651, 17-cv-7913  
 Fresenius Kabi USA, LLC )  
 )

**BILL OF COSTS**

Judgment having been entered in the above entitled action on 12/17/2018 against Hospira, Inc.,  
*Date*  
the Clerk is requested to tax the following as costs:

Fees of the Clerk .....	\$ <u>100.00</u>
Fees for service of summons and subpoena .....	<u>0.00</u>
Fees for printed or electronically recorded transcripts necessarily obtained for use in the case .....	<u>36,807.51</u>
Fees and disbursements for printing .....	<u>2,585.82</u>
Fees for witnesses ( <i>itemize on page two</i> ) .....	<u>8,943.58</u>
Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case. ....	<u>62,787.33</u>
Docket fees under 28 U.S.C. 1923 .....	<u>0.00</u>
Costs as shown on Mandate of Court of Appeals .....	<u>0.00</u>
Compensation of court-appointed experts .....	<u>0.00</u>
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 .....	<u>0.00</u>
Other costs ( <i>please itemize</i> ) .....	<u>26,882.50</u>
<b>TOTAL</b>	<b>\$ <u>138,106.74</u></b>

*SPECIAL NOTE:* Attach to your bill an itemization and documentation for requested costs in all categories.

**Declaration**

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

Electronic service  First class mail, postage prepaid

Other: \_\_\_\_\_

s/ Attorney: Joel M. Wallace

Name of Attorney: Joel M. Wallace

For: Fresenius Kabi USA, LLC Date: 01/16/2018  
*Name of Claiming Party*

**Taxation of Costs**

Costs are taxed in the amount of \_\_\_\_\_ and included in the judgment.

## UNITED STATES DISTRICT COURT

Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees)							
NAME , CITY AND STATE OF RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
(see attached supporting information for detail)		8,943.58					\$8,943.58
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
					<b>TOTAL</b>		<b>\$8,943.58</b>

### NOTICE

**Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:**

“Sec. 1924. Verification of bill of costs.”

“Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.”

**See also Section 1920 of Title 28, which reads in part as follows:**

“A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.”

**The Federal Rules of Civil Procedure contain the following provisions:**

**RULE 54(d)(1)**

Costs Other than Attorneys’ Fees.

Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney’s fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 day’s notice. On motion served within the next 7 days, the court may review the clerk’s action.

**RULE 6**

(d) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after service and service is made under Rule5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

**RULE 58(e)**

Cost or Fee Awards:

Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney’s fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

**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

**DEFENDANT FRESENIUS KABI'S BILL OF COSTS AND DISBURSEMENTS**

This Bill of Costs is submitted on behalf of Defendant Fresenius Kabi USA, LLC in the above-captioned matter. This matter was a lengthy and complex patent litigation that commenced in 2016 and resulted in a five day trial in July of 2018. At trial, the Court heard testimony from five fact witnesses and six expert witnesses. Discovery leading up to the trial involved extensive document production by Fresenius Kabi.

On November 17, 2018, this Court issued a 55 page opinion and Final Judgment in the above-captioned matter in favor of Fresenius Kabi. *See* Exhibits 1 and 2 to the Declaration of Joel M. Wallace Pursuant to 28 U.S.C. § 1924 (“Wallace Declaration”).

Fresenius Kabi is the prevailing party in this litigation. For the purposes of Rule 54, the prevailing party is “the party who prevails as to the substantial part of the litigation.” *First Commodity Traders, Inc. v. Heinold Commodities, Inc.*, 766 F.2d 1007, 1015 (7th Cir. 1985). “In those cases in which one party wins completely on every claim at issue, determining which party has prevailed is a straightforward task.” *Manildra Millin Corp. v. Ogilview Mills, Inc.*, 76 F.3d 1178, 1182 (Fed. Cir. 1996). Here, Fresenius Kabi completely removed Hospira’s ability to

recover for its asserted patents, and so is the prevailing party. *See Med. Co. v. Mylan Inc.*, No. 11-cv-1285, 2017 WL 4882379, at \*3 (N.D. Ill. Oct. 30, 2017). As such, Fresenius Kabi may recover for its taxable costs. Fed. R. Civ. P. 54. For this reason, pursuant to Federal Rule of Civil Procedure 54(d), 28 U.S.C. § 1920, and Local Rule 54.1, Fresenius Kabi is entitled to recover the following costs from Plaintiff Hospira, Inc.

### **BILL OF COSTS – SUPPORTING INFORMATION**

Fresenius Kabi requests taxation of \$138,106.74 in costs against Hospira. The basis for Fresenius Kabi's requested costs is explained below by category. Please note that for many of the accompanying invoices, Fresenius Kabi is only seeking taxation of a portion of the costs listed on the invoice. For such invoices, Fresenius Kabi has indicated the applicable costs in yellow highlighting.

#### **I. Fees Of The Clerk**

<b>Clerk Fee</b>	<b>Amount</b>
Pro Hac Vice fee for Ahmed Riaz	\$50.00
Pro Hac Vice fee for Gina Bassi	\$50.00
<b>TOTAL</b>	<b>\$100.00</b>

Fees paid for Pro Hac Vice application fees are recoverable under 28 U.S.C. § 1920(1). *Boogaard v. National Hockey League*, No. 2017 WL 5517231, at \*1 (N.D. Ill. Nov. 17, 2017) (discussing the Seventh Circuit's acknowledgement of *pro hac vice* fees as taxable costs) (discussing *U.S. ex rel. Gear v. Emergency Med. Associates of Ill., Inc.*, 436 F.3d 726 (7th Cir. 2006)).

As identified in the Wallace Declaration (¶4), the applications for Mr. Riaz and Ms. Bassi were necessary to the litigation. Mr. Riaz was essential to the defense of the litigation. He took fact and expert witness depositions, conducted critical research and legal strategy throughout the case, and presented at trial. His pro hac fee was necessary to the litigation, and is a taxable cost

in this circuit. Ms. Bassi oversaw the litigation in its pretrial and early pleading stages until she left the firm, including preparing the original Answer and Counterclaims for Fresenius Kabi.

Documentation supporting the costs listed in §I is attached hereto as Exhibit 3.

## II. Fees For Transcripts Necessarily Obtained For Use In This Case

### A. Court Reporter Trial and Hearing Transcripts

DESCRIPTION	COST
Trial Transcripts, July 16 through 20, 2018	\$ 4,926.58
Hearing on August 10, 2017 – Hospira v. Amneal (D. Del.)	64.00
Markman Hearing on December 11, 2017	14.40
Hearing on February 4, 2016	54.75
Hearing on September 19, 2017	24.20
Hearing on January 25, 2018	36.30
Pre-trial Hearing on July 6, 2018	68.40
Hearing on October 4, 2018	7.20
Hearing on November 13, 2018	36.30
<b>TOTAL FEES FOR TRIAL TRANSCRIPTS:</b>	<b>\$ 5,232.13</b>

The prevailing party is entitled to recover the costs of transcripts “necessarily obtained for use in the case.” 28 U.S.C. § 1920(2); *Barber v. Ruth*, 7 F.3d 636, 644 (7th Cir. 1993). Daily transcripts were necessary for Fresenius Kabi to prepare its witnesses for direct and cross examination, as well as for attorneys to prepare to take cross examinations of Hospira’s witnesses. *See Davis v. Budz*, No. 99-cv-3009, 2011 WL 1303435, at \*1 (N.D. Ill. Mar. 31, 2011) (Pallmeyer, J.); *Stranski v. Homer Township Highway Dept.*, No. 07-cv-4731, 2010 WL 3824102, at \*2 (N.D. Ill. Sep. 23, 2010) (Pallmeyer, J.). Additionally, the trial transcripts were cited extensively in the post-trial briefing and in the Court’s Opinion, indicating their necessity.

Fresenius Kabi’s cost of obtaining hearing transcripts is a taxable cost. The transcripts include the pre-trial conference, the *Markman* hearing, and motion and status hearings. The

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