

**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

I, Joel M. Wallace, hereby declare as follows:

1. I am a partner at the law firm of Schiff Hardin LLP and represent Fresenius Kabi USA, LLC in the above-captioned action. I am a member in good standing of the State Bar of Illinois, and the United States District Court for the Northern District of Illinois.

2. Attached as Exhibit 1 to Fresenius Kabi's Bill of Costs and Disbursements is a true and correct copy of this Court's Final Judgment in favor of Fresenius Kabi and against Plaintiff Hospira, Inc. with respect to the invalidity of U.S. Patent Nos. 8,648,106 and 9,616,049. (16-651, D.I. 177; 17-7903, D.I. 110.) The Court found all claims asserted by Hospira against Fresenius Kabi at trial invalid as obvious.

3. Attached as Exhibit 2 is a true and correct copy of this Court's signed Consent Judgment and Stipulated Dismissal indicating the dismissal with prejudice of Hospira's U.S. Patent Nos. 8,242,158; 8,338,470; 8,455,527; and 9,320,712. (16-651, D.I. 184; 17-7903, D.I. 116.) All patents asserted by Hospira during this litigation against Fresenius Kabi have been found to be invalid or not infringed by Fresenius Kabi's ANDA Product.

4. Attached as Exhibit 3 to Fresenius Kabi's Bill of Costs are true and correct copies of the docket entries relevant to the fees for the payment of fees for the admission *pro hac vice* for Ms. Gina Bassi and Mr. Ahmed Riaz. (16-651, D.I. 13, 14, 16.) The applications for Mr. Riaz and Ms. Bassi were necessary to the litigation. Mr. Riaz was essential to the litigation. He took fact and expert witness depositions, conducted critical research and legal strategy throughout the case, and presented at trial. 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. The total cost of clerk fees was \$100.00.

5. Attached as Exhibit 4 to Fresenius Kabi's Bill of Costs are true and correct copies of the court reporters' invoices for transcripts of the trial proceedings held in this litigation on July 16-20, 2018 and other court proceedings, totaling \$5,232.13. Daily trial transcripts were necessary due to the technical nature of the witness testimony and the large quantity of exhibits that were admitted into evidence. Daily trial transcripts were used in this case, *inter alia*, to prepare for witness examination and to ensure that exhibits were properly admitted into evidence. Daily trial transcripts were also referred to during subsequent trial days during witness examinations. The trial transcripts were also cited extensively during post-trial briefing and by the Court in its Opinion. Invoices for transcripts of the pretrial hearing on July 6, 2018, claim construction hearing on December 11, 2017, and discovery hearings on August 10, 2017, February 4, 2016, September 19, 2017, January 25, 2018, October 4, 2018, and November 13, 2018 are included in this total. Transcripts of these hearings were used at trial, for trial preparation, for compliance with the Court's oral rulings on discovery motions, to provide out-of-state counsel with a record of the hearings, and for use in filing and responding to various motions filed in the case. Also included is the invoice for the transcript of the Pretrial Conference

from the Amneal litigation in Delaware, which was obtained and used for preparation of trial strategy and in the preparation of discovery motions and hearings.

6. Attached as Exhibit 5 to Fresenius Kabi's Bill of Costs are true and correct copies of invoices for the recording and transcribing of the depositions of Hospira's expert witnesses, Christopher Seaton, Dr. Robert Linhardt, Dr. Stephan Ogenstad, Dr. Eric Sheinin, James White, Andrew Carter, and Dr. Michael Ramsay totaling \$17,199.57. The depositions transcripts for these witnesses were necessarily obtained for use in this case, including in preparation for and during examination of these witnesses at trial. Expedited delivery fees have been included because of the truncated schedule and timing of the depositions. Most depositions were taken in June 2018, and trial was scheduled for July 2018. Given the need to prepare the Pretrial Order and to prepare trial examinations, waiting for normal delivery of the transcripts was not possible. Fees associated with the video transcription have been included. At the time the depositions were taken, Fresenius Kabi did not know if each expert would be available to testify at trial. In fact, the deposition video of Dr. Sheinin was played at trial because of his unavailability. Additionally, each expert witness was included on the parties' "may call" or "will call" lists in the Final Pretrial Order. (D.I. 114-6 at 2-3; 114-7 at 2-3.) Realtime fees, rough draft fees, shipping and handling fees, DVD media costs, and fees for litigation packages were excluded from the Bill of Costs.

7. Attached as Exhibit 6 to Fresenius Kabi's Bill of Costs are true and correct copies of invoices for the recording and transcribing of the depositions of Fresenius Kabi's expert witnesses, Peter Lankau, Dr. James Kipp, Dr. Michael Maile, and Ivan Hofmann, totaling \$5,912.65. The depositions transcripts for these witnesses were necessarily obtained for use in this case, including in preparation for and during examination of these witnesses at trial. Fees for

expedited delivery of the transcripts were necessary because of the truncated schedule and timing of the depositions. Most depositions were taken in June 2018, and trial was scheduled for July 2018. Given the need for witnesses to review the final transcripts and prepare errata, and for attorneys to prepare the Pretrial Order and trial examinations, waiting for normal delivery of the transcripts was not possible. Fees associated with the video transcription of Dr. Kipp have been included. Fresenius Kabi did not obtain the videos of Dr. Maile, Mr. Lankau, or Mr. Hofmann, so their cost is not requested. Realtime fees, rough draft fees, shipping and handling fees, and fees for litigation packages were excluded from the Bill of Costs.

8. Attached as Exhibit 7 to Fresenius Kabi's Bill of Costs are true and correct copies of invoices for the recording and transcribing of the depositions of the fact witnesses in this case, Dr. Robert Cedergren, Dr. Rao Tata-Venkata, Dr. Priyanka Roychowdhury, Mr. Dave Engels, Ms. Shweta Mowli, Dr. Basma Ibrahim, and Ms. Abby Hickman, totaling \$8,463.15. The depositions transcripts for these witnesses were necessarily obtained for use in this case, including in providing to expert witnesses for consideration in forming opinions regarding the on-sale bar, obviousness, and secondary considerations, and preparation for and during examination of these witnesses at trial. The fact witnesses were identified on the parties' "may call" or "will call" lists and deposition designations were identified in the Pretrial Order. (16-cv-651, D.I. 114-6, 114-7, 114-8, 114-9.) At the time the fact depositions were taken, in November 2016, it was unknown if each witness would be available to appear live at trial. Moreover, the parties continued to negotiate which witnesses would appear live or by video designation until the eve of trial. Portions of video depositions of Dr. Tata-Venkata and Dr. Ibrahim were played at trial. Realtime fees, rough draft fees, shipping and handling fees, and fees for litigation packages were excluded from the Bill of Costs.

9. Attached as Exhibit 8 to Fresenius Kabi's Bill of Costs are true and correct copies of invoices for the travel expenses for testimony of Fresenius Kabi's witnesses. All of the necessary travel expenses of these witnesses in Part III(A) were paid by Fresenius Kabi, totaling \$3,539.08. For depositions, travel expenses were incurred only by Mr. Lankau, Dr. Maile, and Mr. Hofmann. For trial, travel expenses were incurred by Mr. Lankau and Dr. Maile. Fresenius Kabi's fact witnesses and Dr. Kipp all reside in this judicial district, so no travel fees were necessary. Expert depositions took place in this judicial district to avoid the need for issuance of subpoenas. Fresenius Kabi paid for the lodging for the deposition of Mr. Lankau, Dr. Maile, and Mr. Hofmann. The actual cost of lodging exceeded the GSA rate, so Fresenius Kabi requests the GSA amount. Fresenius Kabi paid lodging for Ms. Mowli, Mr. Lankau, Dr. Maile, and Dr. Kipp. Ms. Mowli required lodging for one night because she came to the courthouse expecting to be called on Wednesday, July 18, 2018. However, Hospira did not call her that day, but instead called her on Thursday, July 19, 2018. Ms. Mowli lives in a far north suburb and had her infant with her because she was breastfeeding at that time. It was infeasible for Ms. Mowli to return home after trial then return the next morning. For that reason, Ms. Mowli was provided lodging for the night of July 18, 2018. Dr. Kipp lives in the district, but in a distant suburb. In order for Dr. Kipp to be available to attend trial and to consult with counsel both before and after trial days, it was infeasible for him to return home each evening. For this reason, Fresenius Kabi provided lodging for Dr. Kipp in Chicago for the duration of trial. Fresenius Kabi provided lodging to Mr. Lankau for the first three nights of trial. Portions of expert fee summaries not related to taxable costs have been obscured as irrelevant and implicating protected work product.

10. Attached as Exhibit 9 to Fresenius Kabi's Bill of Costs are true and correct copies of invoices for the fees of Fresenius Kabi's experts Mr. Lankau, Dr. Kipp, Dr. Maile, and Mr.

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