

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

HOSPIRA, INC.,

Plaintiff,

v.

FRESENIUS KABI USA, LLC

Defendants.

C.A. No. 1:16-cv-00651

Honorable Rebecca Pallmeyer

FRESENIUS KABI USA, LLC'S OPENING CLAIM CONSTRUCTION BRIEF

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Defendant Fresenius Kabi USA, LLC submits this Opening Claim Construction Brief seeking construction of three terms from U.S. Patent Nos. 8,242,158; 8,338,470; 8,455,527; and 8,648,106 (“the patents-in-suit”) pursuant to the Local Patent Rules and Scheduling Order entered in this case. (D.I. 19.)

I. INTRODUCTION

Plaintiff Hospira, Inc. has asserted that Fresenius Kabi’s proposed ANDA products will infringe claims of four related patents. These four patents are part of the same family, share a specification, and are generally directed to the same invention: “sealed glass containers” containing the drug dexmedetomidine at specific concentrations combined with sodium chloride (saline) solution that are “ready to use” by physicians. One patent, the ’527 patent, is directed to methods of sedating patients by providing them this same “ready to use” composition, including one claim to sedating patients in the “intensive care unit.”

Fresenius Kabi has proposed common sense constructions of two key terms — “ready to use” and “sealed glass container” — that comport with the intrinsic evidence of the patents in suit. Specifically, a composition is “ready to use” when it does not require any further dilution before it can be administered to a patient. Fresenius Kabi proposes that a “sealed glass container” is exactly what it says — a glass container that is closed tightly to prevent unwanted materials to enter or exit. These common sense constructions are supported by the specification, claims, and prosecution history of the patents-in-suit.

Hospira disagrees with Fresenius Kabi’s proposed constructions, but has not provided its own constructions, or even identified exactly why Fresenius Kabi’s constructions differ from the plain and ordinary meaning of those terms. But Hospira’s contentions in this case, and positions in the related Delaware litigation indicate that Hospira hopes to introduce extraneous limitations not supported by the specification or intrinsic record, or to improperly import limitations from

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