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

HOSPIRA, INC.,	)	
	)	
Plaintiff,	)	Docket No. 16 C 651
	)	
vs.	)	
	)	
FRESENIUS KABI USA, LLC,	)	Chicago, Illinois
	)	December 11, 2017
Defendant.	)	9:20 a.m.

TRANSCRIPT OF PROCEEDINGS - Status  
BEFORE THE HONORABLE REBECCA R. PALLMEYER

APPEARANCES:

For the Plaintiff:	JENNER & BLOCK LLP BY: MS. SARA T. HORTON MR. YUSUF ESAT 353 North Clark Street Chicago, Illinois 60654
For the Defendant:	SCHIFF HARDIN LLP BY: MR. JOEL M. WALLACE 233 South Wacker Drive, Suite 6600 Chicago, Illinois 60606
Court Reporter:	FRANCES WARD, CSR, RPR, RMR, FCRR Official Court Reporter 219 S. Dearborn Street, Suite 2144D Chicago, Illinois 60604 (312) 435-5561 frances_ward@ilnd.uscourts.gov

1 THE CLERK: 16 C 651, Hospira versus Fresenius Kabi  
2 USA for status.

3 MS. HORTON: Good morning, your Honor.  
4 Sara Horton and Yusuf Esat for Hospira.

5 THE COURT: Good morning.

6 MR. WALLACE: Joel Wallace on behalf of Fresenius  
7 Kabi.

8 THE COURT: Good morning.

9 Okay. We are here for status. What's our status?

10 MS. HORTON: Your Honor, the status is that you  
11 issued a *Markman* ruling about a month ago.

12 THE COURT: Right.

13 MS. HORTON: And in the interim, also, Hospira  
14 filed suit on a related patent against Fresenius Kabi, and  
15 then the parties agreed to file a joint consolidation motion,  
16 which you granted.

17 THE COURT: Correct.

18 MS. HORTON: So we have that added into this case.

19 In its answer, Fresenius Kabi counter-claimed  
20 adding an additional patent. So there are now two additional  
21 patents, aside from the four that were involved in the  
22 underlying case -- the first case, I should say.

23 We have discussed with Fresenius Kabi a schedule  
24 going forward and how to work these other two patents into  
25 the case.

1 THE COURT: These are patents held by Fresenius  
2 Kabi?

3 MS. HORTON: No. Held by Hospira.

4 THE COURT: Held by Hospira. Okay.

5 So the counterclaim is for invalidity?

6 MS. HORTON: The counterclaim is for invalidity. I  
7 believe we have not yet answered the counterclaim. But  
8 it's -- in short, it's a patent that issued sometime between  
9 the time that Hospira first sued Fresenius Kabi and between  
10 the second case that we filed against them. And I believe  
11 Fresenius just wants it litigated all at the same time.

12 THE COURT: Sure. Okay. We did grant the motion  
13 for reassignment. Remind me of the number of that case so I  
14 can get them both on the same track. We will assume this is  
15 a status in that case as well.

16 MR. WALLACE: The other case was 17 CV 7903.

17 THE COURT: Okay. So this will -- today's status  
18 will be deemed a status in 17 C 7903 as well.

19 Does that include the -- that includes the same  
20 patents that are at issue in this case.

21 MS. HORTON: Yes.

22 MR. WALLACE: It includes only two more patents  
23 that were part of the same family of the four patents that  
24 are in the original case. And there are two more patents  
25 from the same family, same inventor, same specification that

1 issued later, and those have now been all consolidated.

2 The parties have agreed that the claim construction  
3 from the first case applies to the later, because they  
4 share -- all of the -- I guess two of the terms are in all of  
5 the patent claims as well.

6 THE COURT: And does the addition of two patents in  
7 the original case -- actually, does the addition of any of  
8 these patents involve additional claims as well?

9 MS. HORTON: Additional claim terms?

10 THE COURT: Additional claim terms, yes.

11 MS. HORTON: Yes, your Honor, they do. It's  
12 unclear, to Hospira at least, whether or not there will need  
13 to be additional claim construction briefing. We actually  
14 assume that there will not be, but we haven't done any  
15 discovery on them yet to understand that.

16 THE COURT: All right. Well, what we need to do,  
17 then, is get a revised Rule 16 schedule in place based  
18 upon -- I am assuming you are going to at least factor in the  
19 local patent rule schedule, but recognizing that some of the  
20 things that have happened already would eliminate that need  
21 in this case.

22 So can we set a date for that to happen, for you to  
23 develop a proposed schedule?

24 MR. WALLACE: We have discussed a proposed  
25 schedule. Right now this is the overarching situation. It's

1 sort of the impasse between the two parties on setting a  
2 schedule, because of the delay between the claim construction  
3 hearing and the ruling.

4 THE COURT: A lot of the dates should change,  
5 right.

6 MR. WALLACE: Well, the issue for Fresenius Kabi is  
7 that its 30-month stay on regulatory approval is expiring in  
8 June.

9 Fresenius Kabi is interested in launching as soon  
10 as possible at that time. It also implicates whether or not  
11 Hospira would be looking to file a preliminary injunction  
12 motion at that time.

13 So the two options are, we can either compress our  
14 schedule now to try to get everything prepared and get  
15 everything before the Court for a trial in, for example,  
16 early April, and give the Court enough time to hear all the  
17 evidence and then issue a ruling before the June date  
18 happens.

19 The other alternative, which is what Hospira is  
20 proposing, is to take a more traditional schedule at this  
21 time, following the local patent rules more closely, which  
22 then would push trial out to probably late summer, early --  
23 around early autumn, late summer. But there is this high  
24 risk that partway through the proceeding everything is going  
25 to put on a fast track when we get around the end of the

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