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

HOSPIRA, INC.,)	
)	
Plaintiff,)	Docket Nos. 16 C 651
)	17 C 7903
vs.)	
)	
FRESENIUS KABI USA, LLC,)	Chicago, Illinois
)	January 25, 2018
Defendant.)	9:42 a.m.

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

APPEARANCES:

For the Plaintiff:	JENNER & BLOCK LLP BY: MR. BRADFORD P. LYERLA MS. SARA T. HORTON 353 North Clark Street Chicago, Illinois 60654
For the Defendant:	SCHIFF HARDIN LLP BY: MR. JOEL M. WALLACE MR. IMRON T. ALY 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 and 17 C 7903, Hospira versus
2 Fresenius Kabi USA for ruling.

3 MR. ALY: Good morning.

4 Imron Aly and Joel Wallace for Fresenius Kabi.

5 THE COURT: Good morning.

6 MR. LYERLA: Good morning, your Honor.

7 Brad Lyerla and Sara Horton for Hospira.

8 THE COURT: Good morning.

9 All right. We have this motion to strike the
10 invalidity theories as untimely. That's been fully briefed.
11 I have had a chance to look at that.

12 MR. LYERLA: Your Honor, could I interrupt?

13 THE COURT: Sure.

14 MR. LYERLA: With Mr. Aly's permission, we might
15 have a solution to this --

16 THE COURT: Oh, good.

17 MR. LYERLA: -- to propose to the Court, but we
18 need to ask the Court a question first, and I hope that this
19 isn't impertinent. But we were wondering what dates are
20 available for a trial in the second half of June or
21 thereafter?

22 THE COURT: I can certainly answer that question.
23 I know that the end of June I am going to be away, but July
24 is probably fine. So let's take a look at that. I have to
25 be back here by the 28th, which is a Friday, and then I have

1 a trial in kind of the middle of July. But I could start one
2 on, say, July 16th, or pushing a little further forward,
3 August is wide open as is September.

4 MR. LYERLA: So, your Honor, I think the parties
5 agree that this will be a four- or possibly five-day trial --
6 bench trial, of course.

7 THE COURT: In that case, July 16th should work. I
8 do have a trial starting the previous week, but I think it
9 will be over.

10 MR. LYERLA: Can we adjourn for a moment to allow
11 counsel to talk and then come back?

12 THE COURT: Sure. Look at your calendars?

13 MR. LYERLA: Yes.

14 THE COURT: That's fine. We will recall it in a
15 moment.

16 MR. LYERLA: Thank you, your Honor.

17 (The above-mentioned case was passed and was later
18 recalled as follows:)

19 THE CLERK: 16 C 651 and 17 C 7903, Hospira versus
20 Fresenius Kabi USA for ruling.

21 MR. LYERLA: Good morning again, your Honor.

22 So I think we have resolved the issues that were
23 presented in the motion.

24 With a trial beginning on July 16th and internal
25 dates that will be adjusted according to a schedule that we

1 will provide to the Court in writing probably later today or
2 tomorrow -- maybe tomorrow just to give us a little extra
3 time -- with all of that agreed to, we withdraw the motion.
4 Some of the new defenses will be part of the case under our
5 agreement. Some won't. That will be part of what we provide
6 to the Court later.

7 If all of that is agreeable to the Court, then we
8 will proceed on that schedule, and the motion doesn't have to
9 be decided.

10 THE COURT: That's great. We will set trial for
11 July 16th. That's a bench trial.

12 And what I need to do right now is just make sure
13 that I have a status so that if there is an issue that pops
14 up, we have an avenue for addressing it.

15 How about a status in the middle of April?

16 MR. LYERLA: That should be fine, your Honor.

17 THE COURT: April 18th.

18 MR. LYERLA: That should be fine.

19 I have a recollection that we have a date next
20 week.

21 MS. HORTON: There is a status next week, but I'm
22 not sure --

23 THE COURT: We can strike that date.

24 MR. LYERLA: Right. Thank you, your Honor.

25 THE COURT: Good.

1 And then in the meantime, I have got your motion.
2 Obviously that will be withdrawn. I have got the ruling from
3 Judge -- remind me of his name.

4 MR. LYERLA: Andrews.

5 THE COURT: I have seen it. It's 55 pages. I
6 haven't digested the whole thing, but I do want to look at
7 that.

8 All right. I will see you in April.

9 MR. LYERLA: Thank you, your Honor.

10 MR. ALY: Judge we do have one other update. We
11 did advise plaintiff's counsel of this as well beforehand.

12 There was a 30-month stay. So the FDA would allow
13 us to have launched on June 7th. That's why that was an
14 important date that we discussed a few times to try to
15 encourage the schedule to move along.

16 As part of this compromise -- since Fresenius Kabi
17 recognizes we are compromising on the schedule and the trial
18 date, it is voluntarily going to say that it will voluntarily
19 not launch until August 17th, but that's not an FDA
20 regulatory thing. It's simply to accommodate the schedule
21 and so that there isn't an injunction period that happens on
22 June 7th, since we are all agreeing to a trial date
23 thereafter.

24 But that August 17th --

25 THE COURT: You should remind me of that certainly

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