

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TEVA PHARMACEUTICALS USA, INC.,  
Petitioner,

v.

INDIVIOR UK LIMITED,  
Patent Owner.

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Case IPR2016-00280  
Patent 8,475,832 B2

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**PETITIONER'S OPPOSITION TO PATENT OWNER'S  
MOTION TO CORRECT FILING DATE**

Petitioner Teva Pharmaceuticals USA, Inc. opposes Patent Owner Indivior UK Limited's motion (Paper 10) to change the filing date of the present IPR from December 3, 2015 to December 4, 2015. Indivior does not dispute that Teva fully completed all filing requirements on December 3. Instead, its sole complaint is that Teva did not serve the documents until December 4. But as will be discussed below, the relevant statute does not tie the filing date to the service date.

Moreover, the Board has discretion to waive its regulatory requirements where, as here, Teva made a good faith effort at timely service, and there is no prejudice to Patent Owner.

## **I. STATEMENT OF MATERIAL FACTS**

### **A. Filing**

1. On December 3, 2015, Teva's counsel set out to file three IPRs: IPR2016-00280 ("280 IPR"), IPR2016-00281 ("281 IPR"), and IPR2016-00282 ("282 IPR"). Declaration of Eleanor Yost ("Yost Decl."), Exhibit 1028, ¶ 3.

2. Linda Rogers, a legal assistant being supervised by Ms. Yost, logged into the undersigned's PRPS account at approximately 9:45 pm EST on December 3 and began uploading the '280 IPR documents. Declaration of Linda Rogers ("Roger Decl."), Exhibit 1029, ¶ 4. Based on their experience, Ms. Yost and Ms. Rogers believed that each filing would take approximately

twenty minutes, and that, accordingly, they would have ample time to complete the three filings prior to midnight. Rogers Decl. ¶ 13; Yost Decl. ¶ 24. Ms. Rogers found, however, that the PRPS system repeatedly froze during the '280 IPR upload process. Rogers Decl. ¶ 5.

3. To upload a document, the user chooses the document from the local computer or network, and PRPS then automatically uploads it. Yost Decl. ¶ 9. During this process, a “spinning wheel” appears, and users can take no action. *Id.* If successfully uploaded, the system returns the user to a menu that requires input of certain information, including document name and “type” (e.g., motion, petition, notice, exhibit). *Id.* The user can then click “submit” to file the document. *Id.*

4. As Ms. Rogers attempted to upload the '280 IPR documents, she found that the “spinning wheel” would spin for an unusual length of time (sometimes several minutes), and then eventually stop spinning, resulting in a “frozen” screen that prevented her from taking any action (including closing the browser window or opening new windows). Rogers Decl. ¶¶ 6-7. The only remedy that Ms. Rogers and Ms. Yost were aware of was to force-close the browser, re-open the browser, re-login to PRPS, and attempt to resume the filing. Rogers Decl. ¶ 8; Yost Decl. ¶ 12.

5. When Ms. Rogers would re-start the PRPS session and attempt to

re-access the filing, she was met with a “padlock” graphic and an error message. Rogers Decl. ¶ 9. She was then required to select a menu option to “unlock” the session. *Id.* Once unlocked, the document associated with the prior session was gone, and Ms. Rogers was required to re-trace all of the uploading steps for the document. *Id.* ¶ 10.

6. This “freezing,” re-starting, and unlocking process added a significant amount of time to the filing. *Id.* ¶ 11. The total time to complete the ’280 filing took nearly an hour and a half, almost an hour and ten minutes longer than usual. *Id.*

7. Realizing that the deadline was fast approaching and that the ’280 petition uploading process was taking an unusually long time, at approximately 11:00 pm Ms. Yost initiated a separate, parallel PRPS session using her own PRPS account on a different computer to begin filing the ’281 IPR in parallel. Yost Decl. ¶¶ 16-17. Ms. Yost experienced the same freezing errors in connection with several different documents (sometimes more than once for the same document). *Id.* ¶¶ 19-22.

8. The complete ’280 IPR filing was accomplished on December 3, with PRPS generating a filing receipt at 11:11 pm. Rogers Decl. ¶ 15; *see also* Exhibit 1030. Although the petitions and exhibits for the ’281 and ’282 IPRs were uploaded on December 3, difficulties with the payment system delayed the

overall filings, and the notifications for the '281 and '282 IPRs arrived at 12:01 am and 12:09 am, respectively, on December 4. Rogers Decl. ¶¶ 17-18; Yost Decl. ¶¶ 27-29; Exhibits 1031, 1032.

**B. Service**

9. As Ms. Yost and Ms. Rogers attended to filing, the firm's Office Services vendor was printing hard-copy versions of the petitions and relevant documents for service, using the same PDFs located on a server that were being used for the electronic filing. Yost Decl. ¶ 18. Given the slow upload times experienced by Ms. Rogers and Ms. Yost, Office Services was directed to exit all of the PDFs until the filings were complete, as a troubleshooting measure in the event that their accessing the PDFs was exacerbating the upload times. *Id.* Once the filings were complete, printing resumed. *Id.* ¶ 35.

10. The petitions and supporting documents were tendered to FedEx<sup>®</sup> at 3:02 am on Friday, December 4, 2015. *Id.* In the aftermath of the filing issues, Ms. Yost neglected to appreciate that the Certificates of Service attached to the documents uploaded on December 3 still said December 3, and needed to be updated to reflect that the documents were not tendered to FedEx<sup>®</sup> until December 4th. *Id.*

11. Patent Owner's counsel received the service copy on Monday, December 7, 2015, and first inventoried the contents on December 14, 2015.

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