

1
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3
4 Re: Transcript of telephone conference in the
5 matter of

6 TEVA PHARMACEUTICALS USA, INC.,
7 Petitioner,

8 v.

9 MONOSOL RX LLC
10 Patent Owner
11 IPR2016-00281 and IPR2016-00282

12 and

13 INDIVIOR
14 Patent Owner
15 IPR2016-00280

16
17 February 17, 2016
18 1:02 p.m.

19 Panel:
20 IPR2016-00280
21 APJ Bonilla
22 APJ Schneider
23 APJ Yang

24 IPR2016-00281 AND IPR2016-00282
25 APJ Franklin
APJ Hulse
APJ Paulraj

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1 TELEPHONE CONFERENCE
2 Yost.
3 JUDGE FRANKLIN: Thank you. And
4 patent owner of MonoSol?
5 MR. SCOLA: This is Daniel Scola
6 for MonoSol on the 281 and 282, as
7 well as Michael Chakansky.
8 JUDGE FRANKLIN: Mr. Scola, did
9 you agree to have this combined
10 conference call?
11 MR. SCOLA: Yes, we did.
12 JUDGE FRANKLIN: Patent Owner,
13 you'll have to help me with the name
14 here.
15 MS. REISTER: Indivior.
16 JUDGE FRANKLIN: Thank you.
17 MS. REISTER: This is Andrea
18 Reister from Covington on behalf of
19 Indivior with Rick Longton, also from
20 Covington, and we also consent to have
21 the joint call.
22 JUDGE FRANKLIN: Thank you. Do I
23 understand that we have a court
24 reporter on the line?
25 MS. HOLLAND: Yes.

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2 JUDGE FRANKLIN: Good afternoon
3 this is Judge Franklin and this is a
4 conference call for IPR2016-00280,
5 00281 and 00282 and I have on the call
6 with me the judges on the panels for
7 these cases. For the 280 case we have
8 Judges Schneider, Bonilla and Yang and
9 for the 281 and 282 cases we have
10 Judges Franklin, Hulse and Paulraj.
11 Before we begin I want to check
12 with counsel for each party to
13 determine whether you agree to have
14 this consolidated and combined
15 conference call for the 280 case along
16 with the 281 and 282 cases. Let's
17 begin with Petitioner.
18 MS. HOLLAND: Good afternoon,
19 Your Honor. This is Elizabeth Holland
20 of Goodwin Procter for Petitioner and
21 yes, we've consented to have this
22 joint call.
23 JUDGE FRANKLIN: Who is with you
24 on the call?
25 MS. HOLLAND: With me is Eleanor

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1 TELEPHONE CONFERENCE
2 JUDGE FRANKLIN: Who has arranged
3 for the court reporter?
4 MS. HOLLAND: The Petitioner has
5 arranged for the court reporter.
6 JUDGE FRANKLIN: Then we'll ask
7 you to then file in each case a copy
8 of the transcript by the court
9 reporter as soon as it's available.
10 MS. HOLLAND: We will do that,
11 Your Honor.
12 JUDGE FRANKLIN: So this
13 conference call was prompted by
14 Petitioner's request to have the
15 filing accorded and the 281 and 282
16 cases changed from changed December 4,
17 2015 to December 3, 2015. So let's
18 begin with Petitioner addressing that
19 issue briefly.
20 MS. HOLLAND: Yes, Your Honor.
21 There are actually three IPRs that
22 were intended to all be filed on
23 December 3rd: 280, 281 and 282. When
24 the documents were being uploaded
25 those dates we experienced unusual

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<p style="text-align: right;">Page 6</p> <p>1 TELEPHONE CONFERENCE 2 delays in the PRPS system. The system 3 was freezing. It just took a really 4 long time, much longer than we've 5 experienced in the past to get 6 everything uploaded. Notwithstanding 7 all those difficulties, we are able to 8 get the petitions and exhibits all 9 uploaded on December 3rd. However, 10 with respect to the 281 and 282 cases, 11 we also experienced difficulties with 12 getting the payment accepted on the 13 PRPS system. We got several messages 14 saying that the system couldn't 15 process the payment and either "try 16 again" or "try a new method of 17 payment." By the time we sorted 18 through those difficulties with the 19 payment it was for the '541 patent, 20 either right before or right after the 21 stroke of midnight and then for the 22 '150 was a couple of minutes later, I 23 think it was 12:09. So everything was 24 ready to go on the third. It was all 25 uploaded on the third. It was simply</p>	<p style="text-align: right;">Page 8</p> <p>1 TELEPHONE CONFERENCE 2 system crashed, froze, we had to 3 reboot. Can I tell you for sure that 4 it was the PRPS system and not a 5 combination of that and our system? I 6 don't know. I mean, we tried to 7 troubleshoot it best we could that 8 night. We tried many different 9 things; logging out, logging in again. 10 And as I said, we were able to 11 accomplish all the uploading of the 12 petition and exhibits on December 3rd. 13 With respect to the payments, what we 14 received that night when we were 15 trying different methods of payment 16 was simply an error that didn't 17 indicate there were insufficient funds 18 it's just that we can't process, try 19 again or try a new method of payment. 20 JUDGE FRANKLIN: Let me stop you 21 again. I'm going to ask you two 22 questions: The first one being, when 23 did you begin trying to upload the 24 petitions on purpose? Apparently it 25 was after hours because we did not</p>
<p style="text-align: right;">Page 7</p> <p>1 TELEPHONE CONFERENCE 2 a matter of not being able to get the 3 payment processed due to maybe a 4 combination of different things that 5 were happening on the system but once 6 the payments were processed we 7 submitted everything. 8 JUDGE FRANKLIN: Counselor, let 9 me stop you there because in the 10 e-mail from Ms. Yost there is an 11 indication in the subject line that 12 there were technical difficulties. 13 And in the body of the e-mail I think 14 there is some assertion that there was 15 a crash in the system. Is it your 16 position that the difficulties you 17 experienced uploading the petitions or 18 making payment were due to system 19 errors or simply insufficient funds 20 being applied? 21 MS. HOLLAND: I guess let me 22 start with whether or not there were 23 system errors. What I can tell you, 24 Your Honor, is that we experienced a 25 lot of delays with the system so the</p>	<p style="text-align: right;">Page 9</p> <p>1 TELEPHONE CONFERENCE 2 receive a call immediately. And the 3 second question would be: Did you 4 save or keep or make any screen shots 5 indicating error messages to support 6 your position? 7 MS. HOLLAND: So the first 8 petition, which was 280, we began 9 uploading at 9:45. Based on past 10 experience, we had expected that 11 process to upload, the petition and 12 exhibits, to take around 20 minutes or 13 so. It ended up taking about an hour 14 and a half, or maybe a little less 15 than that. 16 With respect to the error 17 messages, I'm not sure that there were 18 error messages, per se. It was more 19 that the system was freezing, crashing 20 on us. I'll actually let Ms. Yost 21 address that because she was the 22 person actually hands-on so maybe she 23 can provide a little more level of 24 detail, if that's what you are looking 25 for.</p>

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<p style="text-align: right;">Page 10</p> <p>1 TELEPHONE CONFERENCE</p> <p>2 MS. YOST: Good afternoon, Your</p> <p>3 Honor. With respect to the document</p> <p>4 uploading errors, what we experienced</p> <p>5 were when documents went to be</p> <p>6 uploaded what we usually see is a</p> <p>7 small circle that then as the document</p> <p>8 is being uploaded and then the</p> <p>9 document is made available on the</p> <p>10 system. In our experience that</p> <p>11 evening the little circle would go for</p> <p>12 quite a while and then stop. And what</p> <p>13 that would necessitate would be a hard</p> <p>14 exit out of the system. In other</p> <p>15 words, we couldn't click anywhere else</p> <p>16 in Internet Explorer and so we had to</p> <p>17 force close the browser. When we</p> <p>18 reopened the browser we were presented</p> <p>19 with a screen that had what looked to</p> <p>20 me like a padlock on it which I</p> <p>21 understood later to mean that we had</p> <p>22 to unlock the process that was ongoing</p> <p>23 at the time, reenter the uploading</p> <p>24 process and then start again. This</p> <p>25 happened several times over the course</p>	<p style="text-align: right;">Page 12</p> <p>1 TELEPHONE CONFERENCE</p> <p>2 JUDGE FRANKLIN: So the issue</p> <p>3 really comes to the payment, the</p> <p>4 timing of the payment?</p> <p>5 MS. HOLLAND: Yes, that's</p> <p>6 correct, Your Honor. And as I said,</p> <p>7 we do have e-mails showing that</p> <p>8 payment was attempted on both of the</p> <p>9 petitions at issue, 281 and 282, prior</p> <p>10 to midnight. Those were, as I said</p> <p>11 earlier, rejected and we weren't given</p> <p>12 any message in terms of why they had</p> <p>13 been rejected so we kept trying</p> <p>14 different methods payment. And as I</p> <p>15 said, for the 281 petition it's</p> <p>16 possible that it was actually a couple</p> <p>17 of seconds before midnight. The</p> <p>18 message that we got that the payment</p> <p>19 had been accepted was exactly at</p> <p>20 midnight. For the '150 it was a</p> <p>21 couple minutes later, 12:09.</p> <p>22 JUDGE FRANKLIN: Is there</p> <p>23 anything else that you would like to</p> <p>24 add regarding your position?</p> <p>25 MS. HOLLAND: I just wanted to</p>
<p style="text-align: right;">Page 11</p> <p>1 TELEPHONE CONFERENCE</p> <p>2 of --</p> <p>3 JUDGE FRANKLIN: But the system</p> <p>4 did not crash, right? Are you</p> <p>5 suggesting that there was a crash in</p> <p>6 the system?</p> <p>7 MS. YOST: No, the system</p> <p>8 wouldn't allow us to do anything --</p> <p>9 JUDGE FRANKLIN: To navigate</p> <p>10 between pages?</p> <p>11 MS. YOST: We couldn't do</p> <p>12 anything. Couldn't actually even</p> <p>13 change windows on Internet Explorer.</p> <p>14 The only thing we could do, that it</p> <p>15 would permit us to do, would be a</p> <p>16 CONTROL-ALT-DELETE close, a force</p> <p>17 close of the entire browser.</p> <p>18 JUDGE FRANKLIN: And that was at</p> <p>19 the time you were trying to upload the</p> <p>20 petitions?</p> <p>21 MS. YOST: Correct.</p> <p>22 JUDGE FRANKLIN: But all the</p> <p>23 petitions were apparently uploaded</p> <p>24 prior to midnight?</p> <p>25 MS. HOLLAND: Correct.</p>	<p style="text-align: right;">Page 13</p> <p>1 TELEPHONE CONFERENCE</p> <p>2 make clear, Your Honor, that as soon</p> <p>3 as we discovered that we had been</p> <p>4 given this December 4th date, we</p> <p>5 immediately wrote an e-mail to the</p> <p>6 Board, as I said earlier, as we</p> <p>7 discussed earlier, we didn't delay</p> <p>8 anything at all. We tried to get this</p> <p>9 resolved as soon as possible. We were</p> <p>10 told that we would need to wait for</p> <p>11 the Panel before we could do anything</p> <p>12 about it.</p> <p>13 JUDGE FRANKLIN: And --</p> <p>14 MS. HOLLAND: I'm sorry, I</p> <p>15 apologize, so that's with respect to</p> <p>16 the filing. With respect to the</p> <p>17 service, we had, again as I said,</p> <p>18 intended to file and serve on</p> <p>19 December 3rd. Based on a combination</p> <p>20 of issues that had to do with trying</p> <p>21 to troubleshoot problems with the PRPS</p> <p>22 system as well as getting the printing</p> <p>23 of all the exhibits and the petitions</p> <p>24 done before midnight, it actually</p> <p>25 spilled over and we worked diligently</p>

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2 to get everything printed but it did
3 not make it to the Fed Ex office until
4 3 a.m. on December 4th. The
5 certificates of service actually state
6 December 3rd because when Ms. Yost was
7 preparing them it was our intention
8 and expectation that they would be
9 served on December 3rd. As it
10 happens, the clerical staff that was
11 tasked with getting these things in
12 the boxes and over to Fed Ex didn't
13 accomplish that until about 3 a.m. on
14 the 4th.
15 JUDGE FRANKLIN: Thank you.
16 MS. HOLLAND: We did -- I'm
17 sorry, one more thing on that. In the
18 afternoon, when we started the process
19 of the printing of everything, one of
20 the methods that we tried to
21 troubleshoot that night about the
22 difficulties with the freezing, et
23 cetera, the PRPS system, was to stop
24 the printing for a period of time to
25 see if that maybe could alleviate the

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2 problems with uploading the documents
3 so that caused a delay that was a
4 factor in it spilling over to 3 a.m.
5 instead of prior to midnight.
6 One additional point on the
7 service, and again this only applies
8 to 281 and 282 IPRs, we had instructed
9 the clerical staff to load the boxes
10 that were going to go out for service
11 and bring them to Fed Ex and we
12 assumed that that had been done. We
13 were informed by Patent Owner on
14 December 23rd, in the evening, that in
15 fact they had noticed that there were
16 some documents missing from the boxes.
17 Again, this is not something we could
18 have corrected earlier because we
19 simply didn't know there was anything
20 missing from the boxes until we were
21 alerted to that fact. As soon as we
22 were alerted by Patent Owner, we
23 served the documents that they said
24 had been missing from the boxes. We
25 obviously had no way to know what they

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2 would be but we were taking them at
3 their word that there were some things
4 missing from the boxes.
5 JUDGE FRANKLIN: What I envision
6 you doing is speaking more about these
7 technical difficulties that you are
8 asserting you experienced and caused
9 the delay in the filing of the 281 and
10 282 cases. So we will let Patent
11 Owner first address their issue with
12 regard to the certificate of service.
13 So if you don't have more relating to
14 the delay of the uploading and filing
15 of the 281 and 282, I'll ask Patent
16 Owner MonoSol to respond to what
17 you've stated there.
18 MR. SCOLA: Your Honor, this is
19 Dan Scola. Our position is that we
20 would oppose any attempt by Petitioner
21 to change the filing dates of the '514
22 and the '150 patents, that's the 281
23 and the 282.
24 We have two main points to make
25 and one of them is the late service,

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2 the delivery to Fed Ex on the 4th
3 where we have a tracking receipt and
4 you just heard the Petitioner say that
5 they in fact did deliver it on the
6 4th. We never received any e-mail
7 service so we didn't -- you know,
8 that's one of the requirements for
9 filing obviously, it's separate than
10 filing the petition.
11 And then the amended certificate
12 of service which was filed on
13 December 17th was not corrected, it
14 still said December 3rd. I would just
15 like to point that out. It didn't
16 make a correction on December 4th and
17 we called Fed Ex to confirm that the
18 boxes were in fact received and we
19 think this issue is dispositive for
20 late service as one of the
21 requirements for obtaining a filing
22 date.
23 Incomplete service as well,
24 that's the second point. On the 281,
25 we did not receive a declaration and

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