

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TEVA PHARMACEUTICALS USA INC.

Petitioner

v.

MONOSOL RX, LLC,

Patent Owner

IPR2016-00281
Patent 8,603,514 B2

IPR2016-00282
Patent 8,017,150 B2¹

**DECLARATION OF ELEANOR YOST IN SUPPORT OF
PETITIONER'S MOTION TO CORRECT FILING DATE**

¹ Petitioner attests that the word-for-word identical paper is filed in each proceeding identified in the heading.

IPR2016-00281 Exhibit 1041
IPR2016-00282 Exhibit 1050

I, Eleanor Yost, hereby declare:

1. I am an attorney at the law firm of Goodwin Procter LLP, counsel of record for Petitioner Teva Pharmaceuticals USA Inc. I make this Declaration in support of Petitioner's Motion to Correct the Filing Date of IPR2016-00281 and IPR2016-00282 from December 4, 2015 to December 3, 2015. This Declaration is based on my own personal knowledge and, if called as a witness, I could and would testify competently to the facts in this Declaration.

2. Teva had been served with a complaint asserting infringement of the patents that are the subject of these three IPRs on December 3, 2014.

3. As laid out below, on the evening of December 3, 2015, Petitioner's counsel filed three IPR petitions concerning U.S. Patent Nos. 8,475,832, 8,603,514, and 8,017,150, which will be referred to herein as the "'280 petition," "'281 petition," and "'282 petition."

4. During the course of the evening, we experienced severe technical difficulties with the USPTO's Patent Trial and Appeal Board Patent Review Processing System ("PRPS") that prevented us from submitting the petitions in '281 and '282 proceedings by midnight EST, despite our best efforts to troubleshoot and rectify the problems throughout the course of the evening.

5. Cognizant that there were numerous exhibits to be filed in support of each of the petitions, I instructed my assistant, Linda Rogers, to begin the filing

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process, and she began at approximately 9:45pm EST, starting by uploading the documents for the '280 petition (including the petition, exhibits, and ancillary documents). *See* Declaration of Linda Rogers (“Rogers Decl.”), submitted herewith ('281 IPR Exhibit 1042, '282 IPR Exhibit 1051).

6. I understand that she undertook the process in the customary way, which involves: (1) logging into PRPS under an authorized account (in this case, the account of Elizabeth Holland, who is lead counsel in these proceedings); (2) filling out forms requesting bibliographic information about the case, the patent at issue, and the attorneys of record; (3) providing payment information (e.g., credit card and/or deposit account information); and (4) uploading the petition and related documents to the PRPS server. Rogers Dec. at ¶ 4.

7. During the process of uploading documents filed in connection with the '280 petition to the PRPS server, Ms. Rogers observed that PRPS was functioning highly unusually. *Id.* at ¶ 5.

8. The PRPS system repeatedly froze during the '280 petition upload process. *See id.* at ¶ 5. Specifically, after Ms. Rogers selected certain exhibits for upload, the browser would show a spinning circle. This circle usually appears only for a few seconds while the selected document is uploading. On December 3rd, however, the circle appeared for much longer than usual in connection with several exhibits and when this happened, PRPS eventually stopped functioning

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altogether. *Id.* at ¶ 6.

9. By way of background, to upload a document to the PRPS server, a user browses to and selects the desired document from the local computer or network, and once chosen, the server then automatically uploads the document to PRPS (during which time a “spinning wheel” appears on the screen and users can take no action). If uploaded successfully, the system then presents the user a menu that requires the user to input certain information about the document, including by selecting its “type” (e.g., motion, petition, notice, exhibit) and name. The user can then click “submit” to file the document.

10. However, on December 3rd, when filing several exhibits, Ms. Rogers observed that the “spinning wheel” spun significantly longer than usual, and then eventually stopped spinning and remained frozen on the screen. PRPS would then cease functioning entirely. *Id.* at ¶ 6.

11. When this occurred, Ms. Rogers was unable to take any action whatsoever (including actions such as selecting another option on PRPS, closing the browser window or opening new windows). *Id.* at ¶ 7. The computer itself and other programs, however, remained functional. (That evening, Ms. Rogers and I were both using reliable computers that were connected to the Internet via high-speed connections. We accessed the PRPS system via Internet Explorer.)

12. When PRPS malfunctions in this way, the only remedy I am aware

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of is to force-close the Internet Explorer browser (i.e., selecting CTRL-ALT-DEL and shutting down the browser through the task menu), re-open the browser, re-login to PRPS, and attempt to resume the filing. This PRPS “rebooting” process took several minutes each time.

13. When this happened on the night of December 3rd, Ms. Rogers was forced to engage in the force-close process several times. *Id.* at ¶¶ 8-9. Once logged back into the PRPS system, though, the petition filing itself was administratively “locked” from access. In other words, when the PRPS session was re-started, the screen displayed a large graphic of a “padlock” and an error message that prevented any further work on the filing. Ultimately, a menu option to “unlock” the session was located to resume filing, but this additional step of “unlocking” the locked filing session further added additional time to the overall filing.

14. Once unlocked, the filing was able to be resumed, but the document associated with the attempted upload was gone. So, Ms. Rogers was required to re-trace all of the uploading steps for each document for which the error occurred. *Id.* at ¶ 10.

15. This “freezing”, re-starting, locking, and unlocking of PRPS on several occasions added a significant amount of time to each filing. As discussed below, I personally experienced the same errors in connection with several

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