

**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.

**MONOSOL RX, LLC,**

*Patent Owner*

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IPR2016-00281  
Patent 8,603,514 B2

IPR2016-00282  
Patent 8,017,150 B2<sup>1</sup>

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**DECLARATION OF ELEANOR YOST IN SUPPORT OF  
PETITIONER'S REPLY**

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

IPR2016-00281 Exhibit 1058

IPR2016-00282 Exhibit 1067

Teva Pharmaceuticals USA, Inc. v. Monosol RX, LLC

I, Eleanor Yost, hereby declare:

1. 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. In its opposition to Petitioner's Motion to Correct the Filing Date, Patent Owner asserts that my e-mail to the Board at 12:30AM on Dec. 4th intentionally misrepresented to the Board that the documents were already served on Patent Owner prior to that e-mail in an alleged effort to mislead the Board and secure an earlier filing date. I made no such intentional misrepresentation.
3. As set forth in my declaration in support of Petitioner's Motion, during the course of the evening, we experienced severe technical difficulties with the USPTO's PRPS system that prevented us from submitting the petitions in these proceedings by midnight EST, despite our best efforts to troubleshoot and rectify the problem throughout the course of the evening.
4. Immediately after I was informed that the '282 petition was successfully submitted, I prepared the 12:30AM e-mail in an effort to contemporaneously notify the Board about the technical issues we experienced when filing the petitions and to seek a teleconference on the issue.
5. I viewed it as essential to notify the Board of the technical difficulties

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as quickly as possible, and my e-mail was therefore written hurriedly, in a matter of minutes following the submission of the '282 petition.

6. Patent Owner's motion implies that I personally instructed the vendor to stop printing the service copies, prepared and sent the e-mail, and then instructed the vendor to resume printing. That is not the case. At the time I wrote the e-mail, I was not physically located in the same office as the staff who assembled the paper copies of the petitions for service, and I did not know that the vendor had been instructed to stop or resume printing the service copies. These instructions were issued by another attorney on our team.

7. It is true that at the time I prepared the e-mail, immediately after the electronic filing was complete, I did not confirm the status of service. I later learned that my e-mail was not correct. I certainly regret the error. But at no time did I intend to mislead the Board in any way. Instead, my email was merely intended to notify the Board staff of the need for action by the Board. I knew and expected that the facts would be fully presented to the Board once a panel was constituted and a teleconference scheduled to discuss the matter with all of the parties. At no time did I believe or expect that my e-mail would be the basis upon which the Board would consider changing the filing date to the petitions.

8. At the subsequent meet-and-confer with opposing counsel, we were

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forthcoming with opposing counsel about the timing of service.

9. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated: March 15, 2016



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Transmitted Pursuant to USA v. [redacted] et al., 1:15-cv-00117-LJM (D. Minn. 1/23/16)