

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

PETITIONER:
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<p style="text-align: right;">Page 2</p> <p>1 TELEPHONE CONFERENCE 2 Eleanor M. Yost, Esq. Goodwin Procter, LLP 3 901 New York Avenue N.W. Washington, D.C. 20001 4 eyost@goodwinprocter.com 5 6 MONOSOL PATENT OWNER: 7 Daniel Scola, Esq. Michael Chakansky, Esq. 8 Hoffmann & Baron, LLP 6900 Jericho Turnpike 9 Syosset, NY 11791 dscola@hbiplaw.com 10 mchakansky@hbiplaw.com 11 12 INDIVIOR PATENT OWNER: 13 Andrea Reister, Esq. Rick Longton, Esq. 14 Covington & Burling, LLP One CityCenter 15 850 Tenth Street, NW Washington, DC 20001-4956 16 areister@cov.com elongton@cov.com 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>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.</p>
<p style="text-align: right;">Page 3</p> <p>1 TELEPHONE CONFERENCE 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</p>	<p style="text-align: right;">Page 5</p> <p>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</p>

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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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2 MS. YOST: Good afternoon, Your
3 Honor. With respect to the document
4 uploading errors, what we experienced
5 were when documents went to be
6 uploaded what we usually see is a
7 small circle that then as the document
8 is being uploaded and then the
9 document is made available on the
10 system. In our experience that
11 evening the little circle would go for
12 quite a while and then stop. And what
13 that would necessitate would be a hard
14 exit out of the system. In other
15 words, we couldn't click anywhere else
16 in Internet Explorer and so we had to
17 force close the browser. When we
18 reopened the browser we were presented
19 with a screen that had what looked to
20 me like a padlock on it which I
21 understood later to mean that we had
22 to unlock the process that was ongoing
23 at the time, reenter the uploading
24 process and then start again. This
25 happened several times over the course

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2 of --
3 JUDGE FRANKLIN: But the system
4 did not crash, right? Are you
5 suggesting that there was a crash in
6 the system?
7 MS. YOST: No, the system
8 wouldn't allow us to do anything --
9 JUDGE FRANKLIN: To navigate
10 between pages?
11 MS. YOST: We couldn't do
12 anything. Couldn't actually even
13 change windows on Internet Explorer.
14 The only thing we could do, that it
15 would permit us to do, would be a
16 CONTROL-ALT-DELETE close, a force
17 close of the entire browser.
18 JUDGE FRANKLIN: And that was at
19 the time you were trying to upload the
20 petitions?
21 MS. YOST: Correct.
22 JUDGE FRANKLIN: But all the
23 petitions were apparently uploaded
24 prior to midnight?
25 MS. HOLLAND: Correct.

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2 JUDGE FRANKLIN: So the issue
3 really comes to the payment, the
4 timing of the payment?
5 MS. HOLLAND: Yes, that's
6 correct, Your Honor. And as I said,
7 we do have e-mails showing that
8 payment was attempted on both of the
9 petitions at issue, 281 and 282, prior
10 to midnight. Those were, as I said
11 earlier, rejected and we weren't given
12 any message in terms of why they had
13 been rejected so we kept trying
14 different methods payment. And as I
15 said, for the 281 petition it's
16 possible that it was actually a couple
17 of seconds before midnight. The
18 message that we got that the payment
19 had been accepted was exactly at
20 midnight. For the '150 it was a
21 couple minutes later, 12:09.
22 JUDGE FRANKLIN: Is there
23 anything else that you would like to
24 add regarding your position?
25 MS. HOLLAND: I just wanted to

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2 make clear, Your Honor, that as soon
3 as we discovered that we had been
4 given this December 4th date, we
5 immediately wrote an e-mail to the
6 Board, as I said earlier, as we
7 discussed earlier, we didn't delay
8 anything at all. We tried to get this
9 resolved as soon as possible. We were
10 told that we would need to wait for
11 the Panel before we could do anything
12 about it.
13 JUDGE FRANKLIN: And --
14 MS. HOLLAND: I'm sorry, I
15 apologize, so that's with respect to
16 the filing. With respect to the
17 service, we had, again as I said,
18 intended to file and serve on
19 December 3rd. Based on a combination
20 of issues that had to do with trying
21 to troubleshoot problems with the PRPS
22 system as well as getting the printing
23 of all the exhibits and the petitions
24 done before midnight, it actually
25 spilled over and we worked diligently

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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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