

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 WEST PALM BEACH DIVISION

4 CASE NO. 20-md-02924-ROSENBERG

5 **IN RE: ZANTAC (RANITIDINE)** .
6 **PRODUCTS LIABILITY** . West Palm Beach, FL
7 **LITIGATION.** . February 26, 2021
8 .
9 .

10 STATUS CONFERENCE (through Zoom)
11 BEFORE THE HONORABLE BRUCE REINHART
12 UNITED STATES MAGISTRATE JUDGE

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Official Court Reporter: Pauline A. Stipes
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1 *THE COURT:* Good afternoon, everybody. It is now
2 3:00 o'clock.

3 Let me -- this is In Re Ranitidine MDL.

4 Can I ask -- I guess it's Ms. Finken for the
5 Plaintiffs and Mr. Oot, and I don't know if Mr. Sachse and Ms.
6 Luhana also want to be heard -- are here, they don't have to
7 be.

8 Good afternoon, Ms. Finken.

9 *MS. FINKEN:* Good afternoon, your Honor.

10 *THE COURT:* Mr. Oot, good afternoon.

11 *MR. OOT:* Good afternoon.

12 *THE COURT:* We are on the record, our court reporter
13 is here, so I'll just remind everyone to please identify
14 themselves each time that you speak so we can get a proper
15 record made in this case.

16 We are not going to have any substantive discussions
17 this afternoon, so don't feel you have to be prepared to have a
18 substantive argument or discussion about anything, folks. We
19 got your communications, which immediately meant I didn't read
20 your submissions because I saw that there was nothing to talk
21 about today, so I didn't spend the time, having already done 15
22 criminal matters this morning and two discovery hearings this
23 afternoon. So, I was happy not to do the work.

24 I did want everyone to get together because I think
25 this is a good opportunity as we are starting to see what

1 sounds like are going to be some more PTO 32 issues brought
2 before the Court, which is perfectly fine, to talk about that
3 process.

4 This one didn't work quite the way that Judge
5 Rosenberg and I want them to work, through no fault of anyone
6 in particular. I am not pointing fingers at anyone. I am
7 always happy when parties are able to try to resolve their
8 issues and are able to reach resolution or make progress, but
9 also, it is never helpful for us to be scheduling hearings at
10 the last minute and then canceling hearings at the last minute.
11 So I just wanted to talk about that a little bit.

12 We have always been transparent kind of in both
13 directions in this case, and I think it is helpful for you to
14 understand from the Court's perspective what we have to go
15 through when you ask us to set a hearing.

16 We have to, first of all, schedule time with Zoom; we
17 have to pull our staff away from other matters and we have to
18 schedule time for a Zoom; we have to enter and draft an order;
19 we have to get the Court Reporter lined up; we have to contact
20 the liaisons and pull them away from what they are doing so
21 they can act as gatekeepers. We already have on this call 44
22 people, so they all have to be admitted into the Zoom.

23 There are a lot of moving parts when we have to
24 schedule one of these hearings, and trust me, I am always happy
25 not to have to do the work at the back end, but I hope you can

1 appreciate that sort of scrambling at the last minute to set a
2 hearing and then canceling it at the last minute is just a lot
3 of work and distraction. So, that is what I want to talk about
4 for a second if I could.

5 My sense is that perhaps you all are taking a much
6 more stringent view of the PTO 32 process than what I intended.
7 So, I don't want you to feel like there's more work than you
8 need to do. O, if I could, I want to walk through that. If
9 you have any questions or concerns or things I can clarify for
10 you, I want to be able to respond to that as well.

11 The idea is the first notice that we should get is
12 simply a pretty high level, we need a discovery hearing, we
13 need this much time, and these are the days we would like to
14 have it. You don't even really have to drill down about what
15 the issue is.

16 So, it may be that you, because you are living this
17 24/7, 365 days a year, see things coming down the pike, and
18 there may be four or five issues that are under discussion and
19 your anticipation is we are probably going to get some of them
20 resolved, but we may not get all of them resolved. That is
21 fine. You can schedule time with me without telling me which
22 of the five issues you are going to present.

23 I am getting the sense that perhaps you haven't always
24 felt that way; that you felt that by the time you reach out to
25 try to get time scheduled with the Court you need to have

1 crystalized which specific issue it is. That is not the intent
2 of the process, that is what the final memos are for.

3 So, I want to be clear, if you are juggling four,
4 five, six, two, multiple issues that may need a hearing, feel
5 free to go ahead and request a hearing. Give us plenty of lead
6 time, we'll schedule a hearing and have all of the logistics
7 taken care of. Then, as I said, the day or two ahead of time
8 is when you can figure out which ones have to come before the
9 Court, which ones don't have to come before the Court, or
10 perhaps nothing has to come before the Court.

11 At that point, you have time to let us know, to hear
12 back from us, or, as with today, if you just need additional
13 time. You say, Judge, we are making progress, but we need
14 additional time. That is okay, too, but it is on a much more
15 organized healthy timeframe for all of us.

16 I know it is not easy for you all to be running around
17 trying to get me a submission that you have to run by the other
18 side and the special master, and you have a deadline and we are
19 running up against it, and you are simultaneously trying to
20 negotiate a resolution that would avoid having to come here in
21 the first place.

22 So, let me just start with that. Does that help both
23 sides clarify that's what the expectations are with how the PTO
24 32 process is supposed to work? Ms. Finken?

25 *MS. FINKEN:* Yes, your Honor. My question would be

1 process wise, if we request a hearing because we see some
2 issues on the horizon and we then resolve those issues and want
3 to pull that down for your Honor, what is your preferred way of
4 notifying the Court?

5 *THE COURT:* Thank you for asking. That is a good
6 question.

7 What will happen is, once you notify me, I will do an
8 order, or Judge Rosenberg will do an order in her cases, we do
9 an order setting a hearing. So, now there is a court order on
10 the docket setting a hearing.

11 So, I think the proper thing to do is just to file
12 something in the docket requesting that the hearing be
13 canceled, and then we will do a very brief paperless order
14 canceling the hearing. That way, people who are monitoring the
15 case, other litigants in the case, but also the public who may
16 be tracking things on the docket, they will have proper notice
17 that the hearing has been canceled.

18 If I tell you and then I tell the liaisons, kind of
19 the insiders will find out organically, but the outsiders will
20 not. So, that is, I think, the best way to do it, Ms. Finken.

21 Do you have any other thoughts, any preferred way to
22 do that other than that?

23 *MS. FINKEN:* No. I appreciate the feedback on that
24 and I guess I just have a followup question, and to the extent
25 that submissions have been submitted to the Court in the

1 meantime while we are working through these issues, would those
2 submissions -- would you prefer that those submissions also get
3 filed in the docket when we take it down so there is a clear
4 record of everything that has transpired?

5 *THE COURT:* Let me think about that one. I don't have
6 a direct answer, it's a good question I don't have a direct
7 answer to. I will think out loud for a second and then maybe
8 you all can give me your thoughts.

9 Certainly, if I have ruled on something and I have
10 looked at something, I always make sure that is in the docket.
11 If I have never ruled on something, I don't know that it is
12 necessary to put in the docket things I looked at that I never
13 relied upon because there would be no need for another Court to
14 review my nonruling. That is my visceral reaction.

15 I am open to discussion with the parties if you think
16 there -- particularly in discovery where there is no public
17 right of access in discovery, if there hasn't ever been a
18 ruling, I don't know why we would be putting things in the
19 record because it invites the impression -- nobody would ever
20 do this on purpose, but it invites the impression that someone
21 is simply loading up some submission with prejudicial
22 information, filing it in the docket, and the Court never reads
23 it, the Court never rules on it, and it is an opportunity for a
24 litigant to take a free shot at somebody else, and I don't
25 think any of us want that.

1 Having talked it out loud, my gut would be not to file
2 it in the docket if the Court never ruled on it. But again, I
3 am open to discussion if the parties feel that way.

4 *MS. FINKEN:* Than you, your Honor, that is helpful. I
5 think that the confusion, I guess, on our side comes when we
6 have already submitted them through the Court's email, and if
7 there is going to be an order issued rendering the hearing
8 moot, or something along those lines, whether or not it makes
9 sense to have the actual submissions submitted with that to
10 just make the record clear.

11 I want to make sure we have clarity on what we should
12 be doing on our side.

13 *THE COURT:* Ms. Finken, that might be a good topic to
14 put on one of our discovery status conferences because that is
15 a non-substantive process-based issue that I would welcome and
16 I know Judge Rosenberg would welcome a broader view on, and we
17 can have that discussion. I think that is the right forum for
18 that.

19 Mr. Oot, you have been very patient, very quiet, I
20 don't mean to box you out. Do you have any questions or
21 comments or thoughts?

22 *MR. OOT:* No, your Honor. I agree that that would be
23 a good subject to discuss at the next status conference. One
24 of the things I think could be helpful to the parties in this
25 PTO 32 process would be the issues that always should come up

1 with simultaneous submissions, so if we could seek some clarity
2 from the Court on that.

3 Often times what happens is, the parties are talking
4 in different directions in the submissions and there isn't much
5 clarity, and we are fine doing the separate two and a half page
6 submissions if that is the way the parties want to do that, but
7 I think it is just a process that would be helpful if there was
8 a seriatim of how we are submitting these things to even one
9 another, so we can ensure that both sides are talking directly
10 at the issue.

11 *THE COURT:* Sure. That may be something I will defer
12 to a discovery status to discuss.

13 I will tell you where that comes from, where the joint
14 memo comes from, and maybe that will inform you.

15 It really developed out of other cases that I do, and
16 the purpose of forcing a joint memo is to make the parties
17 actually talk to each other, because unlike you all who are
18 BFFs and talk every day all day with each other and to the
19 special master, in other cases the lawyers will file discovery
20 disputes and not bother to talk to each other. So, by
21 requiring them to do a joint memo I am at least requiring them
22 to formally meet and confer before they get to me. So that is
23 one purpose.

24 And the other purpose is that it gives me an agenda
25 and it gives me a consolidated document that I can use where I

1 can say the Plaintiff thinks this, the Defendant thinks that,
2 and so there is transparency, that both sides know what the
3 other side is saying.

4 Whereas if submit literally simultaneous submissions,
5 the problem becomes you want to respond to theirs, they want to
6 respond to yours, but this is the first time you are seeing it,
7 so now I have four pieces of paper instead of two pieces of
8 paper, and then you want to reply to their response, and now I
9 have six pieces of paper instead of one piece of paper. That's
10 where it comes from.

11 In terms of order of operations and who should have to
12 submit the first proposal that ends up being the joint memo, we
13 can discuss that. Maybe it is the party who is the one
14 requesting the discovery hearing should go first, but sometimes
15 it is not clear who is requesting the discovery hearing. Is it
16 a motion to compel or a motion for protective order? They are
17 sort of two sides of the same very thin piece of paper.

18 Again, I am thinking out loud to give you some general
19 thoughts, but I think this would be a healthy thing to take up
20 at one of our discovery status conferences.

21 The other thing, I'm not wedded formally to two and a
22 half pages per side. I think it is always helpful to
23 discipline people, that if you give them less time, they will
24 actually use it.

25 When I worked at the Treasury Department when Lloyd

1 Benson was the Secretary of the Treasury, if you sent something
2 in to Lloyd Benson for his decision it could not be longer than
3 two pages. It did not matter if it was the biggest law
4 enforcement agenda item in the history of the ATF, he got two
5 pages. So we got really good at condensing things down.

6 On the one hand, I try to force you to do that. On
7 the other hand, I recognize there are some topics or maybe some
8 hearings where there are four or five or six issues, they just
9 simply can't be fairly addressed in two or three pages.

10 You can talk to the special master, I have given her
11 some limited authority on that regard. I just wanted the
12 parties to be aware of that. I am not fully rigid on that, I
13 am only mostly rigid on that.

14 *MS. FINKEN:* Thank you, your Honor. It is a
15 challenge.

16 *THE COURT:* I understand. I understand.

17 Again, the idea is to sort of tee up the issue, sort
18 of this is the issue, this is our view, this is their view, and
19 you have been through enough of it in a few of those hearings
20 with me, you understand. I will give you plenty of time to
21 argue your position, but while we are talking now -- and again,
22 we can put this on for a discovery status topic. I just got
23 off another hearing and this is fresh in my mind because this
24 is what happened in that case.

25 They were so busy in their submission arguing the

1 legal issues that nobody submitted the evidence I needed to
2 look at to actually resolve who had the burden and whether they
3 met their burden. So that doesn't count against your two and a
4 half pages.

5 If this is an issue -- for example, I think we talked
6 in the past about ESI where I have said data is very helpful,
7 it is very helpful to know hit counts and things like that, or
8 if you are making an undue burden argument, you know, it would
9 be helpful to have an affidavit from somebody who can say this
10 is why we can't do what we're supposed to do by the date we're
11 supposed to do it. That is actual evidence I can rely on.

12 So, I just remind the parties oftentimes it is not a
13 two-and-a-half page or three-page submission that is going to
14 be dispositive or really important to me, it is the materials
15 you attach, the request for production, the objection, the
16 affidavit, the hit count, the interrogatory, the actual
17 evidence, because at some point somebody has a burden and
18 that's really what I am measuring.

19 So, I will just remind you and encourage you to --
20 those don't count against your pages. You can layer those on
21 on the back side.

22 Okay, other general topics we can flesh out on the PTO
23 32 process?

24 Mr. Oot. You are going to get in trouble with
25 Pauline, so say your name.

1 MR. OOT: Thank you, your Honor. Patrick Oot for GSK.

2 Just an overarching comment of I would say that we are
3 much different than your other parties that you are dealing
4 with. Ms. Finken and I were on the phone for over three hours
5 with Ms. Dodge yesterday, and for several other hours earlier
6 this week, so we are spending plenty of time together in meet
7 and confers and we can assure you that at least in those we are
8 not talking sideways against each other.

9 THE COURT: I am sure you are not. The special master
10 talks to me, obviously she does not share with me your
11 conversations. She will just share with me they we are making
12 progress, we are going to need this hearing, we are not going
13 to need this hearing, so I do get some guidance from that. The
14 consistent guidance is they are talking and they are talking
15 productively. So, to the extent anybody is concerned the Court
16 thinks there is not productive dialogue going on, that is
17 certainly not the Court's impression. So, thank you for that.

18 To that end, let me turn to one other issue, which is,
19 when on Tuesday would you like to come in and how much time do
20 you need? I want to get something on the calendar so I can get
21 and order out. If you need to cancel it, you can cancel it,
22 but I want to get you on the calendar for Tuesday.

23 I know you are taking the deposition Wednesday, Ms.
24 Finken, so if there is something that needs to be ruled on
25 before that, I want to rule on it for you.

1 MS. FINKEN: Thank you. Tracy Finken on behalf of
2 Plaintiffs.

3 While you are talking about Tuesday, I wanted to, in
4 light of your Honor's comments, request -- we have an issue
5 coming up in terms of the PTO 32 process with the generic
6 Defendants, and we wanted to request time for that on Tuesday
7 as well.

8 We will send a formal request, obviously, to the
9 Court, but would you prefer, your Honor, to have those back to
10 back, those two PTO 32 conferences?

11 THE COURT: Let me tell you what I've got Tuesday. I
12 have a settlement conference starting at 11:00 o'clock, which I
13 am not optimistic is going to last very long. I had sort of in
14 my mind set aside the afternoon.

15 My thought was I would hear, yes, your issue and the
16 generic issue back to back, probably one -- depending on how
17 much time you need, starting at 2:00 o'clock. So one from 2:00
18 to 3:00, one from 3:00 to 4:00, or one from 2:00 to 3:30, one
19 from 3:30 to 5:00. That is why I am asking you how much time
20 you need.

21 We can sequence it because I don't necessarily need
22 all of the generic lawyers to be billing their clients to sit
23 there and listen while we are talking about a brand issue, and
24 likewise, I don't need the brand lawyers sitting there while
25 we're talking about a generics issue.

1 What is your preference, Ms. Finken, if you have one?

2 *MS. FINKEN:* My preference would be that we go first
3 with the GSK, and I don't foresee us needing more than an hour
4 for that particular topic, and then followed by the generic, so
5 that I don't lose stamina by the time we get to the GSK
6 discussion. That would be my preference.

7 Hopefully, it will be more of a short conversation.
8 Depending upon whatever the proposal is that GSK provides to me
9 over the weekend, maybe we won't need the hearing with them at
10 all.

11 *THE COURT:* Mr. Oot, are you okay with 2:00 o'clock on
12 Tuesday for an hour?

13 *MR. OOT:* Yes, your Honor.

14 *THE COURT:* Great. We'll do an order setting a
15 hearing for 2:00 o'clock on Tuesday for the -- how would I
16 phrase it -- the issues relating to GSK's -- the deposition on
17 Wednesday? I don't want to be pejorative to anybody by seeming
18 to cast blame on anyone. Do I have an alternate term that I
19 can put in the order?

20 Mr. Oot, let me ask you: How would you like me to
21 phrase it?

22 *MR. OOT:* Related to GSK's regulatory (30)(b)(6) I
23 think would be fine.

24 *THE COURT:* That's fine. We'll do an order setting a
25 hearing on the discovery issues related to GSK's regulatory

1 30(b)(6). I like that. Okay.

2 Then, Ms. Finken, I understand the -- I don't know if
3 the generic people are here, so I don't want to talk too much
4 about them other than I will tell you I will set aside the time
5 from 3:00 o'clock -- how much time do you think you will need
6 for the generics issue?

7 MS. FINKEN: That's a little bit more of a moving
8 target, so I suspect we are going to need some more time. We
9 are working very diligently through these issues, and hopefully
10 we will be able to narrow them quite a bit by the time we get
11 in front of the Court on Tuesday, but I would set aside a good
12 two and a half hours.

13 THE COURT: Okay. I will set aside 3:00 to 5:30 for
14 the generics.

15 MS. FINKEN: Thank you, your Honor.

16 THE COURT: Now we have done that. See, this process
17 works beautifully.

18 Then, in terms of submissions, assuming -- let's be
19 pessimistic that you are not going to resolve your issues with
20 GSK over the weekend and I do actually have to have a
21 substantive hearing on Tuesday. Do you want to make new
22 submissions? Can you live off of the old submissions and just
23 tell me what parts not to read?

24 I really need to get that stuff at least 24 to 36
25 hours in advance so that I can give you a real hearing. If I

1 get it the last minute, I can't read it and be prepared. I
2 would like to get those submissions by noon on Monday if I can.

3 What is your feeling, Ms. Finken?

4 *MS. FINKEN:* Your Honor, I think that we can rest on
5 the submissions that we sent today, and if we need to
6 supplement them at all, we can set a timeline Monday morning
7 that we can supplement the submissions or amend them. As far
8 as I'm concerned, we can rely on the ones that have been
9 submitted.

10 *THE COURT:* Okay. Let me turn to Mr. Oot.

11 *MR. OOT:* Patrick Oot for GSK, your Honor.

12 If we could do a -- if any, which I agree with
13 Ms. Finken, if we need one, that we would do a supplemental
14 report perhaps after the meet and confer over the weekend on
15 Monday morning, if that would work for the Court.

16 *THE COURT:* That is fine. My only request would be,
17 in both directions, if there is something you need to
18 supplement, just let us know, and if there is stuff that I
19 don't have to worry about because you have resolved, please let
20 me know.

21 That can be very informal. That can be, like I said,
22 a joint email to the Zantac email account that gets forwarded
23 on to me. I would rather you spend your energies and your time
24 resolving your issues, not preparing pretty letters for me. I
25 don't need that. I can read an email just as well as I can

1 read a pretty letter.

2 Okay. All right. That is great, I think we are set
3 for Tuesday on that.

4 All right. This is always my exit question on these
5 things: Ms. Finken, as long as we are all together, anything
6 else that you think we can make productive use of while we are
7 all together today?

8 *MS. FINKEN:* I don't think so right now, your Honor.
9 I just want to say that we are very, very appreciative of the
10 Court's time. We do understand the logistics that go into
11 scheduling these types of conferences and the Zoom aspect of it
12 placing a whole new level of resources that you need to
13 dedicate to that. We are appreciative and I just want to thank
14 your Honor for the time today and for the time that you are
15 setting aside on Tuesday for us.

16 *THE COURT:* That is my pleasure. By the way, I have
17 not set a deadline for submissions if there is an issue with
18 the generics. I see Mr. Henry is on the call.

19 Mr. Henry, I don't mean to catch you off guard if
20 you're not ready and you want to confer with Ms. Finken on
21 this, but my preference would be to try to get whatever
22 submission I am going to get on any generics issue by noon on
23 Monday as well.

24 Ms. Finken, why don't you and Mr. Henry confer on
25 that. That is going to be my presumptive order unless I hear

1 back through the special master that there is some good reason
2 not to be doing that. Okay?

3 MS. FINKEN: I do not foresee that being a problem,
4 your Honor.

5 MR. HENRY: Thank you, your Honor. We appreciate
6 that. Thank you.

7 THE COURT: Of course. For the record, this is Mr.
8 Henry. Go ahead.

9 MR. HENRY: Thank you.

10 THE COURT: All right. Mr. Oot, anything further
11 while we are all together this afternoon?

12 MR. OOT: No, thank you, your Honor. I appreciate the
13 Court's time and echo Ms. Finken's praises to the Court. Thank
14 you.

15 THE COURT: Look, my pleasure. You are working so
16 hard, I know that. We really are here to make your lives
17 easier, not more difficult, so we will just continue to be
18 transparent.

19 Thank you very much, have a good weekend, everybody,
20 and we will be in recess. Have a good day.

21 MS. FINKEN: Thank you. You, too, your Honor.

22 *(Thereupon, the hearing was concluded.)*

23 * * *

1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above matter.

3
4 Date: February 27, 2021

5 /s/ Pauline A. Stipes, Official Federal Reporter

6 Signature of Court Reporter
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Pauline A. Stipes, Official Federal Reporter

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