IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

SHIRE DEVELOPMENT LLC, SHIRE PHARMACEUTICAL DEVELOPMENT INC., COSMO TECHNOLOGIES LIMITED, and NOGRA PHARMA LIMITED,	)	Case No. 8:12-cv-01190-CEH-AEP
Plaintiffs,	)	
v.	)	
MYLAN PHARMACEUTICALS INC., and MYLAN INC.,	)	
Defendants.	)	

SHIRE'S OPPOSITION TO DEFENDANTS' MOTION TO REOPEN CASE AND MOTION FOR THE TAXATION OF COSTS[1]

[1] Plaintiffs herein re-file their Opposition (originally filed on June 12, 2018 at ECF No. 548) to Mylan's Motion for the Taxation of Costs, which has now been filed at ECF No. 551 and ECF No. 552. The documents filed at ECF No. 551 and ECF No. 552 appear to be the same.

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I. Introduction

Mylan's request for costs is time-barred and should be denied in its entirety. Local Rule 4.18 provides that:

> In accordance with Fed. R. Civ. P. 54, all claims for costs or attorney's fees preserved by appropriate pleading or pretrial stipulation shall be asserted by separate motion or petition filed not later than fourteen (14) days following the entry of judgment. The pendency of an appeal from the judgment shall not postpone the filing of a timely application pursuant to this rule.

M.D. Fla. Local Rule 4.18. Mylan was due to file its motion for costs "not later than fourteen (14) days following the entry" of this Court's June 14, 2017 judgment of non-infringement. Mylan's deadline to seek costs expired on June 28, 2017.

There is no question that Mylan's motion—filed 336 days later—is untimely. Mylan concedes that "a prevailing party is typically expected to move for costs within two weeks of entry of judgment." Mylan's Br. at 2. And Mylan acknowledges its status as the prevailing party. *See* Mylan's Br. at 4. Mylan was due to file any motion for costs under the Federal and Local Rules no later than fourteen days after this Court's June 14, 2017 judgment.

Mylan cites no authority that would excuse such untimeliness. Of the cases cited in Mylan's motion, no party requested costs—as Mylan has done here—on the basis of a motion filed nearly one year after the deadline. To the contrary, courts in this district have routinely denied motions for costs that are filed several days past the deadline as untimely.

Mylan appears to argue that the fourteen-day period set forth by Local Rule 4.18 is triggered by the Federal Circuit's mandate. But Mylan's argument is contrary to the plain language of Local Rule 4.18, which unambiguously ties the deadline to the "entry of judgment"—not the entry of an appellate court mandate. Nor does the Rule contain any exceptions for alleged "uncertainty" or so-called "unusual circumstances." Rather, Local Rule

4.18 expressly contemplates the possibility of a pending appeal, which "***shall not***" postpone the filing of an application for costs.

Shire requests that this Court deny Mylan's motion in its entirety.

II. Argument

A. Mylan's Request for Costs Should Be Denied as Untimely

"Courts enforce Local Rule 4.18 and have denied bills of costs filed more than 14 days after the entry of judgment." *Abdullah v. Osceola Cty. Sheriff*, No. 6:14-cv-629-Orl-40TBS, 2015 WL 12859334, at *1 (M.D. Fla. Dec. 1, 2015) (collecting cases). Applying this Rule, the *Abdullah* court struck a bill of costs filed three days late. *Id.* at *1-2. Denying a motion to tax costs that was filed five days late, the court in *Miller v. Ford Motor Co.* found that a prevailing party's mistaken belief that three extra days applied to the 14-day deadline was "excusable neglect." *Miller v. Ford Motor Co.*, No. 2:01-cv-545-FtM-29DNF, 2004 WL 6235323, at *1 (M.D. Fla. Dec. 17, 2004). Nor was the *Miller* court persuaded by the contention that Hurricane Frances prevented counsel from timely filing the motion. *Id.*; *see also Anderson v. Techtronic Indus. N. Am., Inc.*, No. 6:13-cv-1571-Orl-40TBS, 2015 WL 4459029, at *1-2 (M.D. Fla. July 20, 2015) (denying request for costs that was filed two weeks late and collecting cases); *Mercado v. HRC Collection Ctr.*, No. 3:12-cv-122-J-32JBT, 2013 WL 6085221, at *1-2 (M.D. Fla. Nov. 19, 2013) (denying request for costs where, among other things, the motion was filed four weeks late).

Mylan's request for costs is time-barred, and Mylan identifies no authority that would support the contrary. In deciding whether to excuse an untimely request for costs, the Court considers four factors: (1) the length of delay and its potential impact on judicial proceedings; (2) the reason for the delay, including whether it was within the reasonable control of the movant; (3) the danger of prejudice to the nonmovant; and (4) whether the movant acted in good faith.

These factors do not counsel in favor of accepting Mylan's belated filing.

Mylan filed its motion for costs following a lengthy (336 days) delay. Mylan identifies no cases—and Shire has not found any—that have permitted a motion for costs to be filed almost one year after the deadline. Indeed, as outlined above, this Court has denied motions for costs as untimely based on delays of as little as three days.

Mylan provides no cogent reason as to ***why*** it waited 336 days past the deadline to file its motion for costs. Mylan does not explain why the possibility of reversal and/or remand—which exists in any appeal from a judgment—excuses it from timely seeking costs here. In any event, the Local Rules unambiguously provide that "[t]he pendency of an appeal from the judgment shall not postpone the filing of a timely application [for costs] pursuant to this rule." Local Rule 4.18. Thus, the pendency of Shire's appeal had no bearing on Mylan's obligation to timely seek costs following this Court's June 14, 2017 judgment of non-infringement.

Mylan cannot credibly claim "confusion" over this Court's June 14, 2017 judgment of non-infringement. *See* Mylan's Br. at 5. On June 14, 2017, this Court issued a 13-page opinion vacating the previous judgment and injunction in favor of Shire and ordering the entry of judgment in favor of Mylan—just as Mylan requested. ECF No. 536; ECF No. 507 at 11.[2] On that same day, the Court entered a "Final Judgment," in which the Court "enter[ed] . . . final judgment in favor of the Defendants"—just as Mylan requested. ECF No. 537 at 1; *see also* ECF No. 507 at 11 ("Mylan respectfully requests entry of judgment of non-infringement"). Mylan cannot seriously suggest that there was any question that judgment had been entered in its favor on June 14, 2017, thus triggering the 14-day period for Mylan to move for costs under Local Rule 4.18. Indeed, in its Docketing Statement filed with the Federal Circuit on July 21,

[2] To the extent that they conflict, page numbers to docket entries refer to the number at the bottom of the page, not to the ECF stamp.

2017 (attached hereto as Exhibit 1), Mylan stated that the relevant judgment had been entered on June 14, 2017, and that Mylan was seeking affirmance of that judgment. Mylan's argument of "confusion" over the date and/or import of this Court's June 14, 2017 judgment is disingenuous.

Until now, Mylan has never expressed any doubt that the second final judgment—which Mylan itself requested—"was validly entered." Mylan's Br. at 8. To the contrary, Mylan told the Federal Circuit in no uncertain terms that this Court's June 14, 2017 judgment was the judgment from which Shire's appeal properly lied. Exhibit 1. Additionally, in its brief to the Federal Circuit (relevant excerpts attached hereto as Exhibit 2), Mylan stated that "[the issue on appeal] is a narrow and straightforward one—did Judge Honeywell abuse her discretion in deciding to reconsider her initial decision pursuant to Federal Rules of Civil Procedure 59 and 60. The answer is no." Given these representations to the Federal Circuit—not to mention Mylan's arguments to this Court in its reconsideration motion urging the Court to enter judgment in favor of Mylan (ECF No. 507)—it is simply not credible for Mylan to suggest that it harbored any doubt about whether this Court's judgment "was validly entered."

It is possible that Mylan did not understand Local Rule 4.18. But it is well-settled that "'counsel's misunderstanding of the law cannot constitute excusable neglect.'" *Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1255 (11th Cir. 2007) (quoting *Advanced Estimating Sys., Inc. v. Riney*, 130 F.3d 996, 997 (11th Cir. 1997)). Applying that standard, the Eleventh Circuit found no error in Chief Judge Fawsett's refusal to consider an objection to a bill of costs, which was filed about five months late. *Corwin*, 475 F.3d at 1255. This Court should likewise find that Mylan has failed to show excusable neglect here.

Mylan ignores the prejudice that is inherent in having to defend a motion that is filed in plain violation of the Local Rules. Shire "would be prejudiced if the Court allowed the late filing

in that [it] would have to defend paying costs . . . even though the request[] [was] filed in violation of the . . . Local Rules." *Envtl. Biotech, Inc. v. Sibbitt Enters.*, No. 2:03-cv-124-FtM-33SPC, 2009 WL 1653563, at *3 (M.D. Fla. June 10, 2009). Accordingly, this factor weighs against granting Mylan's motion.

In sum, Mylan offers no legitimate reason for its lengthy delay in seeking costs. The factors considered by this Court in deciding whether to excuse such delay militate against the requested relief. Mylan's motion for costs should be denied in its entirety.

B. Mylan's Motion for Costs Should Be Denied Because It Failed to File a Motion for an Extension of Time

After the time to file a motion has expired, an extension of time may be granted only "on motion . . . if the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(1)(B). Here, Mylan failed to file a motion for an extension of time. *See* Local Rule 3.01(a) (providing that a motion "shall include a concise statement of the precise relief requested, a statement of the basis of the request, and a memorandum of legal authority in support of the request"). Accordingly, there is no basis for extending the time to file the motion for costs.[3] *See IPXL Holdings LLC v. Amazon.com, Inc.*, 430 F.3d 1377, 1385-86 (Fed. Cir. 2005) (reversing a district court's decision to enlarge the time to file a motion for attorney fees where the party seeking attorney fees never filed a motion for an extension of time).

C. Mylan's Motion Should Be Denied Because Mylan Did Not Include a Request for Costs Under 28 U.S.C. § 1920 in Its Pleading or in a Pretrial Stipulation

Additionally, Mylan's motion should be denied because its request for costs was not "preserved by appropriate pleading or pretrial stipulation" as required by Local Rule 4.18. Rather, Mylan simply requested its "reasonable attorney's fees and costs of these Counterclaims

[3] Additionally, as explained in detail above, Mylan has not shown excusable neglect, so any motion for an extension of time would fail on that basis.

pursuant to 35 U.S.C. § 285[.]" ECF No. 7, Answer, Defenses and Counterclaims of Mylan Pharmaceuticals Inc. and Mylan Inc. at Prayer for Relief (f). Because Mylan did not include a request for costs under 28 U.S.C. § 1920, it forfeited its right to do so under Local Rule 4.18. *See Saadi v. Maroun*, No. 8:07-cv-1976-T-24 MAP, 2009 WL 4730533, at *3 (M.D. Fla. Dec. 7, 2009) (denying a request for costs where the party failed, under Rule 4.18, to include the request in its pleading or in a pretrial stipulation). Mylan's failure to follow this aspect of Local Rule 4.18 is yet another reason why its motion for costs should be denied.

D. Mylan's Proposed Costs Are Excessive

For the reasons already stated, Mylan's motion should be denied in its entirety. In the event that the Court entertains Mylan's 336-day-late request for costs, Shire submits that Mylan's proposed costs are excessive. The Supreme Court has explained that costs are "limited to relatively minor, incidental expenses" as defined by 28 U.S.C. § 1920. *Kouichi Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 572-73 (2012). The Court further acknowledged that "[t]axable costs are a fraction of the nontaxable expenses borne by litigants for attorneys, experts, consultants, and investigators." *Id.* at 573. Thus, "a district court may not award costs under Rule 54 'in excess of those permitted by Congress under 28 U.S.C. § 1920.'" *Graphic Packaging Int'l, Inc. v. C.W. Zumbiel Co.*, No. 3:10–cv–891–J–37JBT, 2012 WL 2913179, at *2 (M.D. Fla. June 13, 2012) (quoting *Maris Distrib. Co. v. Anheuser-Busch, Inc.*, 302 F.3d 1207, 1225 (11th Cir. 2002)).

Here, Mylan seeks costs that are excessive, outside the scope of 28 U.S.C. § 1920, and lacking a sufficient level of detail and documentation. As discussed in more detail below and summarized in Table 1, Mylan's request for costs features more than $50,000 in nontaxable expenses.

Table 1 – Summary of Shire's Objections to Mylan's Requested Costs

Subject	Mylan's Requested Costs	Shire's Proposed Reductions to Mylan's Requested Costs	Reduced Taxable Costs
§ 1920(2): Costs for Trial and Hearing Transcripts	$4,838.00	$48.60	$4,789.40
§ 1920(2): Costs for Deposition Transcripts; § 1920(6): Costs for Interpreters	$74,046.36	$34,338.76	$39,707.60
§ 1920(3): Costs for Witness Fees	$2,405.04	$2,405.04	$0.00
§ 1920(4): Costs for Photocopies and Exemplifications	$26,782.83	$16,828.87	$9,953.96
Totals	**$108,072.23**	**$53,621.27**	**$54,450.96**

1. Mylan's Request for Trial and Hearing Transcripts Is Excessive

Mylan requests $48.60 for "court reporter fees associated with the Reconsideration hearing in March 2017." Mylan's Br. at 10. But court-reporter fees are not taxable under the current version of court 28 U.S.C. § 1920(2). *See Moore v. Shands Jacksonville Med. Ctr., Inc.*, No. 3:09–cv–298–J–34PDB, 2014 WL 12652475, at *5-6 (M.D. Fla. Apr. 3, 2014) (declining to tax court-reporter fees because the 2008 amendment to § 1920(2) removed language pertaining to such fees). Accordingly, Mylan's request for $48.60 in court-reporter fees should be denied.

2. Mylan's Requests for Deposition-Transcript Costs and Interpreter Fees Are Excessive

Mylan seeks costs for "transcripts, exhibits, appearance fees, postage, video, and interpretation services," all of which Mylan claims are taxable under either 28 U.S.C. § 1920(2) ("fees for printed or electronically recorded transcripts necessarily obtained for use in the case") or 28 U.S.C. § 1920(6) ("compensation of interpreters"). Mylan's Br. at 11-12. In total Mylan is requesting $74,046.36 in costs related to deposition transcripts and interpretation services. As

explained below, Shire objects to certain invoices pertaining to transcript, exhibit, and video costs (attached to Mylan's Brief as Exhibit 3 of the Mukerjee Declaration) for being excessive or for lacking sufficient detail or documentation. Shire also objects to Mylan's request for appearance fees, postage, and realtime services because precedent from this Court and from the Eleventh Circuit states that these costs are not taxable under § 1920(2). Accordingly, Mylan's requested costs for deposition transcripts and interpreter services features at least $34,338.76 in nontaxable expenses.

a. Deposition Transcripts, Exhibits, and Video Costs

i. The Costs of Dr. Steven Neau's Deposition (Invoice #: 109681) Should Be Denied As Excessive and Unnecessary

Costs for deposition transcripts should be denied "'where the deposition costs were merely incurred for convenience, to aid in thorough preparation, or for purposes of investigation only.'" *Johnston v. Borders*, No. 6:15-cv-936-Orl-40DCI, 2017 WL 1968352, at *4 (M.D. Fla. Apr. 24, 2017) (quoting *United States EEOC v. W&O, Inc.*, 213 F.3d 600, 620 (11th Cir. 2000)). In the declaration that Mylan submitted with its brief (see Mukerjee Declaration ¶ 16), Mylan requests $3,310.80 in costs for Dr. Neau's deposition (attached to the Mukerjee Declaration as Invoice #: 109681). But Mylan decided not to call Dr. Neau at trial. This decision is flatly inconsistent with Mylan's assertion that Dr. Neau's transcript was "necessary for the defense of this case." Mylan's Br. at 12. Rather, Mylan used Dr. Neau's deposition merely "to aid in thorough preparation." Accordingly, Mylan's request for $3,232.80 in costs for Dr. Neau's deposition transcript and exhibits should be denied.

ii. The Costs of Dr. Alan Paul's Video Deposition Should Be Denied

In its request for Deposition Transcript costs Mylan requests video deposition costs for eight witnesses, including a $575.00 invoice for the video deposition of Dr. Alan Paul (see Invoice #: 108950). But the cost of a video deposition is taxable only if, among other things, "the prevailing party explains why it was necessary to obtain both a transcript and video recording of the deposition." *Johnston*, 2017 WL 1968352, at *4 (citing *Morrison v. Reichhold Chems., Inc.*, 97 F.3d 460, 464-65 (11th Cir. 1996)). Mylan's request lacks sufficient detail or documentation. Outside of a general statement that video deposition fees are taxable, Mylan's motion fails to offer any explanation for why a video recording of Dr. Paul's deposition was necessary for use in this case. Therefore, the requested $575.00 cost for Dr. Paul's video deposition should be denied. Nor does Mylan's request provide sufficient detail and documentation. "A court can only award costs that are adequately described and documented." *Wiand v. Wells Fargo Bank, N.A.*, No. 8:12-cv-557-T-27EAJ, 2015 WL 12839237, at *7 (M.D. Fla. June 10, 2015). "Failure to provide sufficient detail or supporting documentation verifying the costs incurred and the services rendered can be grounds for denial of costs." *Blitz Telecom Consulting, LLC v. Peerless Network, Inc.*, No. 6:14-cv-307-Orl-40GJK, 2016 WL 7325544, at *2 (M.D. Fla. Aug. 31, 2016). Because Mylan's Invoice #: 108950 lacks sufficient details so that Shire can determine what exactly the requested "video services" encompass (e.g., whether this charge includes nontaxable expenses such as shipping costs, synchronization, and digitization. For this additional reason, this $575.00 request should be denied.

iii. The Costs for the Expedited Deposition Transcripts of Abhijit Deshmukh, Dr. Neau, Dr. Sinko, and Dr. Spingarn Should Be Denied

In its itemized list of Deposition Transcript costs, Mylan requests costs for five expedited

transcripts of the following witnesses: Abhijit Deshmukh ($4,925.40) (Invoice #: 116909); Dr. Steven Neau ($3,114.20) (Invoice #: 117892); Dr. Patrick Sinko ($1,720.42) (Invoice #: 109198); Dr. Neil Spingarn ($2,745.05) (Invoice #: 118496); and Dr. Neil Spingarn ($5,014.40) (Invoice #: 109929). Cumulatively, Mylan seeks $17,519.47 in costs for these expedited transcripts. Mylan's request for these costs should be denied because the costs are not "adequately described and documented." *Wiand*, 2015 WL 12839237 , at *7.

"[D]eposition costs incurred for the party's convenience," such as expedited transcripts, condensed transcripts, summaries, synchronized videos, scanning and OCR-ing, CD copies, litigation support packages, realtime services, and shipping are not recoverable. *HRCC, Ltd. v. Hard Rock Cafe Int'l (USA), Inc.*, No. 6:14–cv–2004–Orl–40KRS, 2018 WL 1863778, at * 11 (M.D. Fla. Mar. 26, 2018); *Wiand*, 2015 WL 12839237, at *9; *Lehman Bros. Holdings v. Hirota*, No. 8:06-cv-2030-T-24-MSS, 2010 WL 3043653, at *4 (M.D. Fla. July 30, 2010). The invoices for each of the objected to deposition transcripts contain lines for several of these non-taxable costs. Instead of providing a breakdown of the costs these invoices only provide the total amount charged for each transcript. As a result, Shire cannot determine whether these non-taxable costs were included in the total costs for each expedited transcript. Thus, Mylan has failed to "provide sufficient detail and documentation regarding the requested costs so the opposing party may challenge the costs and the court may conduct a meaningful review of the costs." *Blitz Telecom Consulting, LLC*, 2016 WL 7325544, at *2. Mylan's failure to provide sufficient detail is reason enough to deny these costs. *Id.* And as discussed above, the expedited deposition transcript for Dr. Neau (Invoice #: 117892) should also be denied because Mylan decided to not call Dr. Neau at trial, and the transcript therefore was not "necessary for the defense of this case." Mylan's Br. at 12; Mukerjee Declaration ¶ 16. Accordingly, the Court

should deny Mylan's requested $17,519.47 in costs for these expedited transcripts.

b. Mylan's Requested Costs for Appearance Fees, Shipping, and Realtime Services Should Be Denied Because These Costs Are Outside the Scope of 28 U.S.C. § 1920(2)

Mylan incorrectly asserts that court-reporter attendance fees and postage for shipping transcripts may be taxed. Mylan's Br. at 11. But Mylan's cited cases rely on the pre-2008 version of 28 U.S.C. § 1920(2), which, unlike the current version, allowed certain court-reporter costs. *See Moore*, 2014 WL 12652475, at *5-6 (declining to tax court reporter fees because Congress amended § 1920(2) to remove language regarding court reporter fees)); *see also Brown v. Riedl*, No. 3:13-cv-36-J-34PDB, 2017 U.S. Dist. LEXIS 46487, at *7 (M.D. Fla. Jan. 18, 2017) (denying request for court reporter "appearance" fees). Moreover, the Eleventh Circuit has repeatedly held that "costs for shipment of depositions" are not taxable. *Watson v. Lake Cty.*, 492 F. App'x 991, 997 (11th Cir. 2012) (citing *Duckworth v. Whisenant*, 97 F.3d 1393, 1399 (11th Cir.1996)); *see also Fuzion Vapor, LLC v. Fumizer, LLC*, No. 3:16–CV–942–J–34PDB, 2017 WL 9360896, at *17 (M.D. Fla. July 28, 2017); *Brown*, 2017 U.S. Dist. LEXIS 46487, at *6. This Court therefore should deny Mylan's request for shipping costs and court-reporter attendance fees.

Additionally, realtime services are "for the convenience of counsel" and thus not taxable under 28 U.S.C. § 1920(2). *Lehman Bros. Holdings*, 2010 WL 3043653, at *4 (citing *Faucette v. Nat'l Hockey League*, No. 8:04-cv-2185-T-24EAJ, 2006 WL 4877553, at *2 (M.D. Fla. July 19, 2006)). Thus, the Court should deny Mylan's requests for these costs. Table 2 summarizes the shipping costs and attendance fees that Mylan improperly requests. Mylan's shipping costs and attendance fees which Request the Court to deny.

In sum, Mylan improperly seeks $5,345.49 in nontaxable shipping, attendance, and realtime expenses.

Table 2 – Summary of Shire's Objections to Shipping, Attendance, and Realtime Service Costs to Be Deducted from Mylan's Requested Deposition Costs

Mylan's Invoice #	Mylan's Requested Deposition Costs	Shire's Proposed Reductions to Remove Shipping, Attendance, and Realtime Service Costs from Mylan's Requested Deposition Costs	Reduced Taxable Costs
98711	$68.00	$68.00	$0.00
99425	$68.00	$68.00	$0.00
99383	$1,414.40	$68.00	$1,346.40
NY1921148	$1,851.05	$545.00	$1,306.05
NY1931587	$809.50	$39.50	$770.00
99545	$4,135.75	$68.00	$4,067.75
100705	$68.00	$68.00	$0.00
100615	$1,936.80	$68.00	$1,868.80
100581	$68.00	$68.00	$0.00
100604	$2,239.45	$68.00	$2,171.45
NY1989109	$2,444.42	$854.92	$1,589.50
NY1991809	$1,271.15	$61.15	$1,210.00
NY1990287	$1,266.62[4]	$517.17[1]	$749.45
NY1991237	$2,101.75	$795.75	$1,306.00
NY1991705	$1,841.15	$61.15	$1,780.00
NY1995287	$1,461.15	$61.15	$1,400.00
100944	$68.00	$68.00	$0.00
100730	$1,991.40	$68.00	$1,923.40
NY1995312	$1,271.15	$61.15	$1210.00
NY1992014	$1,114.75	$374.75	$740.00
NY1997435	$1,096.15	$41.15	$1,055.00
NY1997875	$2,232.95	$626.00	$1,606.95
NY2004902	$526.15	$41.15	$485.00
NY1999124	$1,048.95	$303.50	$745.45
101340	$709.40	$68.00	$641.40
109681	$3,310.80	$78.00	$3,232.80
109706	$68.00	$68.00	$0.00
109925	$68.00	$68.00	$0.00
Total Proposed Reductions for Shipping, Attendance, and	**—**	**$5,345.49**	**—**

[4] In Mylan's itemized list of requested costs (Exhibit 1 of the Mukerjee Declaration) Mylan mistaken lists the costs for "2014.03.04 – Ajani, Mauro" (Invoice #: NY1990287) as $1,266.62. However, review of this invoice reveals that Mylan made an addition error and that their requested amount should actually be to $1,236.62. Therefore, an additional $30.00 was added to Shire's proposed reductions for this invoice to account for this mathematical error.

Realtime Service Costs			

c. Mylan's Requested Interpreter Fees Are Excessive

Mylan's requests $6,920.00 in interpreter fees for the 4-hour deposition of Massimo Pedrani (Invoice # NY1991722) and $1,390.00 in interpreter fees for the 1-hour deposition of Sergio Baroni (Invoice # NY2005404). These requested fees are excessive. An examination of the fees established by the Administrative Office of the Courts ("AO") provides a good indication of the reasonableness of interpreter fees under 28 U.S.C. § 1920(6). *See Supernus Pharm., Inc. v. TWi Pharm., Inc.*, No. 15-369 (RMB), 2018 WL 2175765, at *18 (D.N.J. May 11, 2018). An examination of the AO rates shows that Mylan's requested interpreter fees are grossly excessive. Indeed, the AO provides for $418 per day for "certified and professionally qualified interpreters," and $226 for a half day. http://www.uscourts.gov/services-forms/federal-court-interpreters (last visited June 7, 2018). Accordingly, Mylan is entitled to no more than $418 for the Pedrani deposition, and no more than $226 for the Baroni deposition. Mylan's request for interpreter fees therefore includes at least $7,666.00 in nontaxable expenses.

3. Mylan's Requested Costs of $2,405.04 for Witness Fees Should Be Denied

Mylan requests $2,405.04 in witness fees for Dr. Spingarn's trial expenses. According to Mylan, these costs represent Dr. Spingarn's "attendance, travel, and lodging expenses" during this case's four-day bench trial. Mukerjee Declaration ¶ 17. But neither Mylan's brief nor the Mukerjee Declaration provides any information pertaining to the details of these expenses. Similarly, apart from the total requested amount of $2,405.04, the invoice that Mylan provides in support of Dr. Spingarn's witness fees is devoid of detail (see Invoice #: 21806). Because "[a] court can only award costs that are adequately described and documented," the Court should deny Mylan's $2,405.04 request in its entirety. *Wiand*, 2015 WL 12839237, at *7.

Moreover, Mylan's invoice for Dr. Spingarn does not comport with the requirements of 28 U.S.C. § 1920(3); 28 U.S.C. § 1821(b); 28 U.S.C. § 1821(c)(1) and (3); or 28 U.S.C. § 1821(d)(1)-(2). For example, 28 U.S.C. 1821(c)(1) clearly states that "a witness shall utilize a common carrier at the most economical rate reasonably available [and that a] receipt or other evidence of actual cost shall be furnished." Mylan's Invoice #: 21806 does not provide such a receipt nor Mylan offer any evidence that Dr. Spingarn traveled by "common carrier at the most economical rate reasonably available." Mylan's Br. at 12-13; Mukerjee Declaration at ¶ 17. With respect to the witness attendance fees (28 U.S.C. § 1821(b)) and "subsistence allowance" (28 U.S.C. § 1821(d)(1)-(2)), there are maximum amounts which can be taxed per day. At most, Dr. Spingarn could receive $240.00 in attendance fees under 28 U.S.C. § 1821(b) ($40.00 per day for four days of trial and one day for travel both before and after trial). Similarly, Dr. Spingarn could receive $800.00, at most, as a "subsistence allowance" under 28 U.S.C. § 1821(d)(1)-(2) (the subsistence rate for Tampa during September 2016 was a maximum of $106 per night for lodging and $54 per day for meals and incidental expenses.[5] Dr. Spingarn would be allowed to recover a subsistence allowance for at most five days, namely the night before trial and the four days of trial). Because Mylan "[f]ail[s] to provide sufficient detail or supporting documentation verifying the costs," this $2,405.04 request should be denied in its entirety.

4. Mylan's Requested Costs for Photocopies and Exemplifications Are Excessive

Mylan seeks a total of $26,782.83 in Photocopies and Exemplification cost. Mukerjee Declaration ¶ 18. This includes $22,244.61 in electronic discovery costs and $4,538.22 in copying costs. Mylan's Br. at 14-15. But Mylan's request improperly seeks $12,290.65 worth

[5] See https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=FL&fiscal_year=2016&zip=&city=tampa

of nontaxable e-discovery costs and $4,538.22 of nontaxable copying costs.

a. Mylan's Request for Electronic Discovery Costs Is Excessive

Applying Eleventh Circuit law, the Federal Circuit has addressed the taxability of e-discovery costs. *CBT Flint Partners, LLC*, 737 F.3d 1320, 1326, 1328 (Fed. Cir. 2013). The Federal Circuit held that "only the costs of creating the produced duplicates" are taxable whereas "a number of preparatory or ancillary costs commonly incurred leading up to, in conjunction with, or after duplication" are not taxable. *Id.* at 1328. In explaining which electronic discovery costs are taxable, the Court broke down the process into three stages: (1) copying (or imaging) "computer hard drives or other 'source media' that contain the requested documents, replicating each source as a whole in its existing state;" (2) organizing the extracted documents into a database and processing the documents for production; and (3) copying the documents selected for production "onto memory media, such as hard drives or DVDs, or, in the case of source code, onto a secured computer." *Id.* at 1328-329. The Court concluded that while stages 1 and 3 are recoverable costs under 28 U.S.C. § 1920(4), stage 2 expenses are not recoverable. *Id.* at 1329, 1331-32.

Mylan requests $22,244.61 in costs. Mylan's Br. at 14. Shire objects to $12,290.65 of Mylan's requested electronic discovery costs as excessive for being outside the allowable scope of § 1920(4). First, Mylan improperly seeks $4,553.40 worth of "production processing" costs, which, as per *CBT Flint Partners*, are not taxable. *Id.* at 1329, 1331-332. Therefore, Mylan's Invoice #: 0020083C-101 contains no more than $288.00 in taxable costs.

Second, Mylan's requested electronic discovery costs should be reduced by an additional $7,737.25 because certain invoices Mylan improperly seeks to recover: (i) costs for uploading documents to a database (outside scope of § 1920(4)); (ii) consulting costs (outside scope of § 1920(4)); or (iii) costs for which Mylan provides illegible documentation. As stated in *CBT Flint*

Partners, LLC, uploading documents to a database is not taxable. 737 F.3d at 1328-330; *see also Blitz Telecom Consulting, LLC*, 2016 WL 7325544 at *7; *Wiand*, 2015 WL 12839237, at *10. In *Graphic Packaging*, this Court denied costs for "computer-enhanced documents" that began as a copy or scan of an existing document as outside the scope of § 1920(4). "Section 1920(4) does not state that all steps that lead up to the production of copies of materials are taxable. It does not authorize taxation merely because today's technology requires technical expertise not ordinarily possessed by the typical legal professional." *Graphic Packaging*, 2012 WL 2913179, at *3 (quoting *Race Tires Am., Inc. v. Hoosier Racing Tire Corp.*, 674 F.3d 158, 169 (3d Cir. 2012)). Similarly, the Court should reject Mylan's "consultant costs" because these costs "lead[] up to the production of materials" and are therefore outside the scope of § 1920(4). Lastly, Mylan's illegible invoices do not "provide sufficient detail and documentation regarding the requested costs so the opposing party may challenge the costs and the court may conduct a meaningful review of the costs." *Blitz Telecom Consulting, LLC*, 2016 WL 7325544, at *2. Table 3 summarizes Shire's objections to Mylan's requested electronic discovery costs.

Table 3 – Summary of Shire's Objections to Electronic Discovery Costs to Be Deducted from Mylan's Requested Photocopies and Exemplification Costs

Mylan's Invoice #	Mylan's Requested Electronic Discovery Costs	Shire's Proposed Reductions to Mylan's Requested Electronic Discovery Costs	Reduced Taxable Costs
0021372C-101	$185.00	$185.00	$0.00
0025357C-101	$288.00	$288.00	$0.00
002754C-101	$288.00	$288.00	$0.00
Illegible	$46.25	$46.25	$0.00
0035200C-801	$1,665.00	$1,665.00	$0.00
0036078C-801	$2,305.00	$2,305.00	$0.00
0036835C-801	$185.00	$185.00	$0.00
0040573C-801	$4,631.75	$2,543.75	$2088.00
0039664C-100	$942.10	$92.50	$849.60
0038727C-801	$380.50	$92.50	$288.00

0031364C-200	$46.25	$46.25	$0.00
Total Proposed Reductions for Electronic Discovery Costs	**—**	**$7,737.25**	**—**

b. Mylan's Request for Copying Costs Is Excessive and Should Be Denied

Mylan improperly requests $502.20 for "scanning documents into PDFs at the inception of the lawsuit" and $4,036.02 for blowback and expert binders for trial. Mukerjee Declaration ¶ 18. Shire objects to both of these requests in their entirety as detailed below. First, Mylan's $502.20 in costs "for scanning documents into PDFs at the inception of the lawsuit" were incurred for the convenience of counsel, and should also be denied because the invoice lacks sufficient details. Mylan's Invoice #: 135474 only states "scan to PDF" without providing any additional information. Without any further information Mylan falls well short of providing sufficient details for Shire to challenge to costs or for the Court to meaningfully review the costs. Because Mylan fails to provide adequate detail, this Court should deny all of Mylan's requested $502.20 in scanning costs.

With respect to Mylan's requested $4,036.02 in blowback and tab costs, the Court should deny these costs in their entirety because they are not taxable. Mylan asserts that the blowbacks were produced in connection with expert binders for trial. Mukerjee Declaration ¶ 18. However, in the Eleventh Circuit, "exhibit costs [such as blowbacks and tabs] are not taxable because there is no statutory authorization." *Reckitt Benckiser, Inc. v. Watson Labs., Inc.*, No. 09-60609-civ-DIMITROULEAS/SNOW, 2011 WL 13173579, at *7 (S.D. Fla. Aug. 25, 2011) (quoting *United States EEOC*, 213 F.3d at 623) (denying costs for blowbacks, tabs, and assembly in their entirety); *see also Durden v. Citicorp Trust Bank*, No. 3:07-CV-974-J-34JRK, 2010 WL 2105921, at * 4 (M.D. Fla. Apr. 26, 2010) (holding that "not all of the copying costs sought are

what they purport to be. While the copying may have been necessary, the costs Defendant seeks extend beyond mere copying. For example, Defendant not only seeks copying costs, but also seeks binder costs, labeling costs, and costs for bates numbering documents. The Court finds these extraneous costs to extend beyond the scope of copying, and thus to be non-taxable; alternatively, the Court finds these costs to be born primarily of convenience, and not necessity."). Accordingly the Court should deny all $4,036.02 in blowback and tab costs requested by Mylan. Thus, all of Mylan's requested copying costs should be denied.

III. Conclusion

For at least the reasons discussed above, Mylan's motion should be denied.

Dated: July 3, 2018

/s/ Paul D. Watson
Paul D. Watson
Florida Bar No. 957224
SIVYER BARLOW & WATSON, P.A.
SunTrust Financial Centre
401 E. Jackson Street, Suite 2225
Tampa, Florida 33602
Main: (813) 221-4242
Fax: (813) 227-8598
pwatson@sbwlegal.com

and

Edgar H. Haug
Andrew Wasson
Elizabeth Murphy
Erika Selli
Jason Kanter
HAUG PARTNERS LLP
745 Fifth Avenue
New York, New York 10151
Telephone: (212) 588-0800
Facsimile: (212) 588-0500

Attorneys for Plaintiffs
Shire Development LLC
Shire Pharmaceutical Development Inc.
Cosmo Technologies Limited
Nogra Pharma Limited

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2018, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to:

Deepro R. Mukerjee
KATTEN MUCHIN ROSENMAN LLP
575 Madison Ave.
New York, NY 10002
deepro.mukerjee@kattenlaw.com

Ben H. Hill
Scott A. McLaren
Carolina Y. Blanco
HILL WARD & HENDERSON, P.A.
101 East Kennedy Blvd., Suite 3700
Tampa, FL 33602
Ben.Hill@hwhlaw.com
Scott.McLaren@hwhlaw.com
Carolina.Blanco@hwhlaw.com

/s/ Paul D. Watson