

ACORDA THERAPEUTICS INC. v. MYLAN PHARMACEUTICALS INC., Appeal Nos. 2015-1456, 1460 (Fed. Cir. March 18, 2016). Before Newman, O'Malley and Taranto.
Appealed from D. Del. (Judges Stark & Sleet).

Background:

Acorda and AstraZeneca hold patents relating to pharmaceuticals for multiple sclerosis and diabetes. Mylan filed Abbreviated New Drug Applications (ANDAs) to market generic versions of each drug. Acorda and Astrazeneca sued Mylan for infringement in the Delaware federal district court.

Mylan filed motions to dismiss in each case under Rule 12(b)(2) of the Federal Rules of Civil Procedure, asserting that the State of Delaware, and thus the federal district court in Delaware, could not exercise personal jurisdiction over Mylan in view of the Due Process Clause of the Fourteenth Amendment. The district court in both cases denied the motions, concluding that Delaware had sufficient contacts related to the subject of these cases so that specific personal jurisdiction can be asserted.

Issue/Holding:

Did the district court err in denying Mylan's motion to dismiss for lack of specific personal jurisdiction? No, affirmed.

Discussion:

The Federal Circuit determined that Mylan's filing of the ANDA applications, coupled with an intent to market and sell its generic product in Delaware, satisfied the requirements of specific personal jurisdiction. It was undisputed that Mylan intends to direct sales of its drugs into Delaware, and the Federal Circuit indicated that the ANDA filings satisfied the minimum contacts standard insofar as it shows Mylan has a purpose of engaging in the injury-causing and allegedly wrongful conduct in Delaware. The Federal Circuit opined that the economic realities of preparing an ANDA are such that the ANDA filing provides a strong confirmation that the ANDA filer has a plan to market. As such, because it was undisputed that Mylan intended to market in Delaware, its ANDA filing was sufficient to allow Delaware to assert specific personal jurisdiction over Mylan. Also, the Federal Circuit felt that the burden on Mylan to defend suit in Delaware is at most modest, and does not run counter to the interests of justice.

Judge O'Malley issued a concurring opinion asserting that Mylan should be subject to general personal jurisdiction in Delaware (and that this should have been the first consideration because it is more straightforward), because Mylan does business in Delaware and Delaware requires such businesses to appoint an agent for service of process. She found that these facts sufficient to consider Mylan subject to general personal jurisdiction in Delaware.