

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING**

ASTRAZENECA AB and ASTRAZENECA
PHARMACEUTICALS LP,

Plaintiffs,

v.

MYLAN PHARMACEUTICALS INC. and
KINDEVA DRUG DELIVERY L.P.,

Defendants.

Civil Action No.: 1:22-cv-35-JPB

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants Mylan Pharmaceuticals Inc. and Kindeva Drug Delivery L.P. (“Defendants” or “Mylan”) move the Court to grant partial summary judgment in their favor with respect to Count I of the complaint filed by Plaintiffs AstraZeneca AB and AstraZeneca Pharmaceuticals LP (“Plaintiffs” or “AstraZeneca”). The basis for this motion is that, as explained in the memorandum of law being filed contemporaneously with this motion, AstraZeneca seeks in Count I specialized relief available under 35 U.S.C. § 271(e)(2). But AstraZeneca does not allege and cannot show that Defendants committed an act of infringement under the provisions of § 271(e)(2), because the patent-in-suit was not issued until after any submission that could have possibly infringed under that section had already occurred.

Because AstraZeneca cannot establish the required act of infringement set forth in 35 U.S.C. § 271(e)(2), and for the other reasons set forth in Defendants’ brief in support of this

motion, Defendants respectfully ask the court to enter partial judgment in their favor as to all claims in Count I of AstraZeneca's complaint.

Respectfully submitted this 20th day of October, 2022.

/s/ Gordon H. Copland

Gordon H. Copland (WV Bar #828)
gordon.copland@steptoe-johnson.com
William J. O'Brien (WV Bar #10549)
william.obrien@steptoe-johnson.com
STEPTOE & JOHNSON PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330
Phone (304) 933-8000

Shannon M. Bloodworth (*admitted PHV*)
SBloodworth@perkinscoie.com
Brandon M. White (WV Bar #14021)
BMWhite@perkinscoie.com
Maria A. Stubbings (*admitted PHV*)
MStubbings@perkinscoie.com
PERKINS COIE LLP
700 13th Street, NW
Washington, DC 20005
(202) 654-6206

David L. Anstaett (*admitted PHV*)
DAnstaett@perkinscoie.com
Emily J. Greb (*admitted PHV*)
EGreb@perkinscoie.com
Brandon M. Lewis (*admitted PHV*)
BLewis@perkinscoie.com
Michael R. Laing (*admitted PHV*)
MLaing@perkinscoie.com

*Attorneys for Defendants
Mylan Pharmaceuticals Inc. and
Kindeva Drug Delivery L.P.*

CERTIFICATE OF SERVICE

I certify that on this 20th day of October, 2022, I electronically filed the foregoing “Defendants’ Motion for Partial Summary Judgment” with the Clerk using the Court’s CM/ECF system which will send notice thereof to the following counsel of record:

James F. Companion
jfc@schraderlaw.com
Sandra K. Law
skl@schraderlaw.com
**SCHRADER COMPANION DUFF
& LAW, PLLC**
401 Main Street
Wheeling, WV 26003

Gary M. Rubman
grubman@cov.com
Christopher N. Sipes
csipes@cov.com
Douglas A. Behrens
dbehrens@cov.com
COVINGTON & BURLING LLP
One City Center
850 Tenth St. NW
Washington, DC 20001

David I. Berl
dberl@wc.com
Kevin Hoagland-Hanson
khoagland-hanson@wc.com
Jessica Palmer Ryen
jryen@wc.com
Jessica Bodger Rydstrom
jrydstrom@wc.com
Anthony Sheh
asheh@wc.com
Arthur J. Argall, III
aargall@wc.com
WILLIAMS & CONNOLLY LLP
725 Twelfth St. NW
Washington, DC 20005

Attorneys for Plaintiffs

/s/ Gordon H. Copland
Gordon H. Copland (WV Bar # 828)
gordon.copland@steptoe-johnson.com
STEPTOE & JOHNSON, PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330
Phone (304) 933-8000

*Attorney for Defendants
Mylan Pharmaceuticals Inc. and
Kindeva Drug Delivery L.P.*