

## **Saiber Helps Mylan Pharmaceuticals Inc. Successfully Dismiss Patent-Infringement Action on Improper Venue Grounds**

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Teaming with our lead co-counsel Wilson Sonsini Goodrich & Rosati, Saiber attorneys Arnold B. Calmann, Jakob B. Halpern and Catherine Soliman recently obtained dismissal of the Complaint on behalf of clients Mylan Pharmaceuticals Inc., Mylan Inc., and Mylan N.V. (“Mylan Defendants”) in a patent-infringement action filed by Celgene Corporation in the United States District Court for the District of New Jersey.

In this litigation, which included several consolidated complaints by Celgene against the Mylan Defendants, Celgene alleged the filing of an Abbreviated New Drug Application (“ANDA”) to market generic versions of Celgene’s pomalidomide product, POMALYST®, constituted patent infringement. As part of its application to the Food and Drug Administration, Mylan Pharmaceuticals Inc. submitted written certifications stating that the claims of Celgene’s patents are invalid, unenforceable, and/or will not be infringed by its generic drug alternative.

The Mylan Defendants moved to dismiss, arguing that venue was improper under 28 U.S.C. section 1400 – the patent venue statute – and also that Celgene had failed to state a claim against Mylan Inc. and Mylan N.V. because they were not the ANDA filers. That initial motion was denied without prejudice to permit Celgene to take jurisdictional discovery. The Mylan Defendants then renewed the Motion, which was heard by Magistrate Judge Michael A. Hammer upon the parties’ consent.

In granting the renewed motion, the Court agreed with the Mylan Defendants’ position and rejected Celgene’s arguments. Under the venue statute, venue is proper only where the defendant resides or where it has a “regular and established place of business.” Judge Hammer concluded that the District of New Jersey qualified under neither prong and thus venue was improper.

Having dismissed the claims against Mylan Pharmaceuticals Inc. and Mylan Inc. because of improper venue, the Court then turned to Mylan N.V. The Court determined that because Mylan Pharmaceuticals Inc. was the only ANDA filer, it was thus the only defendant that was properly alleged to have committed an act of infringement. Therefore, there could not be a claim against Mylan N.V. unless it was actively involved in preparing the ANDA. Judge Hammer noted that because there was nothing beyond Celgene’s conclusory allegations that Mylan N.V. was actively involved in submitting the ANDA and the future marketing of the proposed drug, Celgene failed to state a claim for relief against that entity.

The Court also rejected Celgene’s request to amend its complaint because the deadline to file any motion to amend had expired and Celgene did not offer any grounds that demonstrate good cause for modification of the deadline.