

**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

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**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:

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