IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

BAYER HEALTHCARE LLC, BAYER)	
HEALTHCARE PHARMACEUTICALS INC.,)	
and ONYX PHARMACEUTICALS, INC.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 15-114-LPS
)	CONSOLIDATED
MYLAN PHARMACEUTICALS INC.,)	
)	
Defendant.)	
)	

MEMORANDUM ORDER

WHEREAS, presently before the court is Defendant Mylan Pharmaceuticals Inc.'s ("Mylan") Motion to Dismiss for Lack of Personal Jurisdiction (D.I. 12), on which the parties finished briefing on June 22, 2015 (D.I. 13, 21, 24), as well as Mylan's Motion to Dismiss for Lack of Personal Jurisdiction (C.A. No. 15-1162 D.I. 9) in a related action which was consolidated with the above-captioned action on March 10, 2016 (*see* D.I. 50);

WHEREAS, the Court has reviewed the parties' recently-filed letters regarding how to proceed with the Motions to Dismiss (D.I. 54, 55, 58, 59) and finds that they are ripe for

¹All docket citations are to Civil Action No. 15-114-LPS unless otherwise indicated.

²Although the motion pending in Civil Action No. 15-1162-LPS raises the additional issue of whether venue is proper, Mylan's argument regarding venue stands or falls with its position on personal jurisdiction. *See VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1584 (Fed. Cir. 1990) ("[T]he first test for venue under § 1400(b) with respect to a defendant that is a corporation . . . is whether the defendant was subject to personal jurisdiction in the district of suit at the time the action was commenced.") (quoting 28 U.S.C. §§ 1391(c) & 1400(b)).

decision, notwithstanding the parties' stipulation to "suspend" them (D.I. 46) and notwithstanding Mylan's argument to the contrary (see, e.g., D.I. 58 at 2);³

WHEREAS, on January 14, 2015, the Court rejected Mylan's arguments regarding substantially the same issues of law and fact as those at issue in the pending Motions to Dismiss in *Acorda Therapeutics, Inc. v. Mylan Pharmaceuticals Inc.*, 78 F. Supp. 3d 572 (D. Del. 2015), finding that Mylan is subject to the specific and general personal jurisdiction of Delaware courts;

WHEREAS, on February 3, 2016, the Court entered a Stipulation and Order which suspended further briefing and argument on the Motions to Dismiss pending receipt of "Federal Circuit guidance in pending appeals relating to personal jurisdiction in this district" – that is, pending the Federal Circuit's decision in an interlocutory appeal from this Court's *Acorda* decision (and/or an interlocutory appeal from the decision of Judge Sleet of this Court in *AstraZeneca AB v. Mylan Pharmaceuticals, Inc.*, 72 F. Supp. 3d (D. Del. 2014) ("*AstraZeneca*")) (see D.I. 46);

WHEREAS, on March 18, 2016, the Federal Circuit issued its decision in the appeals of *Acorda* and *AstraZeneca*, affirming this Court's finding of specific jurisdiction over Mylan, *see Acorda Therapeutics Inc v. Mylan Pharm. Inc.*, 2016 WL 1077048 (Fed. Cir. Mar. 18, 2016) ("Acorda Appeal");

WHEREAS, the Court concludes here that it may exercise specific jurisdiction over Mylan, for the reasons stated by the Federal Circuit in the *Acorda Appeal*;

³Mylan indicates that it will be seeking rehearing en banc by the Federal Circuit of the recent panel decision in the *Acorda Appeal*. (*See* D.I. 58 at 1) Noting that the Federal Circuit has not issued a mandate, Mylan asks the Court to "refrain[] from taking further action on Mylan's pending motions until the appellate review process has run its course." (*Id.*)

WHEREAS, the Court further concludes once again that it may exercise general jurisdiction over Mylan, for the reasons stated by this Court in *Acorda*, as general jurisdiction was an independent ground for finding personal jurisdiction over Mylan in *Acorda* that was not disturbed by the Federal Circuit in the *Acorda Appeal*;

NOW, THEREFORE, IT IS HEREBY ORDERED that Mylan's Motions to Dismiss (D.I. 12; C.A. 15-1162, D.I. 9) are DENIED WITHOUT PREJUDICE to renew should the en banc Federal Circuit or Supreme Court materially change the law from what the Federal Circuit panel has held in the *Acorda Appeal*. (See D.I. 59 at 1)

March 30, 2016 Wilmington, Delaware HON. LEONARD P. STARK UNITED STATES DISTRICT COURT