

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INDIVIOR INC.,

Plaintiff,

v.

No. 15-cv-1016 (RGA)

MYLAN TECH.,

Defendant.

MEMORANDUM ORDER

Defendant's request (D.I. 154) to renew its motion to dismiss for lack of venue is **DENIED**. A litigant waives its right to contest venue when "the litigant performs some act which indicates to the court that [it] elects not to raise [its] privilege of venue." *Davis v. Smith*, 253 F.2d 286, 288 (3d Cir. 1958); *see also Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 168 (1939) (Venue objections "may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct."); *Koninklijke Philips N.V. v. ASUSTeK Computer Inc.*, 2017 WL 3055517, at *2 (D. Del. Jul. 19, 2017).

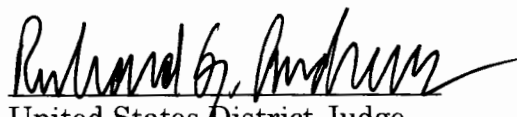
Defendant timely objected to venue by filing a motion to dismiss for lack of venue as part of its first defensive response. (D.I. 9). Before I could rule on that motion, however, Defendant asked me to "refrain from taking further action on Defendants' pending motion to dismiss...." (D.I. 51). A panel of the Federal Circuit

had ruled against Defendant in *Acorda Therapeutics Inc. v. Mylan Pharma. Inc.*, 817 F.3d 755 (Fed. Cir. 2016). That case involved whether there was personal jurisdiction over Defendant in Delaware. The case did not touch on venue. I granted Defendant's request with permission to renew the motion. (D.I. 55). Defendant's request for rehearing was denied on June 20, 2016 (No. 15-1456 D.I. 128), and on January 9, 2017, the Supreme Court denied its writ of certiorari, *Mylan Pharma. v. Acorda Therapeutics*, 137 S. Ct. 625 (2017).

After its defeat in the Federal Circuit, Defendant could have renewed its motion on venue grounds. It did not. Instead, the docket shows a flurry of litigation activity by Defendant including participating in claim construction and discovery, and entering a consent decree for one of the patents at issue in the case.

On June 28, 2017, more than a year after the Federal Circuit denied its petition for rehearing and six months after the Supreme Court denied certiorari, Defendant renewed its objection to venue. Defendant is too late. Having actively participated in litigation here for so long, Defendant has communicated its consent to venue here in the District of Delaware. Defendant's request to renew its motion to dismiss for lack of venue is **DENIED**.

IT IS SO ORDERED this 28 day of July 2017.


United States District Judge