

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SHIRE DEVELOPMENT, LLC, et al.,

Plaintiffs,

v.

Case No. 8:12-cv-1190-T-30AEP

**MYLAN PHARMACEUTICALS, INC.
and MYLAN, INC.,**

Defendants.

ORDER

THIS CAUSE comes before the Court upon Plaintiffs' Motion for Partial Judgment on the Pleadings (Dkt. 83) and Defendants' Response in Opposition (Dkt. 102). The Court, having reviewed the motion, response, and being otherwise advised in the premises, concludes that the motion should be denied.

Plaintiffs' motion is peculiar. In this patent case, Plaintiffs move for judgment on the pleadings with respect to Defendants' purported claim of "inequitable conduct" before the Patent Office. Plaintiffs cite generally to Defendants' third and fifth affirmative defenses and assume that these defenses rely, in part, on an unenforceability argument, to wit, that the subject patent is unenforceable due to Plaintiffs' inequitable conduct.

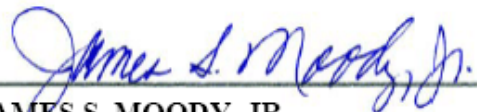
Defendants' response makes it clear that, at this time, they are not seeking an unenforceability claim due to inequitable conduct. Rather, Defendants' counsel notified

Plaintiffs' counsel that Defendants *may* seek leave to amend their answer in the event that discovery reveals facts supporting such a claim.¹

In sum, Plaintiffs' motion for judgment on the pleadings seeks a judgment on an unpled claim. The Court cannot render an advisory opinion on this issue. Accordingly, Plaintiffs' motion is without merit. Plaintiffs may move for summary judgment at the appropriate time on Defendants' affirmative defenses. At this stage, these defenses are properly pled.

It is therefore ORDERED AND ADJUDGED that Plaintiffs' Motion for Partial Judgment on the Pleadings (Dkt. 83) is DENIED.

DONE and **ORDERED** in Tampa, Florida on March 21, 2014.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

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¹ The Court renders no opinion at this juncture regarding whether the Court would grant such a motion.