

## Patent Litigation Alert

### District of Delaware Decision Addresses General Personal Jurisdiction in Post-*Daimler* Hatch-Waxman Cases

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On January 14, 2015, in *Acorda Therapeutics, Inc. v. Mylan Pharmaceuticals Inc.*, Case No. 1:14-cv-00935, Chief Judge Leonard Stark of the District of Delaware issued a decision in favor of our client, Acorda Therapeutics, Inc., on the issue of personal jurisdiction in the wake of the Supreme Court's decision in *Daimler AG v. Bauman*. Judge Stark denied a motion by Mylan Pharmaceuticals Inc. to dismiss the patent infringement case, brought against it by Acorda under the Hatch-Waxman Act, on the grounds that it is neither at home nor subject to specific jurisdiction in Delaware because it is headquartered and incorporated in West Virginia and does not conduct business in Delaware. Addressing "an important question of first impression," the court ruled that Mylan was subject to both general jurisdiction and specific jurisdiction in Delaware. As explained below, Judge Stark's opinion may have a major impact on the availability of Delaware as a favored forum in Hatch-Waxman litigation and on the ability of branded pharmaceutical companies to sue multiple ANDA filers in a single forum.

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In *Daimler*, the Supreme Court held that the general jurisdiction inquiry is not whether a foreign corporation's in-forum contacts are "in some sense 'continuous and systematic,'" but rather whether the contacts "are so 'continuous and systematic' as to render [the foreign corporation] essentially at home in the forum." The court identified the foreign corporation's state of incorporation and principal place of business as "paradigm all-purpose forums."

In his decision applying *Daimler*, Judge Stark agreed with Acorda that because Mylan is registered to do business in Delaware, Mylan is deemed, under long-standing Delaware law, to have consented to general jurisdiction in Delaware. Given that consent, there was no need to conduct a traditional “minimum contacts” jurisdictional analysis to assess the propriety of subjecting Mylan to jurisdiction in Delaware. The court held: “Consistent with *Daimler*, it remains the law that general jurisdiction may be established by showing that a corporation is ‘at home’ in the sense described in detail in *Daimler*, or separately general jurisdiction may be established by a corporation’s consent to such jurisdiction. *Daimler* is directed to the former situation and has nothing to say about the latter scenario.” Hence, the court held that Mylan was subject to general jurisdiction in Delaware regardless of its other contacts with Delaware.

Judge Stark additionally held that Mylan was subject to specific jurisdiction in Delaware because Acorda’s claims “arise out of and relate to Mylan Pharma’s activities that are and will be directed to Delaware.” The court observed that besides having registered to do business in Delaware, Mylan is seeking FDA approval of a generic product that will be sold in Delaware, Mylan is challenging the patents of a Delaware corporation which will, accordingly, suffer injury in Delaware, and Mylan sent its statutory notice letter knowing that Acorda was already suing another ANDA filer in Delaware on the same patents. The court further noted that Mylan litigates frequently in Delaware and registered with the Delaware Board of Pharmacy.

Judge Stark’s opinion is noteworthy in that the court parts company on the general jurisdiction issue with Judge Sleet, also of the District of Delaware. In *AstraZeneca AB v. Aurobindo Pharma Ltd., et al.*, Case No. 1:14-cv-00664, Judge Sleet denied a similar motion to dismiss brought by Mylan, but only on the grounds that Mylan was subject to specific jurisdiction in Delaware. Unlike Judge Stark, Judge Sleet ruled that, under *Daimler*, Mylan’s registration to do business in Delaware did not, without more, subject Mylan to general jurisdiction in Delaware. On December 17, 2014, in the *AstraZeneca* case, Judge Sleet granted Mylan’s motion to certify the issue to the Federal Circuit. Mylan’s petition to the Federal Circuit for permission to appeal is pending.

Judge Stark’s ruling thus appears to have important implications for the future of Delaware as a popular forum in which to bring Hatch-Waxman litigations and, more broadly, for the ability of branded pharmaceutical companies to bring actions against multiple ANDA-filers in a single forum. Indeed, some have read *Daimler* as effectively limiting general jurisdiction to the corporation’s principal place of business and its state of incorporation. Per Judge Stark’s ruling,

however, even under *Daimler*, consent remains a valid basis for subjecting a corporation to general jurisdiction. Consequently, every corporation registered to do business in Delaware—even if not incorporated there—is subject to general jurisdiction in Delaware.

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