

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

_____	)	
ASTRAZENECA AB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 14-664-GMS
	)	<b>CONSOLIDATED</b>
AUROBINDO PHARMA LTD. and	)	
AUROBINDO PHARMA U.S.A., INS.,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

WHEREAS, presently before the court is the Motion for Certification for Interlocutory Appeal (D.I. 63), filed on November 11, 2014, by defendant Mylan Pharmaceuticals Inc. (“Mylan”).

WHEREAS, the court having considered the parties’ briefing and the applicable law;  
IT IS HEREBY ORDERED THAT:

Mylan’s Motion for Certification for Interlocutory Appeal (D.I. 63) is GRANTED.<sup>1</sup>

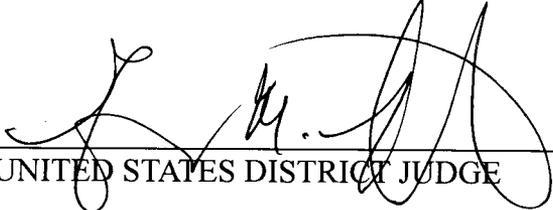
<sup>1</sup> Mylan seeks interlocutory appellate review of the court’s memorandum and order denying Mylan’s motion to dismiss for lack of personal jurisdiction, issued on November 5, 2014. (C.A. No. 14-696-GMS, D.I. 26, 27.) Pursuant to 28 U.S.C. § 1292(b):

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

§ 1292(b).

The court finds that the elements of § 1292(b) are met in this case and will certify Mylan’s request for interlocutory appeal to the Court of Appeals for the Federal Circuit. The court is not familiar with any other judicial decision analyzing person jurisdiction in “Hatch-Waxman litigation,” in the wake of the Supreme Court’s ruling in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). The court agrees with Mylan that this is a controlling (and novel) question of law for which there is substantial ground for difference of opinion. The plaintiff AstraZeneca AB (“AstraZeneca”) argues that interlocutory review will not “advance the ultimate termination of litigation” because the case is likely to proceed in this or some other forum, even if the court’s jurisdiction ruling is reversed. But given the volume of Hatch-Waxman cases pending in this district, the court is of the view that interlocutory appellate review will provide necessary guidance as to whether these cases are properly before the court. Thus, immediate appeal may indeed advance the termination of this and other litigation.

Dated: December 17, 2014

  
UNITED STATES DISTRICT JUDGE

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The court declines, however, to certify the narrow question put forth by Mylan in its briefing:  
Does the Due Process Clause of the Fourteenth Amendment to the United States  
Constitution permit specific personal jurisdiction over Mylan in Delaware based  
on Mylan's act of sending a paragraph IV certification letter to AstraZeneca in  
Delaware, as required under 21 U.S.C. § 355(j)(2)(B)(iii)?

(C.A. No. 14-664-GMS, D.I. 64 at 5.) The court considers this question to be an oversimplification of its holding, as AstraZeneca points out in its answering brief. (D.I. 94 at 6 & n.3.) The court will therefore certify Mylan's request for interlocutory appeal of the November 5, 2014, memorandum and order, but without further limitation.