

**U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:20-cv-01589-JFB-CJB**

Astellas Pharma Inc. et al v. Sandoz Inc. et al

Assigned to: Judge Joseph F. Bataillon

Referred to: Judge Christopher J. Burke

Related Cases: [1:16-cv-00905-JFB-CJB](#)

[1:16-cv-00908-JFB-CJB](#)

[1:16-cv-00924-JFB-CJB](#)

[1:16-cv-00930-JFB-CJB](#)

[1:16-cv-00942-JFB-CJB](#)

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[1:21-cv-01771-JFB-CJB](#)

[1:21-cv-00664-JFB-CJB](#)

[1:21-cv-00425-JFB-CJB](#)

[1:21-cv-00992-JFB-CJB](#)

[1:21-cv-01141-JFB-CJB](#)

Date Filed: 11/24/2020

Jury Demand: Defendant

Nature of Suit: 835 Patent – Abbreviated

New Drug Application(ANDA)

Jurisdiction: Federal Question

Cause: 35:271 Patent Infringement

Date Filed	#	Docket Text
04/21/2022	343	<p>ORAL ORDER: The Court, having again reviewed the parties' briefing with regard to Plaintiffs' final lingering discovery dispute, (D.I. 307; D.I. 311; D.I. 317), addressed during the March 28, 2022 teleconference, and having reviewed Defendants' March 29, 2022 supplemental submission, (D.I. 329), hereby ORDERS as follows: (1) Plaintiffs' request that the Court compel Defendants to supplement Interrogatory No. 3 to confirm that they will not rely on any prior art other than the 41 identified references, absent a proper amendment, (D.I. 311 at 4), is DENIED. As Defendants note, (D.I. 317 at 4–5), this request appears to conflict with the Scheduling Order's May 26, 2022 deadline for final supplementation of all invalidity references, (D.I. 303 at 2).; and (2) With regard to Plaintiffs' remaining requests, (D.I. 311 at 4), they are GRANTED–IN–PART as follows. These requests are premised on Plaintiffs' assertion that Defendants' current response to Plaintiffs' Interrogatory No. 3 (which requests Defendants' contentions that the asserted claims of the patent–in–suit are invalid under 35 U.S.C. § 103), which in turn incorporates by reference Defendants' Joint Initial Invalidity Contentions (the "Initial Invalidity Contentions"), are unduly vague and insufficiently fulsome. (Id. at 3–4) The Court has reviewed the Initial Invalidity Contentions. In general, they provide real detail, including significant specificity as to: (a) the prior art references that could be a part of invalidity combinations, (see, e.g., Initial Invalidity Contentions at 54–114); (b) the portions of the prior art references that are relevant to Defendants' obviousness arguments, (see, e.g., id. at Appendix A); and (c) why a person of ordinary skill in the art might be motivated to combine the teachings of certain prior art references, (see id. at 128–31, 136–47). That said, the one area as to which the Court has sympathy for Plaintiffs' position is that in the Initial Invalidity Contentions, Defendants generally state that the asserted claims are obvious over many possible combinations of many different references, (see, e.g., id. at 132), which makes it difficult for Plaintiffs to know exactly which specific combinations are being asserted against them. On that score, Plaintiffs should get some relief. In terms of how and when that relief should be provided, the Court repeatedly suggested that if Plaintiffs were willing to narrow the number of asserted claims, then the Court could require Defendants to then cut down to a specific number of invalidity combinations by a date certain. But Plaintiffs did not seem particularly interested in that option during the teleconference. In light of this, and in light of the fact that the deadline for final invalidity contentions is coming up soon, the Court hereby ORDERS that by June</p>

	22, 2022, the date when Defendants' final invalidity contentions are due, Defendants shall: (a) identify in those final invalidity contentions the specific invalidity combinations they intend to rely upon (without the use of terms like "exemplary" and "and/or"); (b) provide fulsome detail regarding the obviousness arguments for those specific invalidity combinations; and (c) supplement their response to Interrogatory No. 3 by incorporating the final invalidity contentions into that response. Ordered by Judge Christopher J. Burke on 4/21/2022. (mlc) (Entered: 04/21/2022)
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