

Propriety Of “Protective” ANDA Suits Recognized And Motion To Dismiss Denied Based On Allegation Of Forum Shopping.

In *Pfizer Inc. v. Sandoz Inc.* 2010, U.S. District Lexis 4527 (D. Del. Jan. 20, 2010), Judge Farnan upheld the use of a protective ANDA filing in denying a motion to transfer. Pfizer filed suit against Sandoz in Delaware and filed a nearly identical suit in the District of Colorado the next day. Sandoz responded to the Colorado action by asserting counterclaims on the asserted patent as well as three additional patents. Sandoz then filed a DJ action in Colorado on the three additional patents. Concurrently with the Colorado DJ, Sandoz answered the Delaware Action but did not counterclaim or DJ on the three additional patents. Sandoz moved to transfer the Delaware action to Colorado.

The court denied Sandoz's motion to transfer on the grounds that Pfizer engaged in forum shopping. The court held that filing a “protective” ANDA suit in another jurisdiction did not constitute “forum shopping”. The court then held that Sandoz did not meet its burden of proving that the private and public interest factors weighed strongly in favor of transfer.