IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

KING PHARMACEUTICALS RESEARCH AND DEVELOPMENT, INC., ASTELLAS US LLC, and ASTELLAS PHARMA US, INC.,	)	
Plaintiffs,	)	
v.	)	Civ. No. 05-337-SLR
SICOR INC., SICOR PHARMACEUTICALS, INC., TEVA PHARMACEUTICALS USA, INC., and TEVA PHARMACEUTICAL INDUSTRIES, LTD,	)	
Defendants.	)	

O R D E R

At Wilmington this 29th day of June, 2006, having reviewed defendants' motion to amend and the papers submitted in connection therewith;

IT IS ORDERED that said motion (D.I. 78) is denied. Although this motion was timely filed, I cannot fathom the need for such an amendment, since it is black letter law that a party cannot be held liable for infringement of a claim unless that claim is valid and enforceable. See Viskase Corp. v. American Nat. Can Co., 261 F.3d 1316, 1323 (Fed. Cir. 2001). Adding

unnecessary language[1] to a pleading usually leads to mischief and I decline to encourage such conduct.

United States District Judge

[1]Defendants want to add to their affirmative defense of non-infringement that "[t]he manufacture, use, offer for sale, sale or importation of Adenosine Injection, USP specified in ANDA No. 77-425 does not and will not infringe **any asserted valid and enforceable claim** of the '877 patent, either literally or under the doctrine of equivalents." (D.I. 78, exs. A, B)