

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**


GLENMARK GENERICS LTD., <i>et. al.</i> ,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 3:14CV422-HEH
)	
FERRING B.V.,)	
)	
Defendant.)	

**ORDER
(Denying Defendant’s Motion to Dismiss)**

THIS MATTER is before the Court on Defendant’s Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF Nos. 15), filed on July 30, 2014.¹ For the reasons set forth in the accompanying Memorandum Opinion, the Motion is DENIED.

The Clerk is directed to send a copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

It is so ORDERED.


 _____ /s/
 Henry E. Hudson
 United States District Judge

Date: Oct 14, 2014
Richmond, Virginia

¹ Although Defendant’s Motion to Dismiss came to the Court pursuant to 12(b)(1) and 12(b)(6), jurisdiction is a threshold matter. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994) (citations omitted) (“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute”). That is, the Court was required to first determine whether it had jurisdiction. As the Court determined it had subject matter jurisdiction in this matter, Ferring’s motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim was similarly denied, as it was premised upon the ’340 being viewed as never having existed, a contention that, as explained in the Memorandum Opinion, does not affect the FDA’s approval process.