

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VERINATA HEALTH, INC., *et al.*,

No. C 12-05501 SI

Plaintiffs,

**ORDER DENYING MOTION TO
COMPEL**

v.

ARIOSA DIAGNOSTICS, INC, *et al.*,

Defendants.

Currently before the Court is plaintiff Verinata's motion to compel a further response to Interrogatory No. 2, which asks defendant Ariosa to identify the asserted claims in Verinata's patents that Ariosa's product does not infringe, and the reasons supporting Ariosa's non-infringement contentions. In its supplemental interrogatory responses, Ariosa provided a substantive answer; providing a short explanation of how its test operates, identifying 16 claim limitations its test does not infringe, and referencing its proprietary operating procedures. *See* Ex. A. Verinata claims this response is deficient, apparently because Ariosa's supplemental response does not provide detailed reasons on a claim limitation by claim limitation basis. Verinata asserts that it needs a more detailed response in order to fully prepare its claim construction submissions.

The Court has reviewed the parties' joint letter, as well as the exhibits attached thereto, and finds that in light of the nature of the patents and tests in suit and at this stage of the litigation, Ariosa's supplemental response is sufficient. Ariosa has explained, albeit briefly, which claim limitations it

1 believes its product does not infringe and references documents in support. Moreover, Verinata does
2 not explain how further details from Ariosa regarding non-infringement could impact claim
3 construction, where the Court must define claim terms according to their ordinary and customary
4 meaning as understood by a person of ordinary skill in the art in question at the time of the invention.
5 *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005).

6
7 **IT IS SO ORDERED.**

8
9 Dated: May 1, 2013



10 _____
11 SUSAN ILLSTON
12 UNITED STATES DISTRICT JUDGE