

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

HERAEUS KULZER)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 3:09-MC-275 CAN
)	
BIOMET INC., <i>et al.</i> ,)	
)	
Defendants)	

OPINION AND ORDER

On July 21, 2009, Heraeus Kulzer GmbH (“Heraeus”) filed a suit in Germany against Respondents, Biomet Inc. and Biomet Orthopedics LLC (“Biomet”), for alleged misappropriation of trade secrets. On January 29, 2008, Heraeus submitted an *ex parte* application for discovery in aid of foreign litigation pursuant to 28 U.S.C. § 1782. On February 2, 2009, this Court granted Heraeus’ application. On March 2, 2009, Biomet filed a motion to vacate this Court’s prior order and filed a motion for a hearing.

On April 8, 2009, this Court granted Biomet’s motion and vacated its prior ruling, concluding that Heraeus’ application for discovery was not appropriate under *Intel Corp.* factors. Specifically, this Court found: (1) that German discovery procedures provided ample opportunity for Heraeus to seek discovery; (2) that granting Heraeus access to United States’ discovery procedures in order to avoid more restrictive German procedures was not in keeping with the purpose of the statute allowing international discovery; (3) that the discovery steps taken by Heraeus suggested that Heraeus was impermissibly seeking to circumvent the German procedures through its application for discovery in this Court; and (4) that Heraeus’ requests were vague, over-broad and

impermissibly sought irrelevant and privileged information. See *In re Heraeus Kulzer*, 3:09-mc-8, 3:09-mc-183.

On March 20, 2009, following the issuance of this Court's order, Heraeus filed a motion for review of the order. On July 9, 2009, District Court Judge Robert L. Miller denied Heraeus's objections to this Court's order. On July 22, 2009, Heraeus filed a notice of appeal of this Court's ruling and that of the District Court, arguing that both orders were contrary to law. See *In re Heraeus Kulzer*, 3:09-mc-183.

On July 21, 2009, under a different cause of action, Heraeus filed a second motion for discovery. On July 30, 2009, Biomet filed a motion for a status conference. On August 10, 2009, this Court granted Biomet's motion. However, on August 14, 2009, Biomet filed a motion to reschedule the status conference, noting that the scheduled status conference conflicted with a telephonic settlement conference before the Seventh Circuit. The settlement conference is directed at resolving Heraeus' pending appeal of this Court's prior order. On August 17, 2009, Heraeus filed a response in opposition, arguing that this Court's status conference should take place prior to the settlement conference before the Seventh Circuit. In support, Heraeus contends that, in its second motion, Heraeus has altered its original discovery requests to comply with the statute permitting international discovery, and notes that, should this Court grant Heraeus' second motion, it would render its appeal and the need for a settlement conference moot.

Having considered the motions, this Court now **GRANTS** Biomet's motion, Doc. No. 13, and **VACATES** the status conference. If the 7th Circuit settlement conference on August 25, 2009 is continued, the parties are to notify this Court and this Court will reinstate the status conference. Should the settlement conference proceed, however, and prove effective in resolving the matter, the

parties are to file a status report with this Court to indicate the status of this cause of action going forward. Alternatively, if the settlement conference proves ineffective to resolve the dispute, the parties are to file a status report to permit the rescheduling of this Court's status conference at the earliest possible opportunity.

SO ORDERED.

Dated this 17th Day of August, 2009.

S/Christopher A. Nuechterlein
Christopher A. Nuechterlein
United States Magistrate Judge