

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 this, different cause of action, Heraeus filed a second motion for discovery. On July 30, 2009, Biomet filed a motion for a status conference to set a briefing schedule on the motion. On August 10, 2009, this Court granted Biomet's motion and set a telephonic status conference on August 25, 2009. 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. Accordingly, on August 17, 2009, this Court vacated the status conference but indicated that this Court would reschedule the conference if the settlement conference was continued. On August 19, 2009, Heraeus filed a notice that the settlement conference had been continued until September 1, 2009 and requested that the status conference be reinstated.

This Court now sets an in-court status conference to discuss Kulzer's motion for discovery, [Doc. No. 1], on **August 26, 2009**, at **10:30 a.m. (E.S.T.)** in the U.S. District Court, Northern District of Indiana, South Bend Division, 204 South Main Street, South Bend, Indiana. Counsel for Plaintiff and counsel for Defendant all must appear *in person* and be prepared to address the motion

for discovery, contemplated deadlines for briefing on the motion, and the status of the previous motion for discovery that is currently pending on appeal.

**SO ORDERED.**

Dated this 20th Day of August, 2009.

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