

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Gary Selinsky, et al. and  
related cases

Civil No. 06-873 (JMR/FLN)

Plaintiffs,

v.

**ORDER**

Boehringer Ingelheim Pharmaceuticals, Inc.,  
Pfizer Inc., Pharmacia Corporation, and Pharmacia  
& Upjohn Company LLC,

Defendants.

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Tara D. Sutton, Vincent J. Moccio, and Gary L. Wilson for Plaintiffs  
Peter J. Goss and Barry J. Thompson for Defendant Pfizer  
Scott A. Smith and Beth S. Rose for Defendant Boehringer Ingelheim Pharmaceuticals

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**THIS MATTER** came before the undersigned United States Magistrate Judge on June 25, 2007, on Plaintiffs' motion for sanctions against Defendant Boehringer Ingelheim Pharmaceuticals, Inc. and to compel further production of documents [#197].<sup>1</sup> Plaintiff argues that Defendant Boehringer Ingelheim Pharmaceuticals, Inc. ("BIPI") has conducted an inadequate search for documents responsive to Plaintiffs' discovery requests and this Court's Orders. During the hearing and in an Order [#255] following the hearing, Defendant BIPI was ordered to submit an affidavit detailing its search methodology and addressing various questions related to the methodology. The Court has received and reviewed the Declaration of Sheila Anne Denton [#257] and a responsive letter from Plaintiffs.

The law requires Defendant BIPI to "conduct a reasonable inquiry under the circumstances"

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<sup>1</sup>In a previous Order [#255] the Court addressed the other motions heard during this hearing.

to ensure that its discovery responses are complete and correct. The Rottland Co. v. Pinnacle Corp., 222 F.R.D. 362, 374 (D. Minn. 2002) (citing Fed. R. Civ. P. 26(g)). To grant the relief sought by the Plaintiffs, the Court would have to conclude that Defendant BIPI has not met its obligation to conduct a reasonable inquiry to ensure that its document production is a correct and complete response to this Court's Orders and Plaintiffs' discovery requests.

The Court is troubled by the evidence that Defendant BIPI appears to have produced several responsive documents after depositions to which they are relevant have already occurred. It also appears that BIPI is unable to produce the Case Report Form for Patient 213, a document that is clearly relevant and the subject of two separate Orders [## 145, 179] of this Court. Defendant BIPI stated at the hearing that it is still diligently searching for the missing Case Report Form. The Plaintiffs' motion does not specifically ask the Court to address these specific incidents but offers them as evidence in support of Plaintiffs' request that the Court impose sanctions against BIPI for broadly failing to comply with its discovery obligations.<sup>2</sup>

If the CRF for Patient 213 is never found, the Court can, in advance of trial, revisit what, if any, sanction is appropriate to address that specific issue. Likewise, if the practice of producing documents after the conclusion of depositions to which they pertain becomes a pattern, the Court will not hesitate to impose an appropriate sanction for such a discovery abuse. That specific request is not before the Court.

What the Plaintiffs do seek is an order that the jury be given an adverse inference instruction and an order that Defendant be compelled to perform specific searches of its various data bases, and

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<sup>2</sup>Plaintiffs seek an Order compelling Defendant BIPI to search various document repositories, however this request is moot as it pertains to Case Report Forms, which the Court has already ordered and continues to order Defendant BIPI to produce. See Docket Nos. 145, 179.

document repositories. As the Court is unable, upon the record before it, to conclude that Defendant failed to conduct a reasonable inquiry under the circumstances, it is compelled to deny the Plaintiffs' motion.

Based on all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiffs' motion for sanctions against Defendant Boehringer Ingelheim Pharmaceuticals, Inc. and to compel further production of documents [#197] is **DENIED** as follows:

1. To the extent that the motion seeks the adverse inference stated on page 2 of the Motion [#197], the motion is **DENIED**;
2. To the extent that the motion seeks an order compelling Defendant BIPI to search various document repositories, the motion is **DENIED**;
3. Nothing in this Order should be construed as relieving Defendant BIPI from providing a correct and complete response to Plaintiffs' discovery requests and this Court's prior Orders.

DATED: July 5, 2007

s/ Franklin L. Noel  
FRANKLIN L. NOEL  
United States Magistrate Judge