

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In Re: Rosuvastatin Calcium Patent :
Litigation : MDL No. 08-1949
_____ :

MEMORANDUM ORDER

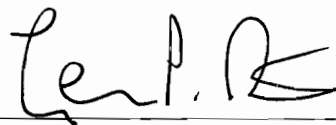
1. Now before the Court are two discovery disputes that have arisen in this multi-district ANDA litigation. (D.I. 178, D.I. 179, D.I. 186, D.I. 188).

2. In the first of the instant disputes, Defendants seek an order compelling Plaintiffs to produce “all documents relating to their efforts to ‘co-market’ and ‘co-promote’ Crestor, including all due diligence communications.” Plaintiffs have offered instead to search central AstraZeneca document repositories and documents in possession of key AstraZeneca senior level managers or custodians and thereafter to produce documents found there: (i) relating to communications between AstraZeneca and potential co-promoters or co-marketers of Crestor rosuvastatin calcium product to the extent such communications reflect the views of such third parties regarding either the clinical or pharmacological properties of Crestor or the strength of the ‘314 patent-in-suit; (ii) whatever due diligence documents were made available to such third parties expressing an interest in co-marketing or co-promoting Crestor rosuvastatin calcium (to the extent such documents still can be identified and do not relate solely to the non-asserted secondary consideration of commercial success); and (iii) any co-promotion or co-marketing agreements limited to Crestor rosuvastatin calcium actually signed with any such third party. Plaintiffs’ position is more reasonable than Defendants’. Among other things, it limits production to documents reasonably calculated to lead to the discovery of admissible evidence

and cures the overbreadth problem inherent in Defendants' request for "all documents" relating to co-marketing or co-promotion efforts. Therefore, Plaintiffs are ordered to produce, **within fifteen days of the date of this Order**, all non-privileged documents described in (i), (ii), and (iii) above that are retrieved following the searches described above (in addition to any such responsive, non-privileged documents that Plaintiffs have already identified to date).

3. Separately, Plaintiffs seek an order compelling Defendant Sandoz, Inc. to produce documents and permit others to produce documents and provide testimony regarding certain research and development efforts. Defendant Sandoz responds that Plaintiffs' request seeks irrelevant materials and that it would be unduly burdensome for Sandoz to produce the information sought. Both sides have offered compromises in an effort to resolve their dispute but their efforts, it appears, have failed. If the parties remain unable to resolve this dispute, the Court will hear further argument solely with respect to this dispute during the teleconference scheduled for May 8, 2009 at 3:30 p.m.

Dated: May 7, 2009


United States Magistrate Judge