

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MEDTRONIC SOFAMOR DANEK, INC.,)
)
Plaintiffs/)
Counterclaim Defendant))
vs.) No. 01-2373 MLV)
)
GARY K. MICHELSON, M.D.,)
and KARLIN TECHNOLOGY, INC.,)
)
Defendants/)
Counterclaimants,)
)
consolidated with)
)
MEDTRONIC SOFAMOR DANEK, INC.,)
and MEDTRONIC, INC.,)
)
Plaintiffs,)
)
vs.) No. 03-2055 MLV)
)
GARY K. MICHELSON, M.D.,)
and KARLIN TECHNOLOGY, INC.,)
)
Defendants.)

ORDER DENYING PLAINTIFF'S MOTION TO EXCLUDE THE REPORT AND
TESTIMONY OF DR. MANOHAR PANJABI

Before the court is the March 23, 2004 motion of the plaintiff, Medtronic Sofamor Danek, Inc. ("Medtronic"), seeking a court order excluding Dr. Manohar Panjabi from testifying at trial as an expert for the defendants, Gary K. Michelson, M.D., ("Michelson") and Karlin Technology, Inc. ("KTI"), because the defendants have refused to make him available for deposition. The

motion was referred to the United States Magistrate Judge for determination. Michelson and KTI timely responded on April 8, 2004. For the reasons that follow, Medtronic's motion is denied.

On September 11, 2003, Michelson and KTI identified Dr. Panjabi as an expert witness whom they intended to call to testify at trial. When Medtronic attempted to schedule his deposition, Michelson and KTI informed Medtronic that Dr. Panjabi's deposition was unnecessary because they no longer intended to call him as an expert witness at trial. By letter dated March 9, 2004, Michelson and KTI advised counsel for Medtronic in writing that they were "withdrawing Dr. Panjabi as a trial expert, subject to and without waiver of [their] right to seek leave of court to re-designate him as a trial expert." (Mem. in Supp of Pl.'s Mot. to Exclude the Report and Testimony of Defs.' Expert Dr. Manohar Panjabi, Ex. H.)

Accordingly, there is no issue at this time, and the motion is therefore moot and denied without prejudice. In the event Michelson and KTI seek leave of court to re-designate Dr. Panjabi, Medtronic may renew its motion.

IT IS SO ORDERED this 21st day of April, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE