

documents responsive to the subpoena, the district court denied the Commission's petition for enforcement, in part, on the grounds that the work product doctrine shielded the documents from disclosure. See Memorandum Opinion (docket #69), issued September 27, 2012.

The Commission intends to present the following issues in this appeal:

1. Whether the district court improperly sustained Boehringer's claim to work product protection for financial analyses concerning a joint marketing (or "co-promotion") agreement due to its relationship to an agreement to settle patent litigation, despite Boehringer's persistent assertions that the co-promotion agreement was free-standing and independent of the litigation settlement.
2. Whether the district court e

agreement or the patent litigation settlement) did not contain or reflect the legal opinions or judgments of counsel.

4. Whether the Commission met its burden of showing the necessity for the information in the documents to carry out its law enforcement investigation and the unavailability of such information by any other means, so as to overcome any work product protection that might have attached to the documents.

5. Whether the district court, in addressing the Commission's need for the information in the documents and opining that such information would not significantly add to the Commission's knowledge about issues relevant to the investigation, improperly blocked legitimate avenues of the Commission's inquiry in a manner that transgressed the established limits of a court asked to enforce an investigative subpoena.

Respectfully submitted,

David C. Shonka
Acting General Counsel

John F. Daly
Deputy General Counsel for Litigation

Leslie Rice Melman
Assistant General Counsel for Litigation

Of Counsel:

Bradley S. Albert
Daniel W. Butrymowicz
Rebecca Egeland
Michael Perry
Mark Woodward
Bureau of Competition
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW
Washington, DC 20580

/s/ David L. Sieradzki
David L. Sieradzki
Attorney, Office of General Counsel
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-2092
dsieradzki@ftc.gov

Attorneys for Petitioner-Appellant
Federal Trade Commission

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Certificate of Service

I hereby certify that copies of the foregoing Statement of Issues to be Raised on Appeal were served upon the following counsel of record, via the Court's CM/ECF system, this 14th day of January, 2013.

Lawrence D. Rosenberg
Peter Biersteker
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001

Michael Sennett
William F. Dolan
Pamela L. Taylor
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, IL 60601

Attorneys for Respondent-Appellee
Boehringer Ingelheim Pharmaceuticals, Inc.

/s/ David L. Sieradzki
David L. Sieradzki