

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2009-1008, -1009, -1010, -1034, -1035, -1036, -1037

THERASENSE, INC. (now known as Abbott Diabetes Care, Inc.)  
and ABBOTT LABORATORIES,

Plaintiffs-Appellants,

v.

BECTON, DICKINSON AND COMPANY,  
and NOVA BIOMEDICAL CORPORATION,

Defendants-Cross Appellants.

Appeals from the United States District Court for the Northern District of California  
in consolidated case nos. 04-CV-2123, 04-CV-3327, and 04-CV-3732,  
Judge William H. Alsup.

ON MOTION

Before BRYSON, Circuit Judge.

### ORDER

Becton, Dickinson and Company et al. (BD) (1) move the court to consider their argument on the doctrine of equivalents in support of their cross appeal as an argument in support of affirmance of the judgment of the United States District Court for the Northern District of California, (2) move to strike from Therasense, Inc. et al.'s (Therasense) reply brief arguments concerning literal infringement or, in the alternative, to accept BD's surreply brief, and (3) move to strike from Therasense's reply brief modified versions of demonstratives that BD states were used, but not admitted into evidence, at trial. Therasense opposes and moves to strike BD's surreply brief.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motions are deferred for consideration by the merits panel assigned to hear this case.

(2) A copy of BD's motion, Therasense's opposition and motion, any reply, and this order shall be transmitted to the merits panel assigned to hear this case.

FOR THE COURT

**JUN 11 2009**

Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

cc: Rohit Kumar Singla, Esq.  
Bradford J. Badke, Esq.

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**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

**JUN 11 2009**

**JAN HORBALY  
CLERK**