

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**BIOPOLYMER ENGINEERING, INC. (DOING
BUSINESS AS BIOTHERA),
*Plaintiff-Appellant,***

AND

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
*Plaintiff,***

v.

**IMMUNOCORP AND BIOTEC PHARMACON ASA,
*Defendants.***

2010-1096

Appeal from the United States District Court for the
District of Minnesota in case no. 05-CV-0536, Judge Joan
M. Ericksen.

Before RADER, *Chief Judge*, BRYSON and MOORE, *Circuit
Judges.*

RADER, *Chief Judge.*

O R D E R

Biopolymer Engineering, Inc. (Biothera) submits a
combined petition for panel rehearing and rehearing en

banc with respect to the court's August 2, 2010 order dismissing its appeal as moot.*

The court dismissed the appeal as moot because it appeared that a settlement agreement resolved all claims between the parties. Biothera asserts that the settlement agreement does not resolve claims with respect to all of the products that it accused of infringing United States Patent No. 5,702,719 and thus the appeal is not moot. The court agrees that under these circumstances the appeal is not moot.

Accordingly,

IT IS ORDERED THAT:

(1) The petition for panel rehearing is granted. The court's August 2, 2010 order dismissing this case is vacated and the case is reinstated.

(2) Biothera's brief is due within 30 days of the date of filing of this order.

FOR THE COURT

OCT 21 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Darren B. Schwiebert, Esq.
Susan A. Cahoon, Esq.

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

OCT 21 2010

JAN HORBALY
CLERK

* The court did not request an answer because Biothera is the only party participating in this appeal.