

NOTE: This order is nonprecedential.

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

**ROCHE DIAGNOSTICS OPERATIONS, INC.
AND CORANGE INTERNATIONAL LIMITED,**
Plaintiffs-Appellants,

v.

LIFESCAN INCORPORATED,
Defendant-Appellee,

and

NOVA BIOMEDICAL CORPORATION,
Defendant-Cross Appellant.

2010-1439, -1539

Appeals from the United States District Court for the
District of Delaware in case no. 07-CV-0753, Judge Jo-
seph J. Farnan, Jr.

ON MOTION

Before FRIEDMAN, *Circuit Judge.*

ORDER

Roche Diagnostics Operations, Inc. and Corange International Limited (Roche) move to dismiss Nova Biomedical Corporation's cross-appeal for lack of jurisdiction or in the alternative move to separate the appeals and suspend 2010-1539 until the district court enters final judgment. Nova opposes. Roche replies.

Roche filed a patent infringement suit against Nova in the United States District Court for the District of Delaware. Nova subsequently filed counterclaims against Roche alleging unfair competition, breach of contract, misappropriation of trade secrets, and conversion. The district court subsequently granted summary judgment of noninfringement and granted summary judgment against Nova on its counterclaims. The district court entered a Fed. R. Civ. P. 54(b) judgment as to the patent infringement claims and directed entry of judgment on the counterclaims. Roche appealed (2010-1439) and Nova filed a cross-appeal (2010-1539) which Nova asserts concern its counterclaims. Nova filed a timely renewed motion for judgment as a matter of law, which is still pending before the district court.

Dismissal of the cross-appeal is not appropriate. The district court directed entry of judgment as to Nova's counterclaims and Nova filed an appeal of the judgment entered against it. Pursuant to Fed. R. App. P. 4(a)(4)(B), the notice of appeal for 2010-1539 becomes effective to obtain review of the judgment on the counterclaims after the district court decides the post-judgment motion. We deny the request to separate these appeals for adjudication. We deem the better course is to deactivate these appeals until the district court rules on the post-judgment motion.

Accordingly,

IT IS ORDERED THAT:

(1) Roche's motion to dismiss 2010-1539 is denied.

(2) Roche's alternative motion to separate the appeals is denied. The appeals are deactivated and the briefing schedule is stayed pending the district court's ruling on the post-judgment motion.

(3) Nova is directed to notify this court within 14 days after the district court decides the post-judgment motion.

FOR THE COURT

JAN 04 2011

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Grantland G. Drutchas, Esq.
Mary W. Bourke, Esq.
Bradford J. Badke, Esq.

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

JAN 04 2011

JAN HORBALY
CLERK