

1
2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9

10 THERASENSE, INC.,

No. C 04-02123 WHA

11 Plaintiff,

Consolidated with

12 v.

No. C 04-03327 WHA

13 BECTON, DICKINSON AND COMPANY,

No. C 04-03732 WHA

14 Defendant.

No. C 05-03117 WHA

15 _____/
16 AND CONSOLIDATED CASES.
17 _____/

**ORDER OF REFERENCE
AGREED TO BY ALL
PARTIES AND SPECIAL
MASTER**

18 Pursuant to Federal Rules of Civil Procedure 53 and 54(d)(2)(D) and the Court's
19 August 21, 2008 Order re Attorney's Fees and Costs, the Court hereby appoints Judge Eugene
20 Lynch (Ret.) of JAMS to proceed, with all reasonable diligence, as Special Master to determine
21 the amount of attorney's fees and costs to which defendants are entitled under the Order re
22 Attorney's Fees and Costs. The Special Master's appointment shall be subject to Rule 53, the
23 Court's Order re Attorney's Fees and Costs (which is incorporated herein by reference), as well
24 as the following terms:

25 1. By **MARCH 2, 2009**, the Special Master shall file a report and recommendation,
26 with factual findings, on the amount of fees to be awarded under the Court's Order re
27 Attorney's Fees and Costs.

28 2. The Special Master's fee shall be divided equally among the parties on an
interim basis. Per the Order re Attorney's Fees and Costs, the Court may reallocate the Special

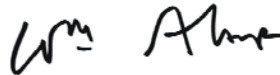
Master's fees among the parties after it reviews the Special Master's findings, report, and recommendation and any objections by the parties.

3. The Special Master may communicate *ex parte* with the Court as necessary. The Special Master may not communicate *ex parte* with any party except as the Special Master finds necessary to fulfill his duties.

4. In addition to the guidelines in the August 21 order, the Special Master shall determine what the "going rate" was at the time in question for a "one-patent case" and shall consider the extent to which the two defendants should have economized by allocating common defense work as between themselves and/or with other defendants. The overall assignment is to determine the reasonable value of attorney's fees and expenses in question. The Special Master shall make a specific recommendation whether his fees should be allocated other than on a fifty-fifty basis due to the taking of unreasonable positions by any party.

IT IS SO ORDERED.

Dated: December 1, 2008.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

Accepted as to form,

Dated: December __, 2008

HON EUGENE LYNCH

Dated: December __, 2008

ROPES & GRAY LLP

Attorneys for Defendants
NOVA BIOMEDICAL CORPORATION
AND BECTION, DICKINSON AND
COMPANY

United States District Court

For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December __, 2008

MORRISON & FOERSTER LLP

Attorneys for Defendant
BAYER HEALTHCARE, LLC

Dated: December __, 2008

MUNGER, TOLLES, & OLSON LLP

Attorneys for Defendants
ABBOTT DIABETES CARE INC.
AND ABBOTT LABORATORIES