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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THERASENSE, INC.,
Plaintiff,

No. C 04-02123 WHA

v.

**REQUEST FOR
FURTHER BRIEFING**

BECTON, DICKINSON AND
COMPANY,
Defendant.

AND CONSOLIDATED CASES.

Further briefing is requested by the judge on the question of whether, in evaluating “knowledge of materiality,” the applicant should be given the benefit of hypothetical arguments that could have been made to the examiner to distinguish the EPO briefs and, if so, must those arguments have actually been in the mind of Dr. Sanghera and Attorney Pope (as opposed to constructed during later litigation)? These questions were raised at oral argument. Defendants pointed to the remand instructions which referenced no hypothetical argument and Abbott referred to the discussion of PTO Rule 56 at page 1294 (col. 2). The judge cannot find a direct answer to these questions in the court of appeals opinion. Counsel will please do a more thorough analysis, including a review of decisions since the remand order. Each side may have up to seven pages (double-spaced, no footnotes). The defense must share one seven-page brief. Briefs are due **MONDAY AT NOON**. By **TUESDAY AT NOON**, each side may file three-page replies.

IT IS SO ORDERED.

Dated: March 22, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE