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28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CONCEPTUS, INC.,

No. C 09-02280 WHA

Plaintiff,

v.

**CASE MANAGEMENT ORDER  
RE BRIEFING SCHEDULE ON  
MOTION FOR PRELIMINARY  
INJUNCTION**

HOLOGIC, INC.,

Defendant.

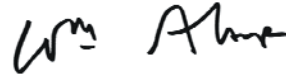
It would be unfair to grant a preliminary injunction based on evidentiary material raised only in a reply submission that should have been in the opening. This is because the opposing party should have a full and fair opportunity to lay out its opposing case. The Court is concerned that the opening motion itself, which should have laid out the full grounds warranting any preliminary injunction, is so expansive in this case that plaintiff Conceptus may be tempted to add in new evidentiary material and arguments in reply that in fairness should have been in the opening. Accordingly, the Court offers plaintiff Conceptus an opportunity to modify the briefing schedule as follows: plaintiff's reply is due at noon on October 19 (as opposed to October 21); defendant Hologic would then have until noon on October 23 to file a surreply including evidentiary material directly responsive to the material submitted in plaintiff's reply. The hearing will remain on **NOVEMBER 4, 2009, AT 1:30 P.M.** If plaintiff Conceptus wishes to stand by the original briefing schedule, however, that will be fine but new material and argument that should have been in the opening will be disregarded.

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Plaintiff Conceptus must elect which scenario it prefers by filing a notice herein by **NOON ON OCTOBER 2**. The November 4 hearing date cannot be moved in either event. The reply by Conceptus in all events will be limited to the page limits set forth in the local rules as will any surreply.

**IT IS SO ORDERED.**

Dated: September 28, 2009.



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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE