

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2008-1511, -1512, -1513, -1514, -1595

THERASENSE, INC. (now known as Abbott Diabetes Care, Inc.)
and ABBOTT LABORATORIES,

Plaintiffs-Appellants,

v.

BECTON, DICKINSON AND COMPANY,
and NOVA BIOMEDICAL CORPORATION,

Defendants-Appellees,

and

BAYER HEALTHCARE LLC,

Defendant-Appellee.

Appeals from the United States District Court for the Northern District of California in
consolidated case nos. 04-CV-2123, 04-CV-3327, 04-CV-3732, and 05-CV-3117,
Judge William H. Alsup.

ON MOTION

Before PROST, Circuit Judge.

ORDER

Abbott Laboratories et al. (Abbott) move for leave to file a reply brief containing up to 12,000 words, with reply brief attached. Bayer Healthcare LLC and Becton, Dickinson and Company and Nova Biomedical Corporation each oppose.

Abbott argues that, pursuant to Fed. R. App. P. 28(c), it is permitted to file a 7,000 word reply brief in response to each appellee's brief but that instead it wishes to file a single reply brief containing up to 12,000 words.

The court determines that Fed. R. App. P. 28(c) does not authorize the filing of multiple reply briefs in cases where there are multiple appellees who file separate briefs. An appellant is permitted to file only a single reply brief in any particular case, regardless of how many appellee briefs are filed. If an appellant believes that it cannot adequately respond to all appellee briefs within the word count permitted by the Federal Rules of Appellate Procedure, the appellant's sole recourse is to file a motion for leave to file an extended brief. Counsel should note, however, that such motions are not invited or routinely granted. See Fed. Cir. R. 28(c) ("The court looks with disfavor on a motion to file an extended brief and grants it only for extraordinary reasons").

In this case, the court determines that Abbott has not shown that an extension of the word count for its reply brief is warranted. Thus, Abbott is directed to file a reply brief either (a) consisting of no more than 15 pages or (b) containing no more than 7,000 words. If Abbott chooses to comply with the type volume limitation rather than the page limitation, the certificate of compliance included in the brief pursuant to Fed. R. App. P. 32(a)(7)(C) must state the number of words in the brief. A statement that the brief contains less than 7,000 words does not meet the requirements of Rule 32(a)(7)(C).

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is denied.
- (2) Abbott is directed to file a single reply brief either (a) consisting of no more than 15 pages or (b) containing no more than 7,000 words within 7 calendar days of the date of filing of this order.

FOR THE COURT

Feb. 2, 2009

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Rohit Kumar Singla, Esq.
Bradford J. Badke, Esq.
Rachel Krevans, Esq.

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