



Reconsidering Inequitable Conduct in Patent Infringement Cases: Oral Arguments Heard En Banc by CAFC in *Therasense v. Becton*

11.10.2010

On Tuesday, November 9, 2010, oral arguments were heard *en banc* by the Federal Circuit in *Therasense Inc. v. Becton, Dickenson & Co.* Audio is available [here](#).

In *Therasense*, plaintiff Therasense Inc. (now Abbott Laboratories) alleged infringement of its patents by defendants Becton, Dickenson & Co. and Bayer Health care LLC. Becton and Bayer defended on grounds of noninfringement and invalidity, alleging inequitable conduct during the prosecution of the patents-in-suit.

The district court agreed with the defendants, holding one of the patents-in-suit invalid for inequitable conduct and finding no infringement with respect to two other asserted patents. The Federal Circuit affirmed, but subsequently agreed to hear the case *en banc*, in part to reconsider the current standard for evaluating inequitable conduct, including whether and when a court may infer deceptive intent based on the materiality of information withheld from, or misstated to, the Patent and Trademark Office during patent prosecution.

Dennis Crouch (of Patently-O) and Bruce Wexler (of *PauHastings*) have also reported on the oral arguments.

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