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October 4, 2005

BY ELECTRONIC MAIL & HAND DELIVERY

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The Honorable Martin Jenkins
Judge, U.S. District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Abbott Diabetes Care Inc., et al. v. Roche Diagnostics Corp., et al.*; in the
Case No. 05-3117 MJJ United States District Court, Northern District of
California.

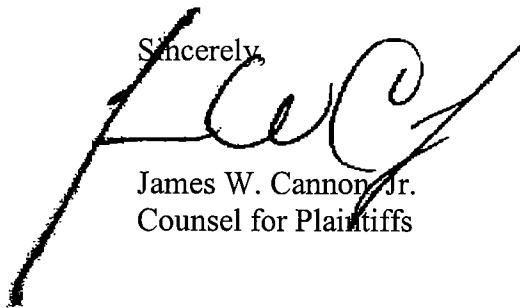
Dear Judge Jenkins:

Enclosed is a Chambers copy of Abbott Diabetes Care Inc. and Abbott
Laboratories' First Amended Complaint and Certificate of Interested Parties.

This Amended Complaint is being filed pursuant to the Stipulation and Order on
Addition and Intervention of Roche Diagnostics Operations, Inc. as a Defendant and Counter-
Plaintiff that was granted yesterday, October 3, 2005.

Thank you.

Sincerely,



James W. Cannon, Jr.
Counsel for Plaintiffs

JWC:glw

Enclosure

The Honorable Martin Jenkins

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October 4, 2005

cc: Richard B. Ulmer, Jr. (*via email*)
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12 Attorneys for Plaintiffs ABBOTT DIABETES
13 CARE INC. and ABBOTT LABORATORIES

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 ABBOTT DIABETES CARE INC. and
17 ABBOTT LABORATORIES,

18 Plaintiffs,

19 vs.

20 ROCHE DIAGNOSTICS CORP.,
21 ROCHE DIAGNOSTICS OPERATIONS,
22 INC. and BAYER HEALTHCARE LLC,

23 Defendants.

CASE NO. CO5 3117 MJJ

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

**CERTIFICATION OF INTERESTED
ENTITIES**

1 Plaintiffs Abbott Diabetes Care Inc., formerly known as TheraSense, Inc.
2 (“ADC”), and Abbott Laboratories (“Abbott”) bring this action for patent infringement against
3 defendants Roche Diagnostics Corporation (“Roche”), Roche Diagnostics Operations, Inc.
4 (“RDOI”) and Bayer HealthCare LLC (“Bayer”), and each alleges upon personal knowledge with
5 respect to itself and its own acts, and upon information and belief with respect to all other matters,
6 as follows:

THE PARTIES

7
8 1. ADC is a Delaware corporation with its principal place of business in Alameda,
9 California. ADC is a worldwide leader in the development, manufacture and marketing of blood
10 glucose self-monitoring systems. The ADC systems feature very small sample size, rapid test
11 results, and less painful testing systems for people with diabetes.

12 2. Abbott is an Illinois corporation that maintains its principal offices and research
13 facilities in Abbott Park, Illinois. ADC is a wholly-owned subsidiary of Abbott. Abbott is a
14 worldwide leader in the area of pharmaceutical products and medical devices.

15 3. ADC and Abbott (collectively “Plaintiffs”) are informed and believe, and on that
16 basis allege, that Defendant Roche is an Indiana corporation with its principal place of business in
17 Indianapolis, Indiana. Plaintiffs are informed and believe that Defendant Roche has business
18 operations and regularly conducts business in this district. Defendant Roche has been properly
19 served with process and has made an appearance in this case.

20 4. Plaintiffs are informed and believe, and on that basis allege, that Defendant RDOI
21 is a Delaware corporation with its principal place of business in Indianapolis, Indiana. Plaintiffs
22 are informed and believe that Defendant RDOI has business operations and regularly conducts
23 business in this district. Per agreement, Defendant RDOI may be served with process by serving
24 its counsel, Lynn C. Tyler, Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, IN
25 46204-3535.

26 5. Plaintiffs are informed and believe, and on that basis allege, that Defendant Bayer
27 is a Delaware limited liability company with its principal place of business in Tarrytown, New
28

1 York. Plaintiffs are informed and believe that Defendant Bayer has business operations and
2 regularly conducts business in this district. Defendant Bayer has a business office in this district
3 located at 800 Dwight Way, Berkeley, CA 94710. Defendant Bayer has been properly served
4 with process and has made an appearance in this case.

5 JURISDICTION AND VENUE

6 6. This Court has subject matter jurisdiction over this action pursuant to
7 28 U.S.C. §§ 1331 and 1338, in that this is a civil action for patent infringement arising under the
8 Patent Laws of the United States, Title 35, United States Code. This Court has personal
9 jurisdiction over Defendants Roche, RDOI and Bayer (collectively "Defendants") because
10 Defendants regularly do business in this district and/or Defendants have committed acts of patent
11 infringement in this district.

12 7. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b)
13 because Defendants are subject to personal jurisdiction in this district, Defendants reside and/or
14 may be found in this district, and/or Defendants have committed acts of patent infringement and
15 regularly do business in this district.

16 FIRST CAUSE OF ACTION

17 **(Patent Infringement – United States Patent No. 5,820,551 Against Roche)**

18 8. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 7 of this
19 First Amended Complaint as though fully set forth herein.

20 9. On October 13, 1998, the Patent and Trademark Office (the "PTO") duly issued to
21 Hugh Allen Oliver Hill, Irving John Higgins, James Michael McCann, and Graham Davis United
22 States Letters Patent No. 5,820,551 (the "'551 Patent"), entitled "Strip Electrode with Screen
23 Printing," a true and correct copy of which is attached hereto as Exhibit A. Messrs. Hill et al.
24 assigned the '551 Patent to MediSense, Inc. As the successor in interest to MediSense, Inc.,
25 Abbott is the assignee of the '551 Patent.

26 10. Defendant Roche has engaged in one or more acts that constitute infringement of
27 the '551 Patent within the meaning of 35 U.S.C. § 271.
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1 11. On information and belief, Defendant Roche knew of and willfully and
2 deliberately infringed the '551 Patent.

3 12. Plaintiffs have suffered and will continue to suffer serious irreparable injury unless
4 Defendant Roche's infringement of the '551 Patent is enjoined.

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6 **SECOND CAUSE OF ACTION**

7 **(Patent Infringement – United States Patent No. 5,820,551 Against RDOI)**

8 13. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 12 of this
9 First Amended Complaint as though fully set forth herein.

10 14. On October 13, 1998, the PTO duly issued to Hugh Allen Oliver Hill, Irving John
11 Higgins, James Michael McCann, and Graham Davis the '551 Patent, entitled "Strip Electrode
12 with Screen Printing," a true and correct copy of which is attached hereto as Exhibit A. Messrs.
13 Hill et al. assigned the '551 Patent to MediSense, Inc. As the successor in interest to MediSense,
14 Inc., Abbott is the assignee of the '551 Patent.

15 15. Defendant RDOI has engaged in one or more acts that constitute infringement of
16 the '551 Patent within the meaning of 35 U.S.C. § 271.

17 16. On information and belief, Defendant RDOI knew of and willfully and
18 deliberately infringed the '551 Patent.

19 17. Plaintiffs have suffered and will continue to suffer serious irreparable injury unless
20 Defendant RDOI's infringement of the '551 Patent is enjoined.

21 **THIRD CAUSE OF ACTION**

22 **(Patent Infringement – United States Patent No. 5,820,551 Against Bayer)**

23 18. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 17 of this
24 First Amended Complaint as though fully set forth herein.

25 19. On October 13, 1998, the PTO duly issued to Hugh Allen Oliver Hill, Irving John
26 Higgins, James Michael McCann, and Graham Davis the '551 Patent, entitled "Strip Electrode
27 with Screen Printing," a true and correct copy of which is attached hereto as Exhibit A. Messrs.
28

1 Hill et al. assigned the '551 Patent to MediSense, Inc. As the successor in interest to MediSense,
2 Inc., Abbott is the assignee of the '551 Patent.

3 20. Defendant Bayer has engaged in one or more acts that constitute infringement of
4 the '551 Patent within the meaning of 35 U.S.C. § 271.

5 21. On information and belief, Defendant Bayer knew of and willfully and deliberately
6 infringed the '551 Patent.

7 22. Plaintiffs have suffered and will continue to suffer serious irreparable injury unless
8 Defendant Bayer's infringement of the '551 Patent is enjoined.

9 **FOURTH CAUSE OF ACTION**

10 **(Patent Infringement – United States Patent No. 6,592,745 Against Roche)**

11 23. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 22 of this
12 First Amended Complaint as though fully set forth herein.

13 24. On July 15, 2003, the PTO duly issued to Benjamin J. Feldman, Adam Heller,
14 Ephraim Heller, Fei Mao, Joseph A. Vivolo, Jeffery V. Funderburk, Fredric C. Colman, and
15 Rajesh Krishnan United States Letters Patent No. 6,592,745 (the "'745 Patent"), entitled "Method
16 of Using a Small Volume In Vitro Analyte Sensor with Diffusible or Non-Leachable Redox
17 Mediator," a true and correct copy of which is attached hereto as Exhibit B. Messrs. Feldman et
18 al. assigned the '745 Patent to TheraSense, Inc., now known as ADC.

19 25. Defendant Roche has engaged in one or more acts that constitute infringement of
20 the '745 Patent within the meaning of 35 U.S.C. § 271.

21 26. On information and belief, Defendant Roche knew of and willfully and
22 deliberately infringed the '745 Patent.

23 27. Plaintiffs have suffered and will continue to suffer serious irreparable injury unless
24 Defendant Roche's infringement of the '745 Patent is enjoined.

25 **FIFTH CAUSE OF ACTION**

26 **(Patent Infringement – United States Patent No. 6,592,745 Against RDOI)**

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28. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 27 of this First Amended Complaint as though fully set forth herein.

29. On July 15, 2003, the PTO duly issued to Benjamin J. Feldman, Adam Heller, Ephraim Heller, Fei Mao, Joseph A. Vivolo, Jeffery V. Funderburk, Fredric C. Colman, and Rajesh Krishnan the '745 Patent, entitled "Method of Using a Small Volume In Vitro Analyte Sensor with Diffusible or Non-Leachable Redox Mediator," a true and correct copy of which is attached hereto as Exhibit B. Messrs. Feldman et al. assigned the '745 Patent to TheraSense, Inc., now known as ADC.

30. Defendant RDOI has engaged in one or more acts that constitute infringement of the '745 Patent within the meaning of 35 U.S.C. § 271.

31. On information and belief, Defendant RDOI knew of and willfully and deliberately infringed the '745 Patent.

32. Plaintiffs have suffered and will continue to suffer serious irreparable injury unless Defendant RDOI's infringement of the '745 Patent is enjoined.

SIXTH CAUSE OF ACTION

(Patent Infringement – United States Patent No. 6,592,745 Against Bayer)

33. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 32 of this Complaint as though fully set forth herein.

34. On July 15, 2003, the PTO duly issued to Benjamin J. Feldman, Adam Heller, Ephraim Heller, Fei Mao, Joseph A. Vivolo, Jeffery V. Funderburk, Fredric C. Colman, and Rajesh Krishnan the '745 Patent, entitled "Method of Using a Small Volume In Vitro Analyte Sensor with Diffusible or Non-Leachable Redox Mediator," a true and correct copy of which is attached hereto as Exhibit B. Messrs. Feldman et al. assigned the '745 Patent to TheraSense, Inc., now known as ADC.

35. Defendant Bayer has engaged in one or more acts that constitute infringement of the '745 Patent within the meaning of 35 U.S.C. § 271.

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I. Such other and further relief as this Court may deem just and proper.

DATED: October 4, 2005

BAKER BOTTS, LLP

By: 

JAMES W. CANNON, JR. (*pro hac vice*)

WILLIAM P. JOHNSON (*pro hac vice*)

DAVID T. ARLINGTON (*pro hac vice*)

MARIA WYCKOFF BOYCE (*pro hac vice*)

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Attorneys for Plaintiffs

ABBOTT DIABETES CARE INC. and

ABBOTT LABORATORIES

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**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS
PURSUANT TO NORTHERN DISTRICT LOCAL RULE 3-16**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: October 4, 2005

BAKER BOTTS, LLP

By: 

JAMES W. CANNON, JR. (*pro hac vice*)

WILLIAM P. JOHNSON (*pro hac vice*)

DAVID T. ARLINGTON (*pro hac vice*)

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JASON RANTANEN (SBN 229404)

Attorneys for Plaintiffs

ABBOTT DIABETES CARE INC. and

ABBOTT LABORATORIES

Certificate of Service

I certify that a copy of the foregoing was served on the following counsel of record
via electronic mail:

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Counsel for Bayer Healthcare L.L.C.

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I certify under the penalty of perjury that the foregoing is true and correct.
Executed on October 4, 2005 in Austin, Texas.



James W. Cannon, Jr.