

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

IOVATE HEALTH SCIENCES, INC.,
UNIVERSITY OF FLORIDA RESEARCH
FOUNDATION, INC. and FLAMMA SpA,

Plaintiffs,

v.

BIO-ENGINEERED SUPPLEMENTS &
NUTRITION, INC., d/b/a BSN Inc. and
MEDICAL RESEARCH INSTITUTE,

Defendants.

Case No. 9:07-CV-46

**NOTICE OF APPEAL TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Notice is hereby given that Plaintiffs Iovate Health Sciences, Inc. (“Iovate”) and University of Florida Research Foundation, Inc. (“UFRF”) (collectively, “Plaintiffs”), by counsel, hereby appeal to the United States Court of Appeals for the Federal Circuit from the District Court’s two Consent Judgments and Order of Dismissals (D.I. 304 and 305), both entered by the Court on September 24, 2008, as well as all prior adverse orders entered by the Court in this matter, including but not limited to (1) Order Granting In Part Defendant BSN’s Motion for Summary Judgment (D.I. 295), entered on August 27, 2008; (2) Order Denying Plaintiffs’ Motions to Preclude and Strike (D.I. 294), entered on August 27, 2008; (3) Order on BSN’s Emergency Motion for Discovery Relief (D.I. 182), entered on July 2, 2008; (4) Memorandum Opinion and Order Construing Claim Terms of U.S. Patent Nos. 5,973,199 and 6,100,287 (Part II) (D.I. 161), entered on June 5, 2008; and (5) Memorandum Opinion and Order Construing Claim Terms of U.S. Patent Nos. 5,973,199 and 6,100,287 (Part I) (D.I. 137), entered on March 28, 2008.

Respectfully submitted,

Dated: October 9, 2008

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CERTIFICATE OF SERVICE

I hereby certify that this document(s), filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on October 9, 2008.

/s/ Melvin R. Wilcox, III