

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

55 BRAKE, LLC,

Plaintiff,

v.

AUDI OF AMERICA, et al.,

Defendants.

Case No. 1:CV 08-177-BLW

**ORDER**

Following a conference between the Court's staff and all counsel, the Court has considered whether to proceed with the bench trial set for March 21, 2011. As counsel discussed, the Federal Circuit has not yet issued its en banc decision on the inequitable conduct issue in *Therasense v. Becton*. The Court considered waiting for that decision before holding trial. However, the next trial date on the Court's calendar is far in the future, and the delay in this case would be substantial, especially if a further jury trial was necessary on infringement issues.


For these reasons, the Court will proceed with the bench trial on the inequitable conduct issue on March 21, 2011, even if the *Therasense* decision has not been issued. The Court will also set a pretrial hearing date below. Accordingly,

NOW THEREFORE IT IS HEREBY ORDERED, that the Court will proceed with the bench trial on the inequitable conduct issue on March 21, 2011, even if the *Therasense* decision has not been issued.

IT IS FURTHER ORDERED, that a telephonic pretrial conference shall be held on March 16, 2011, at 10:30 a.m. Plaintiff's counsel shall initiate the call either by operator (the Court can be reached at 208-334-9025) or by call-in number. Any call-in number should be communicated to Law Clerk Dave Metcalf at [dave\\_metcalf@id.uscourts.gov](mailto:dave_metcalf@id.uscourts.gov).



DATED: **February 25, 2011**



B. LYNN WINMILL

Chief Judge

United States District Court