

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**PERKINELMER, INC. AND NTD LABORATORIES,
INC.,**
Plaintiffs-Appellees,

v.

INTEMA LIMITED,
Defendant-Appellant.

2011-1577

Appeal from the United States District Court for the
District of Massachusetts in case no. 09-CV-10176, Judge
F. Dennis Saylor, IV.

ON MOTION

Before REYNA, *Circuit Judge.*

O R D E R

Intema, Inc. moves "for leave not to reply" to portions of the appellees brief that are directed to the issues of validity over the Davies European patent application, the Thilaganathan article, and a Snijders book, or, in the alternative for an enlarged reply brief. The appellees

oppose. Intema replies. Intema also moves for an extension of time to file its reply brief.

Appellees may present "all arguments supported by the record and advanced in the trial court in support of the judgment as an appellee, even if those particular arguments were rejected or ignored by the trial court." *Bailey v. Dart Container Corp. of Michigan*, 292 F.3d 1360 (Fed. Cir. 2002). The appellees presented arguments to the district court with respect to the above-noted issues during summary judgment briefing. Thus, PerkinElmer may present the same arguments here, even if as Intema asserts the district court did not consider the issues in reaching its ultimate determination. However, the relevance and merits of those arguments are left to the discretion of the merits panel.

Accordingly,

IT IS ORDERED THAT:

(1) The motions for "leave not to reply" and for an enlarged reply brief are denied.

(2) The motion for an extension of time is granted. Intema's reply brief is due within 14 days of the filing of this order.

FOR THE COURT

FEB 29 2012

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Bradford J. Badke, Esq.
Lawrence Rosenthal, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

FEB 29 2012

JAN HORBALY
CLERK