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Attorneys for Defendants
TERUMO CORPORATION and TERUMO CARDIOVASCULAR SYSTEMS CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(SAN FRANCISCO DIVISION)

MAQUET CARDIOVASCULAR, L.L.C., a Delaware L.L.C.,

v.

TERUMO CORPORATION, a Japanese corporation and TERUMO CARDIOVASCULAR SYSTEMS CORPORATION, a Delaware corporation,

No. C 08-01735 JSW

UNOPPOSED MOTION TO STAY UNDER 28 U.S.C. § 1659

Date: July 11, 2008
Time: 9:00 a.m.
Place: Courtroom 2,17th floor
Judge: Hon. Jeffrey S. White

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on July 11, 2008 at 9:00 a.m., or as soon thereafter as counsel may be heard in the above-captioned Court, Defendants Terumo Corporation and Terumo Cardiovascular Systems Corporation (collectively, Terumo), will and hereby do move for an order staying these proceedings pursuant to 28 U.S.C. § 1659.

Terumo hereby moves this Court to stay this action until the determination of the U.S. International Trade Commission ("ITC") becomes final in the ITC Proceeding between Terumo and Plaintiff Maquet Cardiovascular, L.L.C. (Maquet) that involves the same patents asserted by Maquet in these proceedings. Terumo has conferred with counsel for Maquet, and Maquet does not oppose this motion.

Maquet filed this action on April 1, 2008 asserting infringement by Terumo of United States Patent Nos. 6,830,546, and Re 36,043 (together the "Patents-In-Suit"). On the same day, Maquet filed a complaint with the ITC pursuant to Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 ("Section 337") asserting the same two patents against Terumo (the "ITC Proceedings"). The ITC initiated its proceeding on April 28, 2008 (Mack Declaration Ex. A at 3) (Notice of Investigation dated April 28, 2008). Because Maquet has asserted exactly the same patents against Terumo in both actions, the claims in each of the proceedings involve the same issues.

Upon the request of defendant in a civil action who is also a respondent in an ITC investigation under Section 337, the Court "shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceedings before the Commission." 28 U.S.C. § 1659(a). This stay is automatic if it is requested within 30 days from the later of (1) the party being "named" a respondent in the ITC Proceedings, or (2) the filing of the district court action. 28 U.S.C. § 1659 (a)(1) – (2); *see also In re Princo,* 478 F.3d 1345, 1355 (Fed. Cir. 2007) (directing district court to stay proceedings until ITC investigation becomes final). In this case, Terumo's request is timely because Terumo filed this motion within 30 days after Terumo was named as a respondent in the ITC Proceeding. (Mack Declaration Ex. A at 3) (Notice of Investigation dated April 28, 2008).

Based upon the foregoing, Terumo respectfully requests that the Court stay this action until the determination of the ITC becomes final.

Dated: May 5, 2008

FISH & RICHARDSON P.C.

By: /s/ Shelley K. Mack
Shelley K. Mack

Attorneys for Defendants
TERUMO CORPORATION, AND TERUMO CARDIOVASCULAR SYSTEMS CORPORATION