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MIZUHO Orthopedic Systems, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(SAN FRANCISCO DIVISION)

MIZUHO ORTHOPEDIC SYSTEMS, INC., a Delaware Corporation Plaintiff, vs. **STERIS CORPORATION**, an Ohio Corporation, Defendant.	Case No. **13 – CV – 01077 – JSW** **STIPULATED ORDER RE: DISCOVERY OF ELECTRONICALLY STORED INFORMATION**

1. PURPOSE

This Order will govern discovery of electronically stored information ("ESI") in this case as a supplement to the Federal Rules of Civil Procedure, this Court's Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

2. COOPERATION

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court's Guidelines for the Discovery of ESI.

3. LIAISON

The parties will identify liaisons to each other who are and will be knowledgeable about and

responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

4. PRESERVATION

The parties will discuss their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

a) Only ESI created or received between September 1, 2003 and the present will be preserved;

b) The parties will exchange a list of the types of ESI they believe should be preserved and the custodians, or general job titles or descriptions of custodians, for whom they believe ESI should be preserved, e.g. "HR head," "scientist," and "marketing manager." The parties shall add or remove custodians as reasonably necessary;

c) The parties will agree on the number of custodians per party for whom ESI will be preserved;

d) Data sources not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but not searched, reviewed, or produced: backup media of systems no longer in use that cannot be accessed;

e) The parties will agree to disclose data sources that are not reasonably accessible. The parties may mutually agree to exclude certain sources of electronically stored information from the preservation order, namely: backup media created before a certain date, digital voicemail, instant messaging, automatically saved versions of documents;

f) In addition to the agreements above, the parties agree data from certain sources (1) could contain relevant information but (2) under the proportionality factors, should not be preserved.

5. SEARCH

The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

6. PRODUCTION FORMATS

The parties agree to produce documents in TIFF or PDF, native, or a combination thereof, file formats, bates labeled, with load files. Load files shall include at a minimum information indicating where individual pages or files belong together as documents, to include attachments, and where each document begins and ends. Excel documents will be produced in native format with the filename of each having a separate, single bates number, and the TIFF or PDF production containing a placeholder indicating the filename produced in native format. If particular documents otherwise warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

7. PHASING

When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to phase the production of ESI and the initial production according to the identity and priority of custodians disclosed under section 4(b). Following the initial production, the parties will continue to prioritize the order of subsequent productions.

8. DOCUMENTS PROTECTED FROM DISCOVERY

a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.

b) Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually, if appropriate.

9. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

IT IS SO STIPULATED, through Counsel of Record.

DATED: June 12, 2013. Bielen, Lampe & Thoeming, P.A.

By /s/ Charles L. Thoeming
Charles L. Thoeming
Attorneys for MIZUHO Orthopedic Systems, Inc.

DATED: June 12, 2013. Winston & Strawn, LLP

By /s/ Floyd R. Nation
Floyd R. Nation
Attorneys for STERIS Corporation

CONCURRENCE IN FILING

I, Charles L. Thoeming, am the ECF User whose identification and password are being used to file this Stipulated Order Re Discovery of ESI. In compliance with General Order 45.X.B, I hereby attest that Floyd R. Nation has concurred in this filing.

/s/ Charles L. Thoeming
Charles L. Thoeming

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 12, 2013.

Jeffrey S. White
UNITED STATES DISTRICT JUDGE