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U.S. DISTRICT COURT
NEW HAVEN, CT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

TYCO HEALTHCARE GROUP LP and UNITED STATES SURGICAL CORPORATION, Plaintiffs, v. ETHICON ENDO-SURGERY, INC., Defendant.	Civil Action No: 3:10cv0060 (JBA)

STIPULATION AND ORDER

WHEREAS Tyco Healthcare Group LP ("Tyco") and United States Surgical Corporation ("USSC") (collectively, "the Plaintiffs") are engaged in litigation with Ethicon Endo-Surgery, Inc. ("Ethicon") in the above-captioned matter;

WHEREAS in a prior action styled *Tyco Healthcare Group LP et al. v. Ethicon Endo-Surgery, Inc.*, C.A. No. 3:04-CV-1702-JBA (D. Conn.) (the "'1702 action'"), Tyco filed a motion for summary judgment of infringement of claims 1, 5, and 9 of U.S. Patent No. 6,063,050 (the '050 patent) and claims 1, 6, 7, and 15 of U.S. Patent No. 6,468,286 (the '286 patent) with respect to Ethicon's then accused products;

WHEREAS in ruling on Tyco's summary judgment motion of infringement in the '1702 action, the Court found claims 1, 5, and 9 of the '050 patent and claims 1, 6, 7, and 15 of the '286 patent infringed with respect to Ethicon's then accused products;

WHEREAS on January 14, 2010, Plaintiffs filed the present action against Ethicon asserting infringement of the '050 patent and the '286 patent with respect to Ethicon products accused of infringement in the '1702 action and several newly accused products;

WHEREAS in the present action, Plaintiffs intend to move for summary judgment of infringement of claims 1, 5, and 9 of the '050 patent and claims 1, 6, 7, and 15 of the '286 patent with respect to Ethicon's newly accused ACE23E, ACE36E, and ACE45E products;

WHEREAS for purposes of infringement in this case, Ethicon's ACE23E, ACE36E, and ACE45E products are materially the same as Ethicon's ACE23P and ACE36P products found to infringe in the '1702 action;

WHEREAS the parties mutually seek to avoid unnecessary motion practice and briefing in this action;

The parties stipulate that, upon entry of this stipulation as an Order:

1. For purposes of this action, the Court's Ruling on Motions for Summary Judgment from the '1702 Action dated October 8, 2007 (D.I. 203) ("the October 8, 2007 Order"), attached as Exhibit 1, is hereby amended to include Ethicon's Harmonic ACE23E, ACE36E, and ACE45E as accused products subject to Tyco's Motion for Summary Judgment of Infringement. For the reasons set out in Part IV of the October 8, 2007 Order with respect to the accused ACE23P and ACE36P products, the Court's finding of infringement of claims 1, 5, and 9 of the '050 patent and claims 1, 6, 7, and 15 of the '286 patent shall be deemed to apply to the newly accused ACE23E, ACE36E, and ACE45E products.

2. For purposes of the record in this case, the parties' filed briefing and evidence related to Tyco's motion for summary judgment of infringement from the '1702 action shall be

deemed to have been filed in the current action and to have specifically included the newly accused ACE devices as products subject to the motion.

3. Both parties agree that neither party is foregoing any right to appeal any aspect of the Court's summary judgment ruling, including any of the Court's claim construction rulings, related to claims 1, 5, and 9 of the '050 patent and claims 1, 6, 7, and 15 of the '286 patent.

4. In view of this stipulation, the parties agree that motion and briefing on Tyco's intended motion for summary judgment of infringement is now moot.

PLAINTIFFS

By: /s/ Mark W. Rueh Dated February 4, 2011

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By: /s/ Steven D. Maslowski Dated February 4, 2011

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IT IS SO ORDERED:

/S/

HONORABLE JANET BOND ARTERTON

2/27/11