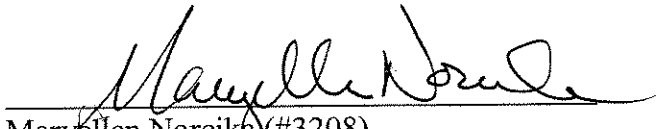
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KYPHON, INC., Plaintiff, v. DISC-O-TECH MEDICAL TECHNOLOGIES, LTD. and DISC ORTHOPAEDIC TECHNOLOGIES, INC., Defendants.	Civil Action No. 04-0204-JJF

DISC-O-TECH MEDICAL TECHNOLOGIES, LTD.'S AND DISC ORTHOPAEDIC TECHNOLOGIES, INC.'S MOTION FOR SUMMARY JUDGMENT THAT KYPHON, INC.'S U.S. PATENT NOS. 5,108,404 AND 4,969,888 ARE INVALID DUE TO ANTICIPATION AND/OR OBVIOUSNESS

Defendants, Disc-O-Tech Medical Technologies, Ltd. and Disc Orthopaedic Technologies, Inc. (collectively "DOT"), hereby move for summary judgment that the claims of U.S. Patent Nos. 5,108,404 and 4,969,888 are invalid due to anticipation and/or obviousness. The grounds for this motion are set forth in DOT's opening brief, submitted herewith.

MORRIS, NICHOLS, ARSHT & TUNNELL



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April 6, 2005

CERTIFICATE OF SERVICE

I, Maryellen Noreika, hereby certify that copies of the foregoing were caused to be served this 6h day of April, 2005 upon the following in the manner indicated:

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