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.	C.A. 04-204-JJF

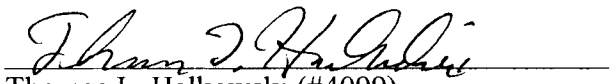
KYPHON'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT

Plaintiff, Kyphon, Inc., respectfully moves this Court for the entry of partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure that defendants infringe: (i) claims 1, 3, 7, 8, 9, 11, and 14 of the '888 patent; (ii) claims 1, 3, 8, 9, 10, 12, and 15 of the '404 patent; (iii) claims 1, 10, 11, 13, 15, 20, and 21 of the '734 patent, and claims 26, 27, 36, 37, 41 and 48 of the '054 patent. The reasons for plaintiff's motion for partial summary judgment are fully set forth in the opening brief and supporting declaration filed herewith.

WHEREFORE, plaintiff requests that the Court grant this motion for partial summary judgment.

Dated: April 6, 2005

FISH & RICHARDSON P.C.

By: 

Thomas L. Halkowski (#4099)
919 N. Market Street, Suite 1100
P.O. Box 1114
Wilmington, DE 19899-1114
Tel: (302) 652-5070
Fax: (302) 652-0607

Frank E. Scherkenbach
Michael R. Hamlin
225 Franklin Street
Boston, MA 02110-2804
Tel: (617) 542-5070
Fax: (617) 542-8906

Karen I. Boyd
500 Arguello Street, Suite 500
Redwood City, CA 94063
Tel: (650) 839-5070
Fax: (650) 839-5071

Rama G. Elluru (admitted only in Texas and Virginia)
1425 K Street, N.W.
Washington, DC 20005
Tel: (202) 783-5070
Fax: (202) 783-2331

Attorneys for Plaintiff
KYPHON INCORPORATED

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2005, I electronically filed with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

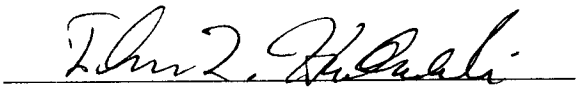
Maryellen Noreika
Morris Nichols Arsht & Tunnell
Chase Manhattan Centre
1201 North Market Street, Suite 2100
P.O. Box 1347
Wilmington, DE 19899-1347

Attorneys for Defendants
Disc-O-Tech Medical Technologies, Ltd.
and Disc Orthopaedic Technologies, Inc.

I hereby certify that on April 6, 2006, I have mailed by Federal Express, the document(s) to the following non-registered participants:

Eric J. Lobenfeld
Jonathan M. Sobel
Robert J. DeMento
Hogan & Hartson, L.L.P.
875 Third Avenue
New York, NY 10022

Attorneys for Defendants
Disc-O-Tech Medical Technologies, Ltd.
and Disc Orthopaedic Technologies, Inc.



Thomas L. Halkowski
(halkowski@fr.com)

80023873.doc