IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KYPHON INC.,	)	
Plaintiff,	)	
v.	)	C.A. No. 04-204-JJF
DISC-O-TECH MEDICAL TECHNOLOGIES LTD., and DISC ORTHOPAEDIC TECHNOLOGIES, INC.,	)	
Defendants.	)	

DEFENDANTS DISC-O-TECH MEDICAL TECHNOLOGIES, LTD.'S AND DISC ORTHOPAEDIC TECHNOLOGIES, INC.'S NOTICE UNDER 35 U.S.C. § 282

Pursuant to 35 U.S.C. § 282, Defendants Disc-O-Tech Medical Technologies, Ltd. and Disc Orthopaedic Technologies, Inc. ("DOT") hereby provide Plaintiff Kyphon, Inc. ("Kyphon") with notice of the patents, publications, and other evidence (in addition to any other patents, publications, and other evidence identified in prior pleadings and other documents served on Kyphon) on which DOT may rely at trial as anticipating or rendering obvious U.S. Patent Nos. 5,108,404, 4,969,888, 6,235,043 B1, 6,241,734 B1, and 6,613,054 B2 ("the Kyphon patents-in-suit"), or as showing the state of the prior art:

- § U.S. Patent No. 3,626,949 Dec. 14, 1971 Shute;
- § U.S. Patent No. 4,488,549 Dec. 18, 1984 Lee et al.;
- § U.S. Patent No. 4,518,430 May 21, 1985 Brown et al.;
- § U.S. Patent No. 4,576,152 March 18, 1986 Müller et al.;
- § U.S. Patent No. 4,627,434 Dec. 9, 1986 Murray;

- § U.S. Patent No. 4,801,263 Jan. 31, 1989 Clark;
- § U.S. Patent No. 4,878,495 Nov. 7, 1989 Grayzel;
- § U.S. Patent No. 4,909,252 Mar. 20, 1990 Goldberger;
- § U.S. Patent No. 5,049,132 Sep. 17, 1991 Shaffer et al.;
- § U.S. Patent No. 5,108,404 Apr. 28, 1992 Scholten et al.;
- § U.S. Patent No. 5,312,333 May 17, 1994 Churinetz et al.;
- § U.S. Patent No. 5,415,631 May 16, 1995 Churinetz et al.;
- § U.S. Patent No. 5,741,261 Apr. 21, 1998 Moskovitz et al.;
- § U.S. Patent No. 5,919,196 Jul. 6, 1999 Bobic et al.;
- § U.S. Patent No. 6,017,348 Jan. 25, 2000 Hart et al.;
- § Aebi, M., "The internal skeletal fixation system. A new treatment of thoracolumbar fractures and other spinal disorders," Clin. Orthop., Vol. 227, pp. 30 - 43, 1988;
- § Angel, M. et al., "Vascularization of Tricalcium Phosphate, an Artificial Bone Substitute," Microsurgery, Vol. 6, pp. 175 - 81, 1985;
- § Benum, P. et al., "Porous Ceramics as a Bone Substitute in the Medial Condyle of the Tibia," Acta Orthop. Scand., Vol. 48, pp. 150 - 57, 1977;
- § Blauth, M., "Therapeutic Concept and Results of Operative Treatment in Acute Trauma of the Thoracic and Lumbar Spine: The Hannover Experience," J. of Orthop. Trauma, Vol. 1, No. 3, pp. 240 – 252, 1987;
- § Bucholz, R. et al., "Hydroxyapatite and Tricalcium Phosphate Bone Graft Substitutes," Orthop. Clin. North Am., Vol. 18, No. 2, pp. 323 - 34, 1987;

- § Campbell's Operative Orthopaedics, A.H. Crenshaw, Ed., 7th ed., Chapter 44, pp. 1653 – 1663, 1987;
- § Carlson, D., et al., "The Use of Methylmethacrylate in Repair of Neoplastic Lesions in Bone," Radiology, Vol. 112, pp. 43 - 46, 1974;
- § Charvet, A. et al., "Pulmonary embolism of cement during vertebroplasty," Ann. Fr. Anesth. Reanim, Vol. 23, No. 8, pp. 827 - 30, 2004;
- § Daniaux, H., "Technik und Ergebnisse der transpedikulären Spongiosaplastik bei Kompressionsbrüchen im Lendenwirbelsäulenbereich," Acta Chir. Austr. (Suppl.), Vol. 43, pp. 79 - 80, 1982;
- § Daniaux, H., "Transpedikuläre Reposition und erste Spongiosaplastik bei Wirbelkörperbrüchen der unteren Brust und Lendenwirbelsäule," Unfallchirurg, Vol. 89, pp. 197 - 213, 1986;
- § Dick, W., "The 'fixature interne' as versatile implant for spine surgery," Spine, Vol. 12 (9), pp. 882 - 900, 1987;
- § Dick, W., "Use of the Acetabular Reamer to Harvest Autogeneic Bone Graft Material: A Simple Method for Producing Bone Paste," Arch. Orthop. Trauma Surg., Vol. 105, pp. 235 – 238, 1986;
- § Edeland, H.G., "Open Reduction of Central Compression Fractures of the Tibial Plateau," Acta Orthop. Scand., Vol. 47, pp. 686 - 689, 1976;
- § Frame, J. et al., "Hydroxyapatite as a Bone Substitute in the Jaws," Biomaterials, Vol. 2, pp. 19 - 22, 1981;

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- Padovani, B. et al., "Pulmonary Embolism Caused by Acrylic Cement: A Rare Complication of Percutaneous Vertebroplasty," Am. J. Neuroradiology, Vol. 20, pp. 375 - 77, 1999;
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- Kyphon's 510(k) Premarket Notification Submission, KphX™ Inflatable Bone Tamp – K981251 (KY 004433 – 4865);
- Presentation regarding Kyphon meeting with FDA on January 16, 2001 (KY 004932 - 4959);
- Draft Letter from Richard Mott to Erin Keith, dated July 9, 2003 (KY 263533 - 263536);
- Letter from K. Talmadge to FDA, dated April 3, 1998 (KY 004440);
- Deposition Testimony of Mark Reiley, dated Nov. 3, 2004;
- Deposition Testimony of Mark Reiley, dated Feb. 2, 2005;
- Deposition Testimony of Arie Scholten, dated Feb. 15, 2005;
- Deposition Testimony of Karen Talmadge, dated February 1, 2005;
- Deposition Testimony of William Rosenberg, M.D., dated Nov. 22, 2004;
- Declaration of William Rosenberg, M.D., dated Nov. 10, 2004;
- Expert Report of Dr. David Mitchell Regarding the Invalidity of U.S. Patent Nos. 5,108,404, 4,969,888, and 6,235,043 B1, dated March 7, 2005;
- Expert Report of Dr. David Mitchell Regarding the Invalidity of U.S. Patent Nos. 6,241,734 B1 and 6,613,054 B2, dated March 11, 2005;
- Declaration of Dr. David Mitchell, dated April 6, 2005;

- Rebuttal Expert Witness Report of Michael Marks, M.D., dated March 23, 2005;
- Second Rebuttal Expert Witness Report of Michael Marks, M.D., dated April 4, 2005;
- Declaration of Michael Marks, M.D., dated April 14, 2005;
- Any prior art relied upon by Kyphon.

Finally, DOT intends to rely on information known to persons skilled in the art as explained in Dr. Mitchell's expert reports and in deposition, and through the trial testimony of DOT's other witnesses.

MORRIS, NICHOLS, ARSHT & TUNNELL

/s/ Maryellen Noreika (#3208)

Maryellen Noreika (#3208)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
(302) 658-9200
Attorneys for Defendants Disc-O-Tech Medical Technologies, Ltd. and Disc Orthopaedic Technologies Inc.

OF COUNSEL:

Eric J. Lobenfeld
Jonathan M. Sobel
Arlene L. Chow
Robert J. DeMento
HOGAN & HARTSON L.L.P.
875 Third Avenue
New York, NY 10022
(212) 918-3000

May 2, 2005

CERTIFICATE OF SERVICE

I, Maryellen Noreika, hereby certify that copies of the foregoing were caused to be served this 2nd day of May, 2005 upon the following in the manner indicated:

BY HAND DELIVERY

Thomas L. Halkowski
FISH & RICHARDSON P.C.
919 N. Market Street, Suite 1100
P.O. Box 1114
Wilmington, DE 19899-1114

/s/ Maryellen Noreika (#3208)
Maryellen Noreika (#3208)