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

SPECIAL MASTER'S MEMORANDUM ORDER RE: D.I. 148

1. Plaintiff Kyphon Inc. ("Kyphon") has moved for Partial Summary Judgment that defendants Disc-O-Tech Medical Technologies, Ltd. and Disc Orthopaedic Technologies, Inc. (collectively, "Disc-O-Tech") Infringe U.S. Patent No. 4,969,888 (the '888 patent); U.S. Patent No. 5,108,404 (the '404 patent); U.S. Patent No. 6,241,734 (the '734 patent); and U.S. Patent No. 6,613,054 (the '054 patent). (D.I. 148).

2. For the reasons set forth in the memorandum opinion that will issue, partial summary judgment of infringement in favor of Kyphon is hereby **GRANTED** with respect to the '888 patent and the '404 patent.

3. Because genuine issues of material fact exist as to whether Disc-O-Tech's accused product(s) infringe the '734 patent and the '054 patent, Kyphon's motion for partial summary judgment of infringement with respect to the '734 and '054 patents is hereby **DENIED**.

/s Vincent J. Poppiti
Vincent J. Poppiti (DSBA No. 100614)
Special Master

Dated: May 16, 2005