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Appendix 1

Statement of Stipulated Facts[1]

Plaintiff Kyphon Inc. ("Kyphon") and Defendants Disc-O-Tech Medical Technologies Ltd. and Disc Orthopaedic Technologies, Inc. (collectively, "DOT"), stipulate to the following uncontested facts, which may be received as evidence in this action:

1. Kyphon is a Delaware corporation, with its principal place of business located in Sunnyvale, California.

2. Defendant Disc-O-Tech Medical Technologies Ltd. is an Israeli corporation located in Israel. Defendant Disc Orthopaedic Technologies, Inc. is a Delaware corporation located in Monroe Township, New Jersey. Disc-O-Tech Medical Technologies Ltd. and Disc Orthopaedic Technologies, Inc. are collectively referred to as "DOT."

3. U.S. Patent No. 4,969,888, entitled "Surgical Protocol for Fixation of Osteoporotic Bone Using Inflatable Device," was issued by the United States Patent and Trademark Office to named inventors Arie Scholten and Mark A. Reiley on November 13, 1990. The patent application was filed on February 9, 1989, and the patent is assigned to Kyphon.

4. U.S. Patent No. 5,108,404, entitled "Surgical Protocol for Fixation of Bone Using Inflatable Device," was issued by the United States Patent and Trademark

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[1] Kyphon requests that these stipulated facts be read to the jury with the Preliminary Jury Instructions. DOT objects to these stipulated facts being read to the jury with the Preliminary Jury Instructions, as Kyphon requests; DOT contends it would be out of context and prejudicial to do so.

Office to named inventors Arie Scholten and Mark A. Reiley on April 28, 1992. The patent application was filed on August 15, 1990, and the patent is assigned to Kyphon.

5. U.S. Patent No. 6,235,043, entitled "Inflatable Device for Use in Surgical Protocol Relating to Fixation of Bone," was issued by the United States Patent and Trademark Office to named inventors Mark Reiley, Arie Scholten, and Karen Talmadge on May 22, 2001. The patent application was filed on January 23, 1997, and the patent is assigned to Kyphon.

6. U.S. Patent No. 6,241,734, entitled "Systems and Methods for Placing Materials Into Bone," was issued by the United States Patent and Trademark Office to named inventors Robert M. Scribner, Michael L. Reo, Mark A. Reiley, and Ryan Boucher on June 5, 2001. The patent application was filed on August 14, 1998, and the patent is assigned to Kyphon.

7. U.S. Patent No. 6,613,054, entitled "System and Methods for Placing Materials Into Bone," was issued by the United States Patent and Trademark Office to named inventors Robert M. Scribner, Michael L. Reo, Mark A. Reiley, and Ryan Boucher on September 2, 2003. The patent application was filed on March 12, 2001, and the patent is assigned to Kyphon.

8. Kyphon is the owner of all right, title, and interests to the '888, '404, '043, '734, and '054 patents.

9. Kyphon, through the sales of and instruction regarding KyphX IBTs and related devices, practices one or more asserted claims in U.S. Patent Nos. 4,969,888; 5,108,404; and 6,235,043 B1.

10. DOT first became aware of Kyphon's kyphoplasty products in late 1999 or early 2000.

11. DOT has made, used, sold, and offered for sale medical devices called the SKy Bone Expander, with associated accessories. The SKy Bone Expander System was formerly known as the B-Twin Bone Expander System.

12. DOT instructs physicians on how to use the SKy Bone Expander and accessories in Instructions for Use and other materials. DOT provides Instructions for Use with each SKy Bone Expander System and expects that doctors will follow those Instructions for Use. DOT manufactures the SKy Bone Expander and accessories specifically to be used as instructed, and to DOT's knowledge, there are no substantial uses of the DOT devices that are not described in the Instructions for Use and other materials.

13. DOT has attended surgical procedures and during such procedures has provided guidance to surgeons regarding the use of the SKy Bone Expander System.

14. When a surgeon performs a procedure on a vertebra using the SKy Bone Expander System as directed by DOT's Instructions for Use, a drill is used to form a passage in the cancellous bone.

15. In surgeries using the SKy Bone Expander System on vertebrae that have been witnessed by DOT employees or representatives in the United States, to the best of DOT's knowledge, after using the SKy Bone Expander System, most all of the surgeons have completed the surgery by putting bone cement into the vertebra.