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5/11/05

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. No. 04-204-JJF

DISC-O-TECH MEDICAL TECHNOLOGIES LTD., AND DISC ORTHOPAEDIC TECHNOLOGIES, INC.'S, PROPOSED FORM OF VERDICT AND SPECIAL INTERROGATORIES[1]

We, the jury, unanimously find as follows:

A. Infringement

Infringement of U.S. Patent Nos. 4,969,888 (the "'888 Patent") and 5,108,404 (the "'404 Patent)

1. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 1 of the '888 and '404 Patents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

2. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 1 of the '888 and '404 Patents under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

[1] This form lists just one claim per patent group, to be supplemented as required before submission to the jury.

Infringement of U.S. Patent No. 6,235,043 (the '043 Patent")

3. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 2 of the '043 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

4. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 2 of the '043 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

5. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 17 of the '043 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

6. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 17 of the '043 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

Infringement of U.S. Patent No. 6,241,054 (the "'054 Patent")

7. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 26 of the '054 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

8. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 26 of the '054 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

9. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 36 of the '054 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

10. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 36 of the '054 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

11. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 41 of the '054 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

12. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 41 of the '054 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

13. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 46 of the '054 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

14. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 46 of the '054 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

15. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 48 of the '054 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

16. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 48 of the '054 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

Infringement of U.S. Patent No. 6,241,734 (the "'734 Patent)

17. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 1 of the '734 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

18. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 1 of the '734 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

19. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 12 of the '734 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

20. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 12 of the '734 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

21. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech literally infringed Claim 15 of the '734 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

22. Has Kyphon proven by a preponderance of the evidence that Disc-O-Tech infringed Claim 15 of the '734 Patent under the doctrine of equivalents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

B. Invalidity

Invalidity of the '404 Patent – Anticipation

23. Has Disc-O-Tech proven by clear and convincing evidence that the following claims of the '404 Patent are anticipated, and therefore invalid?

Claim 1	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 3	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 8	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 9	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 10	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 12	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 15	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**

If you answered yes to Question 23 as to one or more claims, indicate the anticipated claims of the '404 patent by each of the following prior art references:

Prior Art References	**Anticipated Claim(s)**
Article entitled "Transpedicular Fixation of Thoracolumbar Vertebral Fractures" by Olerud et al., February 1988 ("Olerud").	_____
Article entitled "Open Reduction of Central Compression Fractures of the Tibial Plateau" by Edeland, 1976 ("Edeland").	_____
Article entitled "Fractures of the Tibial Condyles: A Preliminary Report on Supplementary Fixation with Methylmethacrylate," by Kennedy, 1978 ("Kennedy").	_____

Article entitled "Transpedikuläre Reposition und erste Spongiosaplastik bei Wirbelkörperbrüchen der unteren Brust und Lendenwirbelsäule," by Daniaux, 1986 ("Daniaux 1986").	_____
Article entitled "Therapeutic Concept and Results of Operative Treatment in Acute Trauma of the Thoracic and Lumbar Spine: The Hannover Experience," by Blauth, 1987 ("Blauth").	_____
Chapter 35 in Operative Orthopaedics, by Schatzker, 1988 ("Schatzker").	_____

Invalidity of the '888 Patent – Anticipation

24. Has Disc-O-Tech proven by clear and convincing evidence that the following claims of the '888 Patent are anticipated, and therefore invalid?

Claim 1	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 3	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 7	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 8	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 9	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 11	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 14	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**

If you answered yes to Question 24 as to one or more claims, indicate the anticipated claims of the '888 patent by each of the following prior art references:

Prior Art References	**Anticipated Claim(s)**
Article entitled "Transpedicular Fixation of Thoracolumbar Vertebral Fractures" by Olerud et al., February 1988 ("Olerud").	_____

Article entitled "Open Reduction of Central Compression Fractures of the Tibial Plateau" by Edeland, 1976 ("Edeland"). _____

Article entitled "Fractures of the Tibial Condyles: A Preliminary Report on Supplementary Fixation with Methylmethacrylate," by Kennedy, 1978 ("Kennedy"). _____

Article entitled "Transpedikuläre Reposition und erste Spongiosaplastik bei Wirbelkörperbrüchen der unteren Brust und Lendenwirbelsäule," by Daniaux, 1986 ("Daniaux 1986"). _____

Article entitled "Therapeutic Concept and Results of Operative Treatment in Acute Trauma of the Thoracic and Lumbar Spine: The Hannover Experience," by Blauth, 1987 ("Blauth"). _____

Chapter 35 in Operative Orthopaedics, by Schatzker, 1988 ("Schatzker"). _____

Invalidity of the '404 Patent – Obviousness

25. Has Disc-O-Tech proven by clear and convincing evidence that the following claims of '404 Patent are invalid for obviousness?

Claim 1	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 3	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 8	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 9	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 10	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 12	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 15	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**

If you answered yes to Question 25 as to one or more claims, indicate the claims of the '404 patent rendered obvious by any of the following references alone, or in combination with one of more of the other references listed here:

Prior Art References	**Claim(s) Rendered Obvious**
Article entitled "Transpedicular Fixation of Thoracolumbar Vertebral Fractures" by Olerud et al., February 1988 ("Olerud").	_____
Article entitled "Open Reduction of Central Compression Fractures of the Tibial Plateau" by Edeland, 1976 ("Edeland").	_____
Article entitled "Fractures of the Tibial Condyles: A Preliminary Report on Supplementary Fixation with Methylmethacrylate," by Kennedy, 1978 ("Kennedy").	_____
Article entitled "Transpedikuläre Reposition und erste Spongiosaplastik bei Wirbelkörperbrüchen der unteren Brust und Lendenwirbelsäule," by Daniaux, 1986 ("Daniaux 1986").	_____
Article entitled "Therapeutic Concept and Results of Operative Treatment in Acute Trauma of the Thoracic and Lumbar Spine: The Hannover Experience," by Blauth, 1987 ("Blauth").	_____
Chapter 35 in Operative Orthopaedics, by Schatzker, 1988 ("Schatzker").	_____
Chapter 44 in Campbell's Operative Orthopaedics, 1987 ("Campbell").	_____

Article entitled "Treated by Percutaneous Poking Reduction and Internal Fixation," by Ma, 1984 ("Ma").

Article entitled "Technik und Ergebnisse der transpedikulären Spongiosaplastik bei Kompressionsbrüchen im Lendenwirbelsäulenbereich," Daniaux, 1982 ("Daniaux 1982").

Article entitled "Use of the Acetabular Reamer to Harvest Autogeneic Bone Graft Material: A Simple Method for Producing Bone Paste," by Dick, 1986 ("Dick 1986").

Article entitled "The Use of Methylmethacrylate in Repair of Neoplastic Lesions in Bone," by Carlson, 1974 ("Carlson").

U.S. Patent No. 4,518,430, issued on May 21, 1985 to Brown et al. ("Brown and Chow patent").

Article entitled "Effect of Cyrosurgery and Polymethyl Methacrylate on the Tumor Cavity," by Malawer and Marks, 1987 ("Malawer and Marks article").

Chapter entitled "Effectiveness of Methyl Methacrylate as a Physical adjuvant in Local Tumor Control," 1987 ("Limb Salvage chapter").

Invalidity of the '888 Patent – Obviousness

26. Has Disc-O-Tech proven by clear and convincing evidence that the following claims of 888 Patent are invalid for obviousness?

Claim 1	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 3	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**

Claim 7	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 8	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 9	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 11	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 14	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**

If you answered yes to Question 26 as to one or more claims, indicate the claims of the '888 patent rendered obvious by any of the following references alone, or in combination with one of more of the other references listed here:

Prior Art References	**Claim(s) Rendered Obvious**
Article entitled "Transpedicular Fixation of Thoracolumbar Vertebral Fractures" by Olerud et al., February 1988 ("Olerud").	_____
Article entitled "Open Reduction of Central Compression Fractures of the Tibial Plateau" by Edeland, 1976 ("Edeland").	_____
Article entitled "Fractures of the Tibial Condyles: A Preliminary Report on Supplementary Fixation with Methylmethacrylate," by Kennedy, 1978 ("Kennedy").	_____
Article entitled "Transpedikuläre Reposition und erste Spongiosaplastik bei Wirbelkörperbrüchen der unteren Brust und Lendenwirbelsäule," by Daniaux, 1986 ("Daniaux 1986").	_____
Article entitled "Therapeutic Concept and Results of Operative Treatment in Acute Trauma of the Thoracic and Lumbar Spine: The Hannover Experience," by Blauth, 1987 ("Blauth").	_____

Chapter 35 in Operative Orthopaedics, by Schatzker, 1988 ("Schatzker").

Chapter 44 in Campbell's Operative Orthopaedics, 1987 ("Campbell").

Article entitled "Treated by Percutaneous Poking Reduction and Internal Fixation," by Ma, 1984 ("Ma").

Article entitled "Technik und Ergebnisse der transpedikulären Spongiosaplastik bei Kompressionsbrüchen im Lendenwirbelsäulenbereich," Daniaux, 1982 ("Daniaux 1982").

Article entitled "Use of the Acetabular Reamer to Harvest Autogeneic Bone Graft Material: A Simple Method for Producing Bone Paste," by Dick, 1986 ("Dick 1986").

Article entitled "The Use of Methylmethacrylate in Repair of Neoplastic Lesions in Bone," by Carlson, 1974 ("Carlson").

U.S. Patent No. 4,518,430, issued on May 21, 1985 to Brown et al. ("Brown and Chow patent").

Article entitled "Effect of Cyrosurgery and Polymethyl Methacrylate on the Tumor Cavity," by Malawer and Marks, 1987 ("Malawer and Marks article").

Chapter entitled "Effectiveness of Methyl Methacrylate as a Physical adjuvant in Local Tumor Control," 1987 ("Limb Salvage chapter").

Invalidity of the '043 Patent – Obviousness

27. Has Disc-O-Tech proven by clear and convincing evidence that the following claims of '043 Patent are invalid for obviousness?

Claim 2	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 17	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 20	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 23	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 24	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 25	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 26	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 27	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 28	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**

If you answered yes to Question 27 as to one or more claims, indicate the claims of the '043 patent rendered obvious by any of the following references alone, or in combination with one of more of the other references listed here:

Prior Art References	**Claim(s) Rendered Obvious**
U.S. Patent No. 3,626,949, issued on December 14, 1971 to Shute (" '949 Patent").	_____
U.S. Patent No. 4,878,495, issued on November 7, 1989 to Grayzel (" '495 Patent").	_____
U.S. Patent No. 4,909,252, issued on March 20, 1990 to Goldberger (" '252 Patent").	_____

U.S. Patent No. 5,049,132, issued on September 17, 1991 to Shaffer et al. (" '132 Patent").

_____

U.S. Patent No. 5,108,404, issued on April 28, 1992 to Scholten et al. (" '404 Patent").

_____

Invalidity of the '734 Patent – Anticipation

28. Has Disc-O-Tech proven by clear and convincing evidence that the following claims of the '734 Patent are anticipated, and therefore invalid?

Claim 1	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 3	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 7	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 12	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 15	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 19	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**

If you answered yes to Question 28 as to one or more claims, indicate the anticipated claims of the '734 patent by each of the following prior art references:

Prior Art References	**Anticipated Claim(s)**
U.S. Patent No. 5,312,333, issued on May 17, 1994 to Churinetz et al. (" '333 Patent").	_____
U.S. Patent No. 5,415,631, issued on May 16, 1996 to Churinetz et al. (" '631 Patent").	_____

Invalidity of the '734 Patent – Obviousness

29. Has Disc-O-Tech proven by clear and convincing evidence that the following claims of '734 Patent are invalid for obviousness?

Claim 1	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 3	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 4	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 5	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 7	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 8	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 10	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 11	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 12	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 13	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 14	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 15	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 16	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 17	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 19	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 20	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 21	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**

If you answered yes to Question 29 as to one or more claims, indicate the claims of the '734 patent rendered obvious by any of the following references alone, or in combination with one of more of the other references listed here:

Prior Art References	**Claim(s) Rendered Obvious**

U.S. Patent No. 5,312,333, issued on May 17, 1994 to Churinetz et al. (" '333 Patent").

_____

U.S. Patent No. 5,415,631, issued on May 16, 1996 to Churinetz et al. (" '631 Patent").

_____

U.S. Patent No. 4,576,152, issued on March 18, 1986 to Müller et al. (" '152 Patent").

_____

U.S. Patent No. 4,801,263, issued on January 31, 1989 to Clark (" '263 Patent").

_____

U.S. Patent No. 5,741,261, issued on April 21, 1998 to Moskovitz et al. (" '261 Patent").

_____

U.S. Patent No. 5,919,196, issued on July 6, 1999 to Bobic et al. (" '196 Patent").

_____

U.S. Patent No. 6,017,348, issued on January 25, 2000 to Hart et al (" '348 Patent").

_____

U.S. Patent No. 5,108,404, issued on April 28, 1992 to Scholten et al. (" '404 Patent").

_____

Invalidity of the '054 Patent – Obviousness

30. Has Disc-O-Tech proven by clear and convincing evidence that the following claims of '054 Patent are invalid for obviousness?

Claim 26 **Yes_____ (for Disc-O-Tech)** **No_____ (for Kyphon)**

Claim 27	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 28	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 29	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 36	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 37	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 38	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 39	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 41	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 42	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 43	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 44	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 46	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 47	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 48	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**
Claim 49	**Yes_____ (for Disc-O-Tech)**	**No_____ (for Kyphon)**

If you answered yes to Question 30 as to one or more claims, indicate the claims of the '054 patent rendered obvious by any of the following references alone, or in combination with one of more of the other references listed here:

Prior Art References	**Claim(s) Rendered Obvious**
U.S. Patent No. 5,312,333, issued on May 17, 1994 to Churinetz et al. (" '333 Patent").	_____
U.S. Patent No. 5,415,631, issued on May 16, 1996 to Churinetz et al. (" '631 Patent").	_____

U.S. Patent No. 4,576,152, issued on March 18, 1986 to Müller et al. (" '152 Patent").

_____

U.S. Patent No. 4,801,263, issued on January 31, 1989 to Clark (" '263 Patent").

_____

U.S. Patent No. 5,741,261, issued on April 21, 1998 to Moskovitz et al. (" '261 Patent").

_____

U.S. Patent No. 5,919,196, issued on July 6, 1999 to Bobic et al. (" '196 Patent").

_____

U.S. Patent No. 6,017,348, issued on January 25, 2000 to Hart et al (" '348 Patent").

_____

U.S. Patent No. 5,108,404, issued on April 28, 1992 to Scholten et al. (" '404 Patent").

_____

C. Damages

Patent Damages of the '888 and '404 Patents

31. Do you find that Kyphon has proven by a preponderance of the evidence that it is entitled to an award of damages against Disc-O-Tech for infringing the '888 and '404 Patents?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

NOTE: If you answered "yes" to Question ___, answer Question ___.

32. Has Kyphon proven by a preponderance of the evidence that it is entitled to lost profits with respect to Disc-O-Tech's sales of the accused SKy Bone Expander?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

If you answered "yes" to Question __, what is the amount of lost profits to which Kyphon is entitled?

$_____

If you answered "no" to Question ___, what amount of damages in the form of a reasonable royalty do you find Kyphon has proven by a preponderance of the evidence it is entitled to receive from Disc-O-Tech?

___% royalty rate____
$_____

33. If you have found that at least 1 claim of Kyphon's patents-in-suit is valid and infringed, is Kyphon entitled to pre-judgment interest?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

Patent Damages of the '043 Patent

34. Do you find that Kyphon has proven by a preponderance of the evidence that it is entitled to an award of damages against Disc-O-Tech for infringing the '043 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

NOTE: If you answered "yes" to Question ___, answer Question ___.

35. Has Kyphon proven by a preponderance of the evidence that it is entitled to lost profits with respect to Disc-O-Tech's sales of the accrued SKy Bone Expander?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

If you answered "yes" to Question __, what is the amount of lost profits to which Kyphon is entitled?

$_____

If you answered "no" to Question ___, what amount of damages in the form of a reasonable royalty do you find Kyphon has proven by a preponderance of the evidence it is entitled to receive from Disc-O-Tech?

___% royalty rate____
$_____

36. If you have found that at least 1 claim of Kyphon's patent-in-suit is valid and infringed, is Kyphon entitled to pre-judgment interest?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

Patent Damages of the '054 Patent

37. Do you find that Kyphon has proven by a preponderance of the evidence that it is entitled to an award of damages against Disc-O-Tech for infringing the '054 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

NOTE: If you answered "yes" to Question ___, answer Question ___.

38. Has Kyphon proven by a preponderance of the evidence that it is entitled to lost profits with respect to Disc-O-Tech's sales of the accrued SKy Bone Expander?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

If you answered "yes" to Question __, what is the amount of lost profits to which Kyphon is entitled?

$_____

If you answered "no" to Question ___, what amount of damages in the form of a reasonable royalty do you find Kyphon has proven by a preponderance of the evidence it is entitled to receive from Disc-O-Tech?

___% royalty rate____
$ _____

Patent Damages of the '734 Patent

39. Do you find that Kyphon has proven by a preponderance of the evidence that it is entitled to an award of damages against Disc-O-Tech for infringing the '734 Patent?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

NOTE: If you answered "yes" to Question ___, answer Question ___.

40. Has Kyphon proven by a preponderance of the evidence that it is entitled to lost profits with respect to Disc-O-Tech's sales of the accrued SKy Bone Expander?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

If you answered "yes" to Question __, what is the amount of lost profits to which Kyphon is entitled?

$_____

If you answered "no" to Question ___, what amount of damages in the form of a reasonable royalty do you find Kyphon has proven by a preponderance of the evidence it is entitled to receive from Disc-O-Tech?

___% royalty rate____
$ _____

Willful Infringement

If you answered "yes" to any of Questions 1 through ___, answer Question ___.

41. Do you find that Kyphon has shown by clear and convincing evidence that Disc-O-Tech willfully infringed one or more of the Claims of the patents-in-suit?

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

If you answered "yes" to Question __, answer Question __.

42. Which of the patents-in-suit do you find to have been willfully infringed?

a. '888 and '404 Patents

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

b. '043 Patent

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

c. '054 Patent

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

d. '743 Patent

Yes_____ (for Kyphon) **No_____ (for Disc-O-Tech)**

You must each sign this verdict form

Dated: _____ _____
(Foreperson)

_____

_____

_____