FISH & RICHARDSON P.C.

Suite 1100
919 N. Market Street
P.O. Box 1114
Wilmington, Delaware
19899-1114

Telephone
302 652-5070

Facsimile
302 652-0607

Web Site
www.fr.com

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

VIA ECF

June 1, 2005

The Honorable Joseph J. Farnan, Jr.
United States District Court
for the District of Delaware
844 King Street
Wilmington, DE 19801

Re: *Kyphon Inc. v. Disc-O-Tech Medical Technologies, et al.*
C.A. No. 04-204-JJF

FR

AUSTIN
BOSTON
DALLAS
DELAWARE
NEW YORK
SAN DIEGO
SILICON VALLEY
TWIN CITIES
WASHINGTON, DC

Dear Judge Farnan:

Pursuant to paragraph 10 of the September 30, 2004, Protective Order, which as the Court may recall was first adopted in the parallel ITC action, this is to advise of an inadvertent disclosure, by Kyphon's counsel, of information derived from material that DOT has labeled as being confidential. The inadvertent disclosure concerned a partial list of doctors and hospitals which DOT's damages expert had asserted: (i) were customers in the United States for the accused SKy Bone Expander product; and (ii) were not customers of, and/or trained by, Kyphon. We understand that a substantial number of such customers are actually already known to Kyphon as purchasers of Kyphon's patented Inflatable Bone Tamp or as doctors trained by Kyphon. However, because DOT considers the identity of such customers to be confidential, and out of an abundance of caution, Kyphon is submitting this notice to the Court.

Upon becoming aware of the inadvertent disclosure, counsel for Kyphon immediately directed Kyphon to purge the information and to not use the information in any manner. In addition, of course, Kyphon notified counsel for DOT.

Kyphon and its counsel take their obligations under the Protective Order very seriously and regret that this inadvertent disclosure occurred. We will redouble our efforts to insure this type of thing does not recur.

Respectfully,

/s/ Thomas L. Halkowski

Thomas L. Halkowski

cc Clerk of the Court (via ECF)
Maryellen Noreika (via ECF)
Jonathan M. Sobel (via fax)