EXHIBIT A

DeMento, Robert J.

From: Thomas Halkowski [halkowski@fr.com]
Sent: Tuesday, June 07, 2005 2:37 PM
To: Sobel, Jonathan M.
Cc: Lobenfeld, Eric J.; Thomas Halkowski; Chow, Arlene L.; DeMento, Robert J.; MNoreika@MNAT.com; Frank Scherkenbach
Subject: RE: Kyphon: Live Witnesses for Infringement/Validity Trials

Jonathan,

Kyphon anticipates presenting testimony from Drs. Halliday and Loguidice regarding objective indicia of non-obviousness (e.g., praise, long-felt need, etc.). Their full names are set forth in the proposed pretrial order previously filed with the Court, as well as in Kyphon's letter to DOT of January 12, 2005, advising DOT during fact discovery of Kyphon's intention to present them as trial witnesses. The proposed pretrial order also sets forth the witnesses' addresses.

Regards,

Tom

-----Original Message-----
From: Thomas Halkowski
Sent: Monday, June 06, 2005 7:37 PM
To: 'JMSobel@HHLAW.com'
Cc: 'EJLobenfeld@HHLAW.com'; 'ALChow@HHLAW.com'; 'RJDeMento@HHLAW.com'; 'MNoreika@MNAT.com'; Frank Scherkenbach
Subject: Re: Kyphon: Live Witnesses for Infringement/Validity Trials

Jonathan,

We are considering DOT's request and will respond as soon as possible, but today we are focusing on getting our exhibit list out the door.

Btw, on what grounds would DOT possibly move to exclude these witnesses?

Regards,

Tom

Thomas L. Halkowski
Fish & Richardson P.C.
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Suite 1100
P.O. Box 1114
Wilmington, DE 19899-1114
Tel: 302-652-5070 (x8407)
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halkowski@fr.com

-----Original Message-----
From: Sobel, Jonathan M. <JMSobel@HHLAW.com>
To: Thomas Halkowski <halkowski@fr.com>
CC: Lobenfeld, Eric J. <EJLobenfeld@HHLAW.com>; Chow, Arlene L. <ALChow@HHLAW.com>; DeMento, Robert J. <RJDeMento@HHLAW.com>; mnoreika@mnat.com <mnoreika@mnat.com>; Frank Scherkenbach <Scherkenbach@fr.com>
Sent: Sun Jun 05 16:06:34 2005
Subject: RE: Kyphon: Live Witnesses for Infringement/Validity Trials

Tom and Frank -

Please advise whether Kyphon will provide a substantive answer to the inquiry below by close of business tomorrow, June 6. DOT reserves its right to move in limine to preclude

the testimony of these witnesses.
If necessary, we will seek relief from Judge Farnan to obtain this information.

Thank you for your attention.

Very truly yours,
Jonathan

Jonathan M. Sobel
Hogan & Hartson L.L.P.
875 Third Avenue
New York, New York 10022
Tel: (212) 918-3541
Fax: (646) 619-4219 (local/efax)
Email: JMSobel@hhlaw.com

From: Sobel, Jonathan M.
Sent: Thursday, June 02, 2005 4:16 PM
To: Thomas Halkowski
Cc: Lobenfeld, Eric J.; Chow, Arlene L.; DeMento, Robert J.; mnoreika@mnat.com; Frank Scherkenbach
Subject: RE: Kyphon: Live Witnesses for Infringement/Validity Trials

Tom,

Please disclose as soon as possible the subject matter about which Drs. Halliday and Loguidice will testify.
Please identify the relevance of their testimony to the invalidity and infringement trials. Please also provide their employers and titles. Please also provide their full names.

Thank you.

Very truly yours,
Jonathan

Jonathan M. Sobel
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From: Thomas Halkowski [mailto:halkowski@fr.com]
Sent: Wednesday, June 01, 2005 6:50 PM
To: Sobel, Jonathan M.
Cc: Lobenfeld, Eric J.; Chow, Arlene L.; DeMento, Robert J.; mnoreika@mnat.com; Frank Scherkenbach
Subject: Kyphon: Live Witnesses for Infringement/Validity Trials

Jonathan,

Per the parties' agreement to exchange lists of live witnesses on June 1st that each side anticipates will be presented during the upcoming trials on infringement

and validity issues, Kyphon advises that in addition to Dr. Marks, Kyphon anticipates presenting testimony from the inventors (Dr. Reiley, Mr. Scholten and Dr. Talmadge), Kyphon's CEO (Mr. Mott), and brief testimony from Drs. Halliday and Loguidice.

Regards,

Tom

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EXHIBIT B

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Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

January 12, 2005

VIA FACSIMILE AND FIRST CLASS MAIL
Jonathan M. Sobel, Esq.
Hogan & Hartson L.L.P.
875 Third Avenue
New York, NY 10022

Re: *Kyphon Inc. v. Disc-O-Tech Medical Technologies, et al.*
USDC-D. Del. – C.A. 04-204-JJF

Dear Jonathan:

FR

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

This letter concerns the provisions of the Scheduling Order regarding trial witnesses and asserted patent claims.

Kyphon presently anticipates that it may present testimony from the following witnesses:

* Ben Clawson
* Andrew V.S. Doggett
* Dan Daniels
* Dick Emmitt
* Dr. Andrea Halliday
* Jack Lasersohn
* Dr. Joseph C. Loguidice
* Melissa Chang Lui
* Henry Klyce
* Dr. Michael Marks
* Christian S. McCutcheon
* Richard Mott
* Brian Napper
* Heather A. Ramey
* Dr. Mark Reiley
* Arie Scholten
* Robert Scribner
* David Shaw
* Dr. Harry Skinner
* Karen Talmadge
* Art Taylor
* Karl Wenger
* Stuart Young

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Kyphon reserves the right to present testimony from any of the witnesses set forth on DOT's January 12, 2005, witness list, and from any of the depositions that are taken in this suit (or the prior ITC proceeding related to this suit).

With regard to the number of patent claims to be presented at trial, Kyphon advises that it is continuing to carefully review the asserted claims and will advise as soon as practicable of any changes to the reduced set of claims that are presently being asserted by Kyphon. We also look forward to receiving the proposed stipulation that, prior to the holidays, DOT had advised would soon be presented for Kyphon's consideration concerning the narrowing of issues for trial regarding the '054 and '734 patents.

Regards,

Thomas L. Halkowski

TLH:sb

cc Maryellen Noreika, Esq. (via hand delivery)

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