IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KYPHON, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 04-204 JJF
	:	
DISC-O-TECH MEDICAL TECHNOLOGIES LTD. and DISC ORTHOPAEDIC TECHNOLOGIES, INC.,	:	
	:	
Defendants.	:	

O R D E R

WHEREAS, Plaintiff Kyphon, Inc. ("Kyphon") filed a Motion To Strike Portions Of The Declaration Of William S. Rosenberg, M.D. (D.I. 91);

WHEREAS, Dr. Rosenberg's declaration was submitted in support of Defendants' opposition to Kyphon's motion for a preliminary injunction;

WHEREAS, Kyphon moves to strike paragraphs 13-23, 28, 29, 35, 36-38, 40-42, and 44-47 of Dr. Rosenberg's declaration because they contain legal opinion and hearsay testimony of a nature not properly relied upon by an expert;

WHEREAS, the Court finds that the facts and data that Dr. Rosenberg relies upon are of a type reasonably relied upon by experts in his field;

NOW THEREFORE, IT IS HEREBY ORDERED that the Motion To Strike Portions Of The Declaration Of William S. Rosenberg, M.D.

(D.I. 91) filed by Kyphon is **DENIED**.

June 13, 2005
DATE

Joseph J. Farnan, Jr.
UNITED STATES DISTRICT JUDGE