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June 17, 2005

VIA ECF
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. 204-JJF

FR

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

Dear Judge Farnan:

This letter on behalf of Kyphon concerns a witness availability issue with regard to the second trial concerning validity issues. After review of the guidance the Court provided during yesterday's conference concerning expected scheduling of the infringement and validity trials, Kyphon wishes to advise of a potential issue regarding Dr. Halliday's testimony. Dr. Halliday is an orthopedic surgeon that Kyphon anticipates presenting as a third-party witness for brief direct testimony of approximately 20 minutes. She has cleared sufficient time from her practice to fly from Oregon to Delaware and appear at trial next week. Unfortunately, because she has surgeries scheduled on Friday (June 24th) and early in the following week starting Monday, June 27th, she is limited to testifying only on Wednesday (if the jurors' deliberations are completed early in the day) or anytime on Thursday before 3:00 p.m. EST (when she needs to depart for the airport). Because there is a chance that DOT may not have completed its validity case on Thursday, Kyphon wishes to note this scheduling issue. However, Kyphon anticipates that the parties should be able to address this issue cooperatively and, if necessary, present Dr. Halliday's testimony out of order on Thursday at some convenient time.[1]

Respectfully submitted,

/s/ Thomas L. Halkowski

Thomas L. Halkowski

TLH:sb

cc Clerk, U.S. District Court (via ECF)
Maryellen Noreika, Esq. (via ECF)
Jonathan M. Sobel (via ECF)

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[1] Kyphon has contacted DOT by voicemail this afternoon and advised them of this issue, but not yet had the opportunity to substantively address this issue.