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.	Civil Action No. 04-204-JJF

STIPULATION AND ORDER
ON DEPENDENT CLAIMS AND INDIRECT INFRINGEMENT

To streamline the issues for the trial starting on June 20, 2005, and consistent with the parties' positions taken in this case, Plaintiff Kyphon, Inc. ("Kyphon") and Defendants Disc-O-Tech Medical Technologies, Ltd. and Disc Orthopaedic Technologies, Inc. (collectively, "DOT"), by and between the undersigned attorneys for the respective parties, stipulate as follows:

1. If judgment is entered that DOT infringes independent claim 17 of U.S. Patent No. 6,235,043, then DOT agrees that at the same time judgment may be entered that it also infringes asserted claims 20, 24 and 26, which depend from claim 17.

2. DOT does not contest that if the use of the accused SKy Bone Expander System infringes the asserted claims of U.S. Patent Nos. 4,969,888, 5,108,404 and 6,235,043, DOT induces infringement and contributes to the infringement of those claims, and agrees that judgment may be entered on inducement and contributory infringement, if and when judgment is entered on infringement.

3. This stipulation will not be read to the jury or used in any way at the trial commencing on June 20, 2005.

4. This stipulation is made without prejudice to DOT's rights to appeal the claim constructions and rulings of Special Master Popitti, which have been adopted by the District Court.

Respectfully Submitted,

/s/ Thomas L. Halkowski

Thomas L. Halkowski, (#4099)
FISH & RICHARDSON P.C.
919 N. Market Street, Suite 1100
P.O. Box 1114
Wilmington, DE 19899-1114
Tel: (302) 652-5070

Frank E. Scherkenbach
225 Franklin Street
Boston, MA 02110-2804
Tel: (617) 542-5070

Karen I. Boyd
Limin Zheng
500 Arguello Street, Suite 500
Redwood City, CA 94063
Tel: (650) 839-5070

Attorneys for Plaintiff Kyphon Incorporated

Dated: June 19, 2005

/s/ Maryellen Noreika

Maryellen Noreika (#3208)
MORRIS, NICHOLS, ARSHT & TUNNELL
201 N. Market Street
Post Office Box 1347
Wilmington, Delaware 19899
(302) 658-9200

Of Counsel:
Eric J. Lobenfeld
Jonathan M. Sobel
Arlene A. Chow
Robert J. Demento
Hogan & Hartson L.L.P.
875 Third Avenue
New York, NY 10022
(212) 918-3000

Attorneys for Defendants Disc-O-Tech Medical Technologies, Ltd. and Disc Orthopaedic Technologies, Inc.

IT IS SO ORDERED this _____ day of

_____, 2005.

_____
United States District Judge