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 In Limine #3 To Preclude Admission Of, Or Reference To, Kyphon's Discussions With The FDA Regarding Kyphon's Commercial KyphX IBT Device (D.I. 204);

WHEREAS, Defendants assert that they intend to use Kyphon's statements to the FDA to show how Kyphon has characterized relevant prior art in the past, not to show how Kyphon has characterized its commercial embodiments (D.I. 204);

WHEREAS, the Court concludes that Kyphon's statements to the FDA are relevant to the issue of validity and their probative value outweighs the risks of undue prejudice to Kyphon or confusion to the jury;

NOW THEREFORE, IT IS HEREBY ORDERED that the Motion In Limine #3 To Preclude Admission Of, Or Reference To, Kyphon's Discussions With The FDA Regarding Kyphon's Commercial KyphX IBT

Device (D.I. 204, Ex. 7A3) filed by Kyphon is **DENIED**.

June 21, 2005
DATE

UNITED STATES DISTRICT JUDGE