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 Motions In Limine (D.I. 204);

WHEREAS, Kyphon filed a Motion In Limine #1 To Preclude Admission Of, Or Reference To, Portions Of Dr. Mitchell's Expert Testimony Relating To But Failing To Properly Analyze Obviousness;

WHEREAS, the Court concludes that Kyphon has adequate recourse should it believe Dr. Mitchell's testimony departs from the contents of his expert report;

WHEREAS, Kyphon filed a Motion In Limine #2 To Preclude Evidence Regarding Recreation of Prior Art Procedure;

WHEREAS, Defendants have agreed to not to use the X-Ray component of the recreation at trial;

WHEREAS, Kyphon filed a Motion In Limine #4 To Preclude Admission Of, Or Reference To, Any DOT Patents Or Patent

Applications That Cover The Accused Device;

WHEREAS, the Court concludes that Defendants' separate patents are irrelevant to the issue of infringement;

WHEREAS, Kyphon filed a Motion In Limine #5 To Preclude Reference To Kyphon's Streamlining Of Its Infringement Claims;

WHEREAS, the Court concludes that Kyphon's efforts to simplify this case for trial are not relevant to the merits of any issue being presented to the jury;

NOW THEREFORE, IT IS HEREBY ORDERED that:

1) The Motion In Limine #1 To Preclude Admission Of, Or Reference To, Portions Of Dr. Mitchell's Expert Testimony Relating To But Failing To Properly Analyze Obviousness is **DENIED**;

2) The Motion In Limine #2 To Preclude Evidence Regarding Recreation of Prior Art Procedure is **DENIED**;

3) Motion In Limine #4 To Preclude Admission Of, Or Reference To, Any DOT Patents Or Patent Applications That Cover The Accused Device is **GRANTED**;

4) The Motion In Limine #5 To Preclude Reference To Kyphon's Streamlining Of Its Infringement Claims is **GRANTED**.

June 21, 2005
DATE

UNITED STATES DISTRICT JUDGE