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, Medtronic Sofamor Danek, Inc, Medtronic Sofamor Danek USA, Inc. And SGDI Holdings, Inc. (collectively Medtronic) filed an Emergency Motion For Leave To Intervene For The Purpose Of Modifying The Stipulated Protective Order And To Modify The Stipulated Protective Order (D.I. 288);

WHEREAS, Kyphon sued Medtronic in the Western District of Tennessee ("Tennessee Court"), alleging infringement of the same patents at issue in this litigation ("Delaware litigation");

WHEREAS, although Medtronic has requested that Kyphon produce all documents from the Delaware case, Medtronic represented to the Tennessee Court that it only needed specific documents that it described on a chart presented at that Court's November 2, 2006 hearing ("Document Chart");

WHEREAS, the Tennessee Court concluded, in an Order dated November 7, 2006, that the documents referenced on the

Document Chart were relevant to the litigation pending there and discoverable, yet deferred to this Court's determination as to whether the existing Protective Order in the Delaware litigation should be modified to allow for the discovery of those documents;

WHEREAS, the Court concludes that a modification of the Protective Order is necessary to allow Medtronic to defend against Kyhpon's Motion For Preliminary Injunction in Tennessee, and the Court further concludes that the Protective Order in the Tennessee litigation is sufficient to protect the documents sought by Medtronic from abuses during the discovery process;

NOW THEREFORE, IT IS HEREBY ORDERED that Medtronic's Emergency Motion For Leave To Intervene For The Purpose Of Modifying The Stipulated Protective Order And To Modify The Stipulated Protective Order (D.I. 288) is **GRANTED**, with respect to those documents referenced on the Document Chart.

November 14 2006
DATE

UNITED STATES DISTRICT JUDGE