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10 Attorneys for Defendant
 KAVO DENTAL CORPORATION

11
 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 SUNSTONE DENTAL, LLC, a
 California Limited Liability Company,

15 Plaintiff,

16 v.

17 KAVO DENTAL GMBH, a business
 18 form unknown; KAVO DENTAL
 CORPORATION, an Illinois
 19 corporation,

20 Defendants.

CASE NO. CV09-02147 ODW (PJWx)

The Honorable Otis D. Wright II

FINAL JUDGMENT

21 KAVO DENTAL CORPORATION, an
 22 Illinois corporation,

23 Counterclaimant,

24 v.

25 SUNSTONE DENTAL LLC, a
 26 California Limited Liability Company,

27 Counterclaim defendant.

28

1 The Court enters Final Judgment as follows:

2 In its Complaint, plaintiff and counterclaim defendant Sunstone Dental LLC
3 (“Sunstone”) accused defendant and counterclaimant KaVo Dental Corporation
4 (“KaVo”) and KaVo Dental, GmbH, of infringement of United States Patent No.
5 5,554,896 (“the ’896 patent”) through the making, importing, distributing, using,
6 selling, and/or offering for sale of certain products, including products marketed
7 under the name “ELECTROtorque” (collectively “accused products”).

8 In response to Sunstone’s Complaint, KaVo asserted various defenses and
9 asserted declaratory judgment counterclaims for noninfringement and invalidity of
10 the ’896 patent. In response to KaVo’s counterclaims, Sunstone asserted various
11 defenses.

12 Following a *Markman* hearing on April 12, 2010, this Court issued a Claim
13 Construction Order [Dkt. # 55] on May 13, 2010, interpreting certain terms in the
14 ’896 patent claims.

15 On August 10, 2010, KaVo filed a Motion for Summary Judgment for
16 Noninfringement Based on the Court’s Claim Construction. After full briefing by
17 the parties, and after holding a hearing on the motion on October 18, 2010, this
18 Court orally granted the motion at that hearing. The Court issued an Order
19 Granting Defendants’ Motion for Summary Judgment of Noninfringement [Dkt. #
20 71] on October 22, 2010. Based on the Court’s interpretations of the claim terms
21 “variable voltage controller” in claims 1-4 and 16, “foot controller” in claims 5-14
22 and 17-20, and “variable power controller” in claim 15, this Court held that KaVo
23 did not infringe any of claims 1 through 20 of the ’896 patent.

24 As a result, Sunstone’s only claim in the lawsuit – the claim for infringement
25 of the ’896 patent – has been decided on the merits and is dismissed with
26 prejudice. KaVo’s declaratory judgment counterclaim for noninfringement of that
27 patent has likewise been decided on the merits for the same reason.

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1 On November 1, 2010, Sunstone and KaVo filed a Stipulation wherein,
2 among other things, they agreed to dismissal of Sunstone's claim for infringement
3 of the '896 patent against KaVo Dental, GmbH, a named defendant who has never
4 been served in this case, for the same reasons expressed in the Court's Summary
5 Judgment Order; and agreed to dismissal, without prejudice of KaVo's declaratory
6 judgment counterclaim for invalidity of the '896 patent under Fed. R. Civ. P.
7 41(a)(1)(A)(ii) and 41(c).

8 Because there are no remaining claims in this case, and because there are no
9 remaining issues for the Court to decide and no reason why Final Judgment should
10 not be entered, based on the Court's Claim Construction Order, the Court's
11 Summary Judgment Order, and the parties Stipulation,

12 IT IS ORDERED AND ADJUDGED as follows:

13 1. Sunstone's claim for patent infringement against Kavo and KaVo
14 Dental, GmbH is dismissed with prejudice because that claim and KaVo's
15 declaratory judgment counterclaim of noninfringement have been decided on the
16 merits.

17 2. KaVo's declaratory judgment counterclaim for invalidity of the '896
18 patent is dismissed without prejudice pursuant to Rule 41(a) of the Federal Rules
19 of Civil Procedure. That counterclaim may be refiled by KaVo if the Court's
20 Summary Judgment Order and/or Final Judgment in this case is reversed or
21 vacated on any appeal.

22 3. KaVo is awarded its costs and may file a bill of costs and/or motion
23 for attorneys' fees under Rule 54(d) of the Federal Rules of Civil Procedure within
24 30 days after a mandate issues from the United States Court of Appeals for the
25 Federal Circuit, in the event this Court's Summary Judgment Order and/or Final
26 Judgment is not vacated or reversed on appeal, or 20 days after the deadline passes
27 for filing a Notice of Appeal, in the event Sunstone does not file a Notice of
28 Appeal.

