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28United States District Court
For the Northern District of CaliforniaIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MEDTRONIC, INC., et al.,

No. C-07-0567 MMC

Plaintiffs,

**ORDER GRANTING MEDTRONIC'S
ADMINISTRATIVE MOTION FOR RELIEF
FROM PRETRIAL PREPARATION
ORDER**

v.

AGA MEDICAL CORPORATION,

Defendant.

Before the Court is plaintiffs Medtronic, Inc., Medtronic USA, Inc., and Medtronic Vascular, Inc.'s (collectively, "Medtronic") Motion for Administrative Relief from the Court's Pretrial Preparation Order Deadline for Expert Reports, by which Medtronic seeks leave to "serve one or two expert reports to rebut AGA's newly-pleaded defense of Obviousness-Type Double Patenting ('OTDP')." (See Mot. filed Apr. 30, 2009 at 1:4-6.) Defendant AGA Medical Corporation ("AGA") has filed opposition. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.

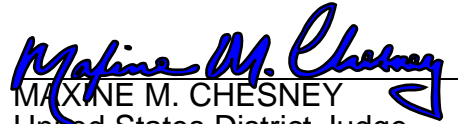
Medtronic received AGA's expert report as to the issue of OTDP on January 23, 2009, and, on February 4, 2009, moved to strike said opinion. Although Medtronic's motion to strike AGA's expert's opinion as to OTDP was denied by Magistrate Judge Edward M. Chen (see Order filed Mar. 2, 2009 at 7), Magistrate Judge Chen's order was not issued until after the February 6, 2009 deadline for the service of rebuttal expert reports. There is

1 no suggestion in Magistrate Judge Chen's order that Medtronic's motion had been brought
2 in bad faith, and, in light of the Court's having continued the trial date in the instant action to
3 July 6, 2009, AGA has failed to show it will be prejudiced by the proposed timing of
4 Medtronic's expert report on the issue of OTDP. Under such circumstances, the Court
5 finds it appropriate to extend the expert disclosure deadline for the limited purpose of
6 affording Medtronic an opportunity to serve a rebuttal expert report on the issue of OTDP.

7 Accordingly, Medtronic's motion is hereby GRANTED. Medtronic's expert report on
8 the issue of OTDP shall be served no later than May 11, 2009, and Medtronic shall make
9 its expert available for deposition, limited to the issues raised in such report, no later than
10 May 18, 2009.

11 **IT IS SO ORDERED.**

12
13 Dated: May 8, 2009


MAXINE M. CHESNEY
United States District Judge