

1 John Karl Buche (SBN 239477)
 Sean M. Sullivan (SBN 254372)
 2 BUCHE & ASSOCIATES, P.C.
 3 875 Prospect, Suite 305
 La Jolla, California 92037
 4 Telephone: 858.459.9111
 Facsimile: 858.459.9120
 5 jbuche@buchelaw.com
 ssullivan@buchelaw.com
 6

7 Attorneys for Defendants,
 TOTAL VEIN SOLUTIONS, LLC
 8

9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO DIVISION**

12)
 13 TYCO HEALTHCARE GROUP LP d/b/a)
 VNUS MEDICAL TECHNOLOGIES,)

14)
 15 Plaintiff/Counter-defendants,)

16 v.)

17 BIOLITEC, INC., DORNIER MEDTECH)
 AMERICA, INC., and NEW STAR LASERS,)
 18 INC., d/b/a COOLTOUCH, INC.,)

19)
 20 Defendants/Counterclaimants.)

LEAD CASE NO. C08-3129-MMC
 (Consolidated Case No. C08-4234-MMC)
STIPULATION AND ~~PROPOSED~~
ORDER REGARDING
CLARIFICATION OF ORDER ON
PLAINTIFF'S MOTION TO STRIKE
DEFENDANT TOTAL VEIN
SOLUTIONS, LLC'S EXPERT
REPORTS

Judge: Hon. Maxine M. Chesney

21)
 22 TYCO HEALTHCARE GROUP LP d/b/a)
 VNUS MEDICAL TECHNOLOGIES,)

23)
 24 Plaintiff/Counter-defendants,)

25 v.)

26)
 27 TOTAL VEIN SOLUTIONS, LLC, d/b/a)
 TOTAL VEIN SYSTEMS,)

28)
 Defendant/Counterclaimants.)

1 WHEREAS, Defendant Total Vein Solutions, LLC d/b/a Total Vein Systems (“TVS”)
2 submitted expert reports of both Dr. Wayne Gradman (“Gradman”) and David Draper (“Draper”) on
3 May 7, 2010;

4 WHEREAS, Plaintiff Tyco Healthcare Group LP d/b/a VNUS Medical Technologies
5 (“VNUS”) objected to certain portions of the Gradman and Draper reports as containing untimely
6 opinions on enablement issues;

7 WHEREAS, TVS asserted that such opinions were timely in that said portions of the reports
8 rebutted VNUS’s own infringement expert report;

9 WHEREAS, in accordance with the Local Rules and governing court orders, VNUS and
10 TVS submitted a joint statement to Magistrate Judge James Larson concerning the expert discovery
11 dispute on May 25, 2010 (Docket No. 174);

12 WHEREAS, on June 29, 2010, Magistrate Judge Larson issued an order stating “it is hereby
13 ordered that the TVS expert reports of Dr. Gradman and Dr. Draper are stricken, and TVS is
14 precluded from relying on them in motions or at trial.” (Docket No. 196);

15 WHEREAS, VNUS only sought a court order striking the portions of the Gradman and
16 Draper reports relating to enablement issues and precluding TVS from relying on such opinions;

17 WHEREAS, the Court’s June 29th order does not specify that only the enablement portions of
18 the Gradman and Draper opinions were struck;

19 NOW THEREFORE, it is hereby stipulated and agreed by the respective parties by and
20 through their counsel of record that TVS is not precluded from relying on the portions of the
21 Gradman and Draper reports relating to non-infringement and testimony regarding the non-
22 infringement opinions disclosed in said reports either in motions or at trial.
23

24 [Signatures on following page].

25 //

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July 15, 2010

Respectfully Submitted,
BUCHE & ASSOCIATES, P.C.

By: /s/ John Karl Buche
John Karl Buche (SBN 239477)
Sean M. Sullivan (SBN 254372)

Telephone: 858.459.9111
Facsimile: 858.459.9120

ATTORNEYS FOR DEFENDANT TOTAL
VEIN SOLUTIONS, LLC d/b/a TOTAL VEIN
SYSTEMS

Dated: July 15, 2010

DAVIS POLK & WARDWELL LLP

By: /s/ Chung G. Suh
Matthew B. Lehr (SBN 213139)
Suong T. Nguyen (SBN 237557)
Chung G. Suh (Bar No. 244889)

Tel: (650) 752-2000
Fax: (650) 752-2111

ATTORNEYS FOR PLAINTIFF TYCO
HEALTHCARE GROUP LP d/b/a VNUS
MEDICAL TECHNOLOGIES

I hereby attest that I have on file written (or e-mail) permission to sign this stipulation from all parties whose signatures are indicated by a "confirmed" signature (/s/) within this e-filed document.

Dated: 07/15/10

/s/ John K. Buche
John K. Buche

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 27, 2010


HON. JAMES LARSON
U.S. MAGISTRATE JUDGE

1 John Karl Buche (SBN 239477)
2 Sean M. Sullivan (SBN 254372)
3 BUCHE & ASSOCIATES, P.C.
4 875 Prospect, Suite 305
5 La Jolla, California 92037
6 Telephone: 858.459.9111
7 Facsimile: 858.459.9120
8 jbuche@buchelaw.com
9 ssullivan@buchelaw.com

10 Attorneys for Defendants,
11 TOTAL VEIN SOLUTIONS, LLC

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 TYCO HEALTHCARE GROUP LP d/b/a)
16 VNUS MEDICAL TECHNOLOGIES, INC.,)

17 Plaintiff,)

18 v.)

19 BIOLITEC, INC., DORNIER MEDTECH)
20 AMERICA, INC., and NEW STAR LASERS,)
21 INC. d/b/a COOLTOUCH, INC.,)

22 Defendants.)

LEAD CASE NO. C08-03129 MMC
(Consolidated Case No. C08-04234 MMC)

PROOF OF SERVICE

23 TYCO HEALTHCARE GROUP LP d/b/a)
24 VNUS MEDICAL TECHNOLOGIES, INC.,)

25 Plaintiff,)

26 v.)

27 TOTAL VEIN SOLUTIONS, LLC d/b/a)
28 TOTAL VEIN SYSTEMS,)

Defendant.)

1
2 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

3 I, John Karl Buche, declare:

4 I am over the age of 18 years and not a party to this action. My business address is 875
5 Prospect, Suite 304, La Jolla, California 92037, which is located in the county where the service
6 described below occurred.

7 On Thursday, July 15, 2010, at La Jolla, California, I served the following documents entitled:

- 8 • **STIPULATION AND [PROPOSED] ORDER REGARDING CLARIFICATION OF**
9 **ORDER ON PLAINTIFF'S MOTION TO STRIKE DEFENDANT TOTAL VEIN**
10 **SOLUTIONS, LLC'S EXPERT REPORTS**

11 in the following manner:

12 I hereby certify that on Thursday, July 15, 2010, I electronically filed the foregoing document
13 with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such
14 filing to the following individual(s):

15 Attorneys for Plaintiff/Counter-defendant Tyco Healthcare Group LP d/b/a VNUS Medical
16 Technologies, Inc.:

17 Matthew B. Lehr (matthew.lehr@dpw.com)
18 Chung Gyun Suh (gemma.suh@dpw.com)
19 Diem-Suong Thi Nguyen (nguyen@dpw.com)
20 DAVIS, POLK & WARDWELL
21 1600 El Camino Real
22 Menlo Park, CA 94025

23 Attorneys for Defendant/Counter-claimant Biolitec, Inc.:

24 Michael Rader (mrader@wolfgreenfield.com)
25 Charles T. Steenburg (csteenburg@wolfgreenfield.com)
26 WOLF, GREENFIELD & SACKS, PC
27 600 Atlantic Avenue
28 Boston, MA 02210

Attorneys for Defendant/Counter-claimant Dornier Medtech America, Inc.:

A. Shane Nichols (snichols@kslaw.com)
Richard W. Miller (rmiller@kslaw.com)
KING & SPAULDING, LLP
1180 Peachtree Street NE
Atlanta, GA 30309-3521

1 Attorneys for Defendant/Counter-claimant New Star Lasers, Inc, d/b/a Cooltouch, Inc.:

2 Allan W. Jansen (ajansen@orrick.com)
3 James W. Geriak (jgeriak@orrick.com)
4 ORRICK, HERRINGTON & SUTCLIFFE, LLP
5 4 Park Plaza, Suite 1600
6 Irvine, CA 92614-2558

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct.

9 Executed on Thursday, July 15, 2010, at La Jolla, California.

10 /s/ John Karl Buche
11 JOHN KARL BUCHE