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

TYCO HEALTHCARE GROUP LP d/b/a  
 VNUS MEDICAL TECHNOLOGIES,  
  
 Plaintiff,  
  
 v.  
 BIOLITEC, INC. and NEW STAR LASERS,  
 INC. d/b/a COOLTOUCH, INC.,  
  
 Defendants.

LEAD CASE NO. C08-03129 MMC  
 CASE NO. C08-03129 MMC  
  
**STIPULATION AND ~~PROPOSED~~  
 ORDER REGARDING ADDENDA TO  
 STIPULATIONS REFLECTED IN  
 JOINT PRETRIAL STATEMENT (D.I.  
 286)**

Judge: Hon. Maxine M. Chesney

TYCO HEALTHCARE GROUP LP d/b/a  
 VNUS MEDICAL TECHNOLOGIES,  
  
 Plaintiff,  
  
 v.  
 TOTAL VEIN SOLUTIONS, LLC d/b/a  
 TOTAL VEIN SYSTEMS,  
  
 Defendant.

CASE NO. C08-04234 MMC  
 (consolidated with C08-03129 MMC)

1 WHEREAS, on August 30, 2010 pursuant to this Court's Pretrial Preparation Order, the  
2 parties filed a Joint Pretrial Statement (D.I. 286) that set forth the parties' stipulations regarding  
3 pretrial preparation and the conduct of trial and stipulations of fact;

4 WHEREAS since the filing of the Joint Pretrial Statement, the parties have reached the  
5 following additional stipulations:

6 1. Defendants agree not to reference, or present evidence or ask questions regarding,  
7 statements by PTO Examiner Lee S. Cohen made in connection with the prosecution of U.S. Patent  
8 Application No. 10/738,488, including (1) in the course of Defendants' witness' testimony, and (2)  
9 when cross-examining VNUS's witnesses;

10 2. The parties agree not to reference, or present evidence or ask questions regarding,  
11 any alleged independent or prior invention or copying of the claimed methods of the patents-in-suit  
12 by Dr. Robert Min or Dr. Luis Navarro, including (1) in the course of the party's experts'  
13 testimony, and (2) when cross-examining another party's expert;

14 3. VNUS agrees not to reference, or present evidence or ask questions regarding,  
15 benefits of tumescent anesthesia solely for insulation and/or anesthesia (and without compression)  
16 to show secondary indicia of nonobviousness or copying;

17 4. Defendants agree to make available at trial Tyrell Schiek, Brian Foley, and David  
18 Hennings for VNUS to call during its case in chief, and that no subpoenas will be required as to  
19 such witnesses;

20 5. biolitec believes that it had knowledge of VNUS's Closure procedure as of  
21 November 2001;

22 6. SAFONOV, "Multimodality Treatment of Varicosity with Electrocoagulation  
23 Medical Guidelines," May 5, 1974, Moscow (starting production number BIO006428) is authentic  
24 and constitutes a printed publication within the meaning of 35 U.S.C. § 102(b) published more than  
25 one year prior to September 11, 1997; however, VNUS reserves all rights to contest whether such  
26 reference invalidates any of the patents-in-suit under 35 U.S.C. §§ 102 and/or 103; and  
27  
28

1           7.       The translation accompanying the foregoing publication and produced therewith is  
2 adequate to be admitted into evidence; however, VNUS reserves all rights to contest the accuracy  
3 of the translation.

4           8.       The parties agree that a party may offer at trial any exhibit from the opposing side's  
5 exhibit list, subject to whatever objections are made at the time of proffer.

6           9.       To assist all parties in scheduling for trial, the parties agree to exchange, by 5:00 pm  
7 Eastern time on September 28, 2010, a good-faith list of the witnesses they intend to call in their  
8 respective cases-in-chief at trial, the order in which they intend to call those witnesses, and a good-  
9 faith estimate of the length of each witness's direct testimony. The parties further agree to apprise  
10 one another of any changes to their witness lists, order and time estimates by 5:00 pm Eastern time  
11 on October 4, 2010 and October 11, 2010, if they in good faith expect any changes to the lists,  
12 order or time estimates they have previously provided.

13          10.      The parties agree that if they elect to call witnesses from their "May Call" lists to  
14 testify live as part of their respective cases-in-chief, the party calling the witness will disclose such  
15 intention no later than 5:00 pm California time three days before the witness is called to the witness  
16 stand.

17          11.      The parties agree that, to the extent witnesses are called in (or back) for rebuttal or  
18 impeachment, the party calling the witness will disclose such intention no later than 5:00 pm  
19 California time the day before the witness is called to the witness stand, if sufficient time exists for  
20 such notice to be provided.

21               NOW, THEREFORE, the parties request that the stipulations set forth in paragraphs 1-4 and  
22 8-11 above be entered as addenda to Section III of the Joint Pretrial Statement (Stipulations  
23 Regarding Pretrial Preparation and Conduct of Trial) and that the stipulations set forth in  
24 paragraphs 5-7 above be entered as addenda to Section IV.A. of the Joint Pretrial Statement  
25 (Stipulated Facts).

1 Dated: September 27, 2010

DAVIS POLK & WARDWELL LLP

2  
3 /s/ David J. Lisson

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12 Total Vein Solutions, LLC d/b/a Total Vein  
13 Systems

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

17 Dated: September 27, 2010

18 /s/ David J. Lisson  
19 David J. Lisson

20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

21 Dated: September 29, 2010

22   
23 HON. MAXINE M. CHESNEY, U.S.D.