

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 Gregory J. Vogler (admitted *pro hac vice*)  
 Email: gvogler@mcandrews-ip.com  
 2 Robert A Surrette (admitted *pro hac vice*)  
 Email: bsurrette@mcandrews-ip.com  
 3 Andrew W. Bateman(admitted *pro hac vice*)  
 Email: abateman@mcandrews-ip.com  
 4 McANDREWS, HELD & MALLOY, LTD  
 500 West Madison Street, 34<sup>th</sup> Floor  
 5 Chicago, IL 60661  
 Telephone: 312-775-8000  
 6 Facsimile: 312-775-8100

7 William R. Overend (SBN 180209)  
 Email: woverend@reedsmith.com  
 8 REED SMITH LLP  
 101 Second Street, Suite 1800  
 9 San Francisco, CA 94105-3659  
 Telephone: +1 415 543 8700  
 10 Facsimile: +1 415 391 8269

11 Attorneys for Defendants and Counterclaimants  
 12 STRYKER CORPORATION AND STRYKER  
 COMMUNICATIONS, INC.

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN FRANCISCO DIVISION

16 KARL STORZ ENDOSCOPY-AMERICA, INC.,  
 17 Plaintiff,  
 18 vs.  
 19 STRYKER CORPORATION and STRYKER  
 20 COMMUNICATIONS, INC.,  
 21 Defendants.

Case No. C 09-0355 (VRW)  
**AMENDED STIPULATION AND  
~~PROPOSED~~ ORDER CONTINUING  
 SUMMARY JUDGMENT AND CLAIM  
 CONSTRUCTION HEARINGS AND  
 RELATED DEADLINES; DECLARATION  
 OF WILLIAM R. OVEREND IN SUPPORT  
 OF SAME**  
 Honorable Vaughn R. Walker

22 AND RELATED COUNTERCLAIMS  
 23  
 24  
 25

1 Pursuant to Civil Local Rules 6-1 and 6-2, Plaintiff Karl Storz Endoscopy-America, Inc.  
2 (“KSEA”) and Defendants Stryker Corporation and Stryker Communications, Inc. (collectively,  
3 “Stryker”), through their respective counsel of record, hereby stipulate as follows:

4 1. Per the Court’s November 6, 2009 Minute Order, the hearing on Stryker’s Motion for  
5 Summary Judgment of Non-Infringement (Docket No. 110) and KSEA’s Cross Motion for Partial  
6 Summary Judgment of Infringement (Docket No. 154) is currently set for February 11, 2010. In  
7 addition, KSEA responded to Stryker’s Motion for Summary Judgment of Non-Infringement, in  
8 part, by filing a Rule 56(f) Motion To Allow Time for Necessary Discovery in Light of Pending  
9 Motion for Summary Judgment, which is also set for hearing on February 11, 2010. Finally, per the  
10 Court’s May 14, 2009 Case Management Order, the Claim Construction hearing is presently set for  
11 March 17, 2010.

12 2. Based on the Court’s Notice of Unavailability and subsequent communications with  
13 the Courtroom Deputy, Cora Klein, the parties understand that the Court is no longer available on  
14 either February 11 or March 17, 2010. Ms. Klein has therefore requested that the parties re-schedule  
15 both hearings, and has noted that the earliest available hearing date would be in June 2010. In a  
16 subsequent communication, Ms. Klein specifically proposed June 23, 2010, at 9:30 a.m. for the  
17 hearing date.

18 3. When the original schedule was set, both the parties and the Court envisioned that it  
19 would be more efficient to hear the summary judgment motions before claim construction.  
20 However, now that the parties have filed their respective summary judgment motions and their Joint  
21 Claim Construction Statement, it is now apparent that the majority of claim terms at issue in claim  
22 construction are also at issue in the summary judgment motions. Accordingly, the parties both agree  
23 that it would be more efficient to hear the summary judgment motions and claim construction at the  
24 same time, and that doing so would better conserve judicial resources and the resources of the  
25 parties.

26 4. The parties therefore propose the following modified schedule for both summary  
27 judgment and claim construction, as well as related deadlines:  
28

1 • June 23, 2010, at 9:30 a.m.: Hearing on (a) Stryker's Motion for Summary Judgment  
2 of Non-Infringement, (b) KSEA's Cross Motion for Summary Judgment of Infringement, (c)  
3 KSEA's Rule 56(f) Motion To Allow Time for Necessary Discovery in Light of Pending Motion for  
4 Summary Judgment, and (d) Claim Construction;

5 • April 30, 2010: Deadline for KSEA and Stryker to file responsive claim construction  
6 briefs re claim construction (previously set for February 26, 2010);

7 • April 9, 2010: Deadline for KSEA and Stryker to file opening claim construction  
8 briefs and supporting evidence (previously set for February 5, 2010);

9 • March 28, 2010: Deadline to complete claim construction discovery under Patent  
10 L.R. 4-4 (previously set for January 20, 2010);

11 • February 8, 2010: Deadline for Stryker to file Opposition to KSEA's Cross Motion  
12 for Summary Judgment of Infringement (previously set for February 1, 2010). Per the parties'  
13 earlier discussions and agreement, as discussed with the Court at the second Case Management  
14 Conference, the parties agree that Stryker shall be allowed thirty-five pages for its Opposition.

15 5. Pursuant to Civil L.R. 6-2(a)(1)-(3), this stipulated request is accompanied by the  
16 attached declaration setting forth (a) the reasons for the requested rescheduling; (b) all previous time  
17 modifications in the case; and (c) the effect of the requested rescheduling.

18  
19 IT IS SO STIPULATED.

20  
21 Respectfully submitted,

22 Dated: January 27, 2010.

REED SMITH LLP

23  
24 By           /s/ William R. Overend            
25 William R. Overend  
26 Attorneys for Defendants  
27 Stryker Corporation and Stryker Communications, Inc.  
28

1 Dated: January 27, 2010.

BECK, ROSS, BISMONTE & FINLEY, LLP

2  
3 By           /s/ Alfredo A. Bismonte            
4 Alfredo A. Bismonte  
5 Attorneys for Plaintiff  
6 Karl Storz Endoscopy-America, Inc.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

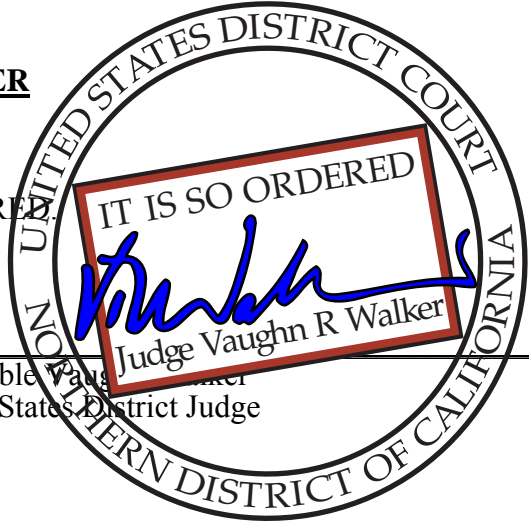
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: February 1, 2010

Honorable Vaughn R. Walker  
United States District Judge



**CERTIFICATION**

I hereby attest that concurrence in the filing of this document has been obtained by the above named signatories.

DATED: January 27, 2010.

REED SMITH LLP

By         /s/ William R. Overend          
William R. Overend  
Attorneys for Defendants  
Stryker Corporation and Stryker Communications,  
Inc.

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

- 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

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

I, William R. Overend, declare:

1. I am a partner with Reed Smith LLP, local counsel for Stryker in the above-captioned action. I have personal knowledge of the matters set forth below, and if called upon I could and would testify competently thereto.

2. The reasons for the requested re-scheduling are stated in Paragraphs 1-3 of the Stipulation herein.

3. No previous time modifications have been sought or entered in this case which have altered any date set by this Court's May 14, 2009 Case Management Order or November 6, 2009 Minute Order, or any other deadline already fixed by the Court, with the exception of an extension of the deadline to file the parties' Joint Claim Construction Statement from December 17, 2009 to January 7, 2010 (which the Court granted).

4. The requested extension would affect only the deadlines set forth in the Stipulation, but will not affect trial, pretrial or other case deadlines.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 27, 2010.

By           /s/ William R. Overend            
William R. Overend