

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, 34th 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
 COMMUNICATIONS, INC.,
 20 Defendants.

Case No. C 09-0355 (VRW)
**STIPULATION AND ~~PROPOSED~~
 ORDER EXTENDING DEADLINES**
 [Civ. L.R. 6-2 & 7-12]
 Honorable Vaughn R. Walker

21
 22 AND RELATED COUNTERCLAIMS
 23
 24
 25

26
 27
 28

1 Pursuant to Civil Local Rules 6-2 and 7-12, 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 to and jointly request the
 4 Court as follows:

5 1. By Order dated May 14, 2009 (Doc # 96-1), the Court entered an initial case
 6 management order. That order included the following schedule of deadlines and hearings:

8 Claim construction hearing	March 17, 2010
9 Fact discovery deadline	July 16, 2010
10 Deadline to disclose expert witnesses	July 16, 2010
11 Deadline to serve expert report(s) for which a party bears the burden of proof	August 20, 2010
12 Deadline to serve rebuttal expert reports	October 15, 2010
13 Expert discovery deadline	December 17, 2010
14 Deadline to file dispositive motions	January 21, 2011
15 Hearings on dispositive motions	April 21, 2011 (pending court availability)

16 Thus, the Court originally arranged the case schedule such that the close of fact discovery and the
 17 deadline to disclose expert witnesses would occur approximately four months after the claim
 18 construction hearing, with subsequent deadlines and hearing dates spaced apart in the manner shown
 19 above.

20 2. Due to the Court's unavailability, and pursuant to stipulation of the parties, the Court
 21 ordered on February 1, 2010 (Doc #186) that the claim construction hearing be continued from
 22 March 17, 2010 until June 23, 2010. Per the Order, Stryker's Motion for Summary Judgment of
 23 Non-Infringement, KSEA's Cross Motion for Partial Summary Judgment of Infringement, and
 24 KSEA's Rule 56(f) Motion to Allow Time for Necessary Discovery in Light of Pending Motion for
 25 Summary Judgment were also scheduled to be heard at the June 23, 2010 hearing.
 26
 27
 28

1 3. In order to maintain the originally intended amount of time between the June 23,
2 2010 hearing and the subsequent deadlines, the parties sought a continuation of those deadlines.
3 Pursuant to stipulation of the parties, the Court granted the continuation in an Order dated May 24,
4 2010 (Doc # 217).

5 4. By Clerk's Notice on June 2, 2010 (Doc # 218), the Court notified the parties that the
6 June 23, 2010 hearing was continued to September 1, 2010. Pursuant to stipulation of the parties,
7 the Court on August 27, 2010 further continued the hearing from September 1, 2010 to October 6,
8 2010. Also pursuant to stipulation of the parties, the Court continued the subsequent case deadlines
9 in an Order dated September 9, 2010 (Doc # 228).

10 5. By Clerk's Notice on October 4, 2010 (Doc # 236), the Court notified the parties that
11 the hearing scheduled for October 6, 2010 was vacated, to be rescheduled at a later time. In a
12 subsequent telephone conference with counsel for both parties, the Courtroom deputy informed the
13 parties that January 12, 2011 was an available date to re-set the hearing.

14 6. The parties hereby propose and stipulate to a new hearing date of January 12, 2011 on
15 the following: (a) claim construction; (b) Stryker's Motion for Summary Judgment of Non-
16 Infringement; and (c) KSEA's Cross Motion for Partial Summary Judgment of Infringement
17 (collectively, "the Motions").

18 7. Pursuant to conversations with the Court's courtroom deputy, the parties understand
19 that the proposed January 12, 2011 date for the Hearing, even if presently adopted by the Court, may
20 need to be vacated and re-scheduled in the future. Moreover, the parties understand that the entire
21 case will be transitioned to a new judge when Judge Walker retires in 2011. The identity of the new
22 judge is not presently known to the parties.

23 8. As a result, there exists considerable uncertainty as to the date on which the hearing
24 on the Motions will ultimately take place. Accordingly, the parties believe that it is most efficient to
25 schedule the remaining case deadlines so that they are linked to the actual date on which the Motions
26 are heard ("New Hearing Date"). By doing so, the parties will be able to maintain the originally
27 intended amount of time between the New Hearing Date and the subsequent case deadlines, without
28 having to file additional stipulations re-setting the other case deadlines if the hearing on the Motions

1 is continued or vacated again. Accordingly, the parties hereby propose and stipulate to subsequent
2 deadlines that are scheduled relative to the New Hearing Date as follows:

3 Fact discovery deadline	17 weeks after the New Hearing Date
4 Deadline to disclose expert witnesses	17 weeks after the New Hearing Date
5 Deadline to serve expert report(s) for which a party bears the burden of proof	22 weeks after the New Hearing Date
6 Deadline to serve rebuttal expert reports	30 weeks after the New Hearing Date
7 Expert discovery deadline	39 weeks after the New Hearing Date
8 Deadline to file dispositive motions	44 weeks after the New Hearing Date
9 Hearings on dispositive motions	57 weeks after the New Hearing Date (pending court availability)

10
11
12
13
14 9. Pursuant to Civil L.R. 6-2(a)(1)-(3), this stipulated request is accompanied by the
15 Declaration of William R. Overend setting forth (a) the reasons for the requested rescheduling; (b)
16 all previous time modifications in the case; and (c) the effect of the requested rescheduling.

17
18 IT IS SO STIPULATED.

19 Respectfully submitted,

20 Dated: December 1, 2010.

REED SMITH LLP

21
22 By /s/ William R. Overend

William R. Overend
Attorneys for Defendants
Stryker Corporation and Stryker Communications, Inc.
BECK, ROSS, BISMONTE & FINLEY, LLP

23
24 Dated: December 1, 2010.

25
26 By /s/ Alfredo A. Bismonte

Alfredo A. Bismonte
Attorneys for Plaintiff
Karl Storz Endoscopy-America, Inc.

- 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

CERTIFICATION

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

DATED: December 1, 2010.

REED SMITH LLP

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

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: December 6, 2010

Honorable Vaughn Walker
United States District Judge

