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ATTORNEYS FOR DEFENDANTS, ABBOTT  
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ABBOTT LABORATORIES, AND  
ABBOTT VASCULAR, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MEDTRONIC VASCULAR, INC.  
MEDTRONIC USA, INC., MEDTRONIC, INC.,  
MEDTRONIC VASCULAR GALWAY, LTD.,  
and EVYSIO MEDICAL DEVICES ULC

Plaintiffs/Counterclaim-  
Defendants

v.

ABBOTT CARDIOVASCULAR SYSTEMS  
INC., ABBOTT LABORATORIES, and  
ABBOTT VASCULAR, INC.

Defendants/Counterclaim-  
Plaintiffs

CASE NO. 06-01066-PJH (EMC)

**DISCOVERY MATTER**

**STIPULATION TO SHORTEN TIME;  
[PROPOSED] ORDER**

Trial in this patent case is scheduled to begin on July 27, 2009, and the final pretrial conference is July 9, 2009.

Abbott filed a *Daubert* motion seeking to preclude the expert testimony of Dr. David Ku. This motion is scheduled to be heard on July 9, during the final pretrial conference. In connection

1 with Plaintiffs' Opposition to Abbott Defendants' motion, which is due to the Court on Thursday,  
 2 June 18, 2009, Dr. David Ku prepared a declaration. It is Plaintiffs' position that this declaration  
 3 does not contain information not otherwise made known to Abbott, but out of an abundance of  
 4 caution, and pursuant to Fed. R. Civ. P. 26(e)(2), Plaintiffs served this declaration as a "supplement"  
 5 on Tuesday, June 9, 2009. It is Abbott's position that the Ku Declaration, which specifically states  
 6 that it was submitted "to supplement [Dr. Ku's] previous expert report" and contains 18 new  
 7 paragraphs never addressed in his prior report, is an improper attempt to file a new report on the eve  
 8 of trial.

9 On Wednesday, June 10, 2009, Abbott asked Plaintiffs to meet and confer, but due to the  
 10 press of other pretrial obligations, Plaintiffs' counsel were unable to schedule a time until yesterday  
 11 afternoon. The parties met and conferred yesterday afternoon and were unable to resolve the dispute  
 12 (for reasons that will be explained in their papers). Abbott is drafting a motion to strike the  
 13 Supplemental Report.

14 Because trial is scheduled to begin on July 27, and the final pretrial conference is scheduled  
 15 for July 9, the parties agree that (provided the Court agrees) it would be best to have this dispute  
 16 decided on an expedited basis and, if possible, before the final pretrial conference. For these  
 17 reasons, the parties stipulate that, with the Court's permission, Abbott's motion to strike the  
 18 Supplemental Report be briefed and heard on shortened time, according to the following schedule:

19 Friday, June 19, 2009	Abbott files motion to strike the Supplemental Report
20 Friday, June 26, 2009	Plaintiffs file opposition brief
21 By 10:00 a.m. Wednesday, July 1, 2009	Abbott files reply brief
22 July 8, 2009 at 3:00 p.m.	Hearing on Abbott's motion

23 By his signature below, counsel for Abbott affirms under penalty of perjury that counsel for  
 24 the Medtronic Plaintiffs concurred in the filing of this document.

25  
 26  
 27  
 28

1 DATE: June 17, 2009

**FOLEY & LARDNER LLP**

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3  
4 BY: \_\_\_\_\_ s/\_\_\_\_\_  
Jeffrey N. Costakos

5 Attorneys for Plaintiffs Medtronic  
6 Vascular, Inc., Medtronic USA, Inc.,  
7 Medtronic, Inc., and Medtronic Vascular  
Galway, Ltd.

8 DATE: June 17, 2009

**FINNEGAN, HENDERSON, FARABOW,  
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10  
11 BY: \_\_\_\_\_ s/\_\_\_\_\_  
12 Robert F. McCauley

13 Attorneys for Defendants  
14 Abbott Cardiovascular Systems, Inc.,  
15 Abbott Laboratories, and Abbott Vascular,  
16 Inc.

**[PROPOSED] ORDER**

17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18  
19 DATE: June 18, 2009

20 Edward M. Chen  
21 United States District Court

