

1 David K. Callahan, P.C. (IL 620227) dcallahan@kirkland.com
 2 KIRKLAND & ELLIS LLP
 200 East Randolph Drive
 3 Chicago, Illinois, 60601
 Telephone: 312-861-2000
 4 Facsimile: 312-861-2200

Attorney For Plaintiff and Counter-defendant
 5 **BAXTER HEALTHCARE CORPORATION,**
BAXTER INTERNATIONAL INC., and
 6 **BAXTER HEALTHCARE SA**

7 Maureen K. Toohey (SBN 196401) mtoohey@toohey.com
 TOOHEY LAW GROUP LLC
 8 225 Franklin Street, 16th Floor
 Boston, Massachusetts 02110
 9 Telephone: (617) 748-5511

Attorneys for Plaintiff and Counter-defendant
 10 **DEKA PRODUCTS LIMITED PARTNERSHIP**

11 Juanita R. Brooks (SBN 75934) jbrooks@fr.com
 FISH & RICHARDSON P.C.
 12 12390 El Camino Real
 San Diego, CA 92130
 13 Telephone: (858) 678-5070
 14 Facsimile: (858) 678-5099

Attorneys for Defendants and Counter-claimants
 15 **FRESENIUS MEDICAL CARE HOLDINGS,**
INC. AND FRESENIUS USA, INC.

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

19 BAXTER HEALTHCARE
 20 CORPORATION,
 BAXTER INTERNATIONAL INC.,
 21 BAXTER HEALTHCARE SA, AND
 22 DEKA LIMITED PARTNERSHIP,

23 *Plaintiffs and Counter-defendants,*

24 vs.

25 FRESENIUS MEDICAL CARE
 26 HOLDINGS, INC., d/b/a FRESENIUS
 MEDICAL CARE NORTH AMERICA,
 27 and FRESENIUS USA, INC.,

Defendants and Counter-claimants.

Case No. C 07-01359 PJH (JL)

**STIPULATION AND [PROPOSED]
 ORDER TO STAY COUNTS VIII AND IX
 OF PLAINTIFFS' FIRST AMENDED
 COMPLAINT (DKT. NO. 115) AND
 DEFENDANTS' RELATED
 COUNTERCLAIMS AND AFFIRMATIVE
 DEFENSES (DKT. NO. 117)**

1 WHEREAS, Plaintiffs asserted infringement of United States Patent No. 6,929,751
2 entitled “Vented Medical Fluid Tip Protector Methods” (“the ’751 patent”) and United States
3 Patent No. 7,083,719 entitled “Medical System Including Vented Tip Protector” (“the ’719
4 patent”) in Counts VIII and IX of Plaintiffs First Amended Complaint (Dkt. No. 115),
5 respectively; and

6 WHEREAS, the parties have discussed the possibility of streamlining this case,

7 NOW, THEREFORE, it is stipulated by the respective parties and their counsel of
8 record:

9 The merits of Plaintiffs case with respect to Count VIII of Plaintiffs’ First Amended
10 Complaint (Dkt. No. 113), relating to Plaintiffs’ assertion of infringement of the ’751 patent
11 shall be stayed.

12 The merits of Defendants’ Counterclaim Counts XV and XVI of Defendants’ Answer to
13 First Amended Complaint and Counterclaims (Dkt. No. 117), affirmative defenses and prayers
14 for relief relating to the ’751 patent shall be stayed.

15 The merits of Plaintiffs case with respect to Count IX of Plaintiffs’ First Amended
16 Complaint (Dkt. No. 115), relating to Plaintiffs’ assertion of infringement of the ’719 patent
17 shall be stayed.

18 The merits of Defendants’ Counterclaim Counts XVII and XVIII of Defendants’ Answer
19 to First Amended Complaint and Counterclaims (Dkt. No. 117), affirmative defenses and prayers
20 for relief relating to the ’719 patent shall be stayed.

21 During the stay, the ’751 and ’719 patents shall not be the subject of Final Infringement
22 Contentions and Final Invalidity Contentions under Patent L.R. 3-6, Defendants’ disclosure of
23 reliance on advice of counsel and production of opinion under Patent L.R. 3-8, willfulness
24 discovery, expert discovery including expert reports, dispositive motions, or trial.

25 However, other fact discovery relating the Plaintiffs’ claim of infringement of the ’751
26 and ’719 patents and Defendants’ related Counterclaim Counts, affirmative defenses and prayers
27 for relief relating to the ’751 and ’719 patents was completed before the December 1, 2008, Fact

1 Discovery Cut-Off date specified by this Court. (Dkt. No. 191)

2 Because the disputed claim terms currently pending before the Court do not include any
3 claim term from the '751 patent or the '719 patent, the stipulated stay of the '751 and '719
4 patents will not impact the current claim construction proceeding.

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December 17, 2008

By: /s/ David K. Callahan

KIRKLAND & ELLIS LLP
David K. Callahan, P.C. (IL 620227)
Garret Leach (*pro hac vice*)
Mary Zaug (*pro hac vice*)
200 East Randolph
Chicago, Illinois, 60601
Telephone: 312-861-2000
Facsimile: 312-861-2200

Robert G. Krupka (SBN 196625)
777 South Figueroa Street
Los Angeles, California 90017
Telephone: 213-680-8400
Facsimile: 213-680-8500

Kenneth Bridges (SBN 243541)
555 California Street
San Francisco, California, 94104
Telephone: 415-439-1400
Facsimile: 415-439-1500

*Attorney For Plaintiff and Counter-defendant
BAXTER HEALTHCARE CORPORATION,
BAXTER INTERNATIONAL INC., and
BAXTER HEALTHCARE SA*

December 17, 2008

By: /s/ Maureen K. Toohey

Maureen K. Toohey (SBN 196401)
TOOHEY LAW GROUP LLC
225 Franklin Street, 16th Floor
Boston, Massachusetts 02110
Telephone: (617) 748-5511
Howard A. Slavitt (SBN 172840)
Rachel G. Cohen (SBN 218929)
COBLENTZ, PATCH, DUFFY & BASS LLP
One Ferry Building, Suite 200
San Francisco, California 94111-4213
Telephone: (415) 391-4800
Facsimile: (415) 989-1663
*Attorneys for Plaintiff and Counter-defendant
DEKA PRODUCTS LIMITED PARTNERSHIP*

December 17, 2008

By: /s/ Michael E. Florey

Juanita R. Brooks (SBN 75934)
Todd G. Miller (SBN 163200)
Michael M. Rosen (SBN 230964)
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Mathias W. Samuel (*pro hac vice*)
Michael E. Florey (*pro hac vice*)
FISH & RICHARDSON P.C.
60 South Sixth Street, Suite 3300
Minneapolis, MN 55402
Telephone: (612) 335-5070
Facsimile: (612) 288-9696

Limin Zheng (SBN 226875)
FISH & RICHARDSON P.C.
500 Arguello Street, Suite 400
Redwood City, CA 94053
Telephone: (650) 839-5070
Facsimile: (650) 839-5071

Attorneys for Defendants and Counter-claimants FRESINIUS MEDICAL CARE HOLDINGS, INC. AND FRESINIUS USA, INC.

ELECTRONIC FILING DECLARATION OF DAVID K. CALLAHAN, P.C.

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I, David K. Callahan, declare as follows:

1. I am a partner at Kirkland & Ellis LLP, and I am Baxter Healthcare Corporation’s legal counsel in the above-captioned litigation.

2. Pursuant to the Northern District of California Electronic Filing Procedures and General Order No. 45, I attest that Michael E. Florey, counsel for Defendants, Fresenius Medical Care Holdings, Inc., d/b/a Fresenius Medical Care North America, and Fresenius USA, Inc., (collectively “Fresenius”), and Maureen K. Toohey, counsel for Plaintiff DEKA Products Limited Partnership, concur in the filing of this document and have granted me permission to electronically file this document absent their actual signatures.

Dated: December 17, 2008

Respectfully submitted,

Kirkland & Ellis LLP

By: /s David K. Callahan s/
David K. Callahan, P.C. (IL 620227),
dcallahan@kirkland.com

Attorney for Plaintiffs and Counter-defendants
*BAXTER HEALTHCARE CORPORATION,
BAXTER INTERNATIONAL INC., and
BAXTER HEALTHCARE SA*

1 David K. Callahan, P.C. (IL 620227) dcallahan@kirkland.com
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Defendants and Counter-claimants.

Case No. C 07-01359 PJH (JL)

**[PROPOSED] ORDER STAYING COUNTS
VIII AND IX OF PLAINTIFFS' FIRST
AMENDED COMPLAINT (DKT. NO. 115)
AND DEFENDANTS' RELATED
COUNTERCLAIMS AND AFFIRMATIVE
DEFENSES (DKT. NO. 117)**

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PURSUANT TO STIPULATION, IT IS SO ORDERED, the merits of this case relating to Plaintiffs’ assertion of infringement of U.S. Patent No. 6,929,751 (“the ’751 patent”) and U.S. Patent No. 7,083,719 (“the ’719 patent”) and Defendants’ counterclaims and defenses of non-infringement and invalidity relating to the ’751 and ’719 patents are STAYED. During the stay, the ’751 and ’719 patents shall not be the subject of Final Infringement Contentions and Final Invalidity Contentions under Patent L.R. 3-6, Defendants’ disclosure of reliance on advice of counsel and production of opinion under Patent L.R. 3-8, willfulness discovery, expert discovery including expert reports, dispositive motions, or trial. However, other fact discovery relating to Plaintiffs’ assertion of infringement of the ’751 and ’719 patents and Defendants’ counterclaims and defenses of non-infringement and invalidity of the ’751 and ’719 patents was completed before the December 1, 2008, Fact Discovery Cut-Off date specified by this Court .

DATED: December 18, 2008

