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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN JOSE DIVISION

13 CRYOTECH INTERNATIONAL, INC., a  
 Delaware Corporation, fka VBS  
 14 INDUSTRIES INCORPORATED

15 Plaintiff,

16 vs.

17 TECHNIFAB PRODUCTS, INC., an Indiana  
 Corporation; and DOES 1-50 inclusive

18 Defendants.

Case No. C08 02921 HRL

Complaint filed June 12, 2008

**STIPULATION AND REQUEST FOR  
 ORDER MODIFYING SCHEDULING  
 ORDER AND ENLARGING DEADLINES  
 FOR DISCOVERY AND EXPERT  
 WITNESS DESIGNATIONS AND  
 REPORTS**

Magistrate Judge Howard R. Lloyd

20 As previously noted in the parties' Stipulation and Request For Order Extending  
 21 Deadlines For Dates Outlines in Case Management Scheduling Order [Doc. No. 31, dated  
 22 December 17, 2008], the parties exchanged initial written discovery which led to several  
 23 telephone calls as to how best to exchange information necessary to evaluate the case and  
 24 maintain confidentiality of confidential and proprietary information, trade secrets, and intellectual  
 25 property. In the course of those discussions, the parties determined and agreed that an early  
 26 mediation of the case was indeed possible and perhaps more practical than extended discovery  
 27 followed by mediation. After further discussion, the parties agreed that if the Court would agree  
 28 to extend the deadlines for discovery cutoff and expert disclosure, the parties would elect Court

1 Supervised Mediation and work with the Court appointed mediator to establish a protocol for  
2 exchange of documents and information necessary to conduct a meaningful mediation. [Doc. No.  
3 31.]

4 The Court granted the parties' Stipulation and Request, and modified the Scheduling Order  
5 so the deadlines are currently as follows: Fact Discovery Cutoff - March 6, 2009; Expert Witness  
6 Designations and Reports - March 20, 2009; Designations of Rebuttal Experts and Reports - April  
7 6, 2009; Expert Discovery Cutoff – May 8, 2009; last day for hearings on dispositive motions -June  
8 9, 2009; and July 14, 2009 - Pre-Trial Conference. Trial is scheduled for July 27, 2009.  
9 Scheduling Order dated December 18, 2008 [Doc. No. 32].

10 The parties did commence "paper" discovery in this case and had scheduled depositions.  
11 Further to its Stipulation and Request, the parties agreed to hold in abeyance the depositions and  
12 completion of full paper discovery responses pending the parties' mediation, which mediation was  
13 held on February 24, 2009, with Mediator Geoff Howard, a court-appointed mediator [Doc. No. 33,  
14 dated January 7, 2009].

15 Instead, as part of the mediation, the parties agreed to conduct "limited" discovery for the  
16 purposes of mediation. The "limited" nature of the discovery was to allow the parties to obtain  
17 certain information from each other that would aid in the resolution of the case, but would not  
18 necessarily encompass all information necessary for a trial.

19 The parties attended mediation on February 24, 2009, however, they were and have been  
20 unable to settle this case. The parties thus request additional time to conduct discovery and to  
21 designate expert witnesses and reports, however, they are unable to do so without an enlargement of  
22 the deadlines for discovery and expert witness designations and reports. Thus, the parties request an  
23 enlargement of the fact discovery cutoff deadline from Friday, March 6, 2009, to Friday, May 29,  
24 2009, an enlargement of the Friday, March 20, 2009, Expert Witness Designations and Reports  
25 deadline to Friday, April 17, 2009, and an enlargement of the Monday, April 6, 2009, Designation  
26 of Rebuttal Experts and Reports deadline to Thursday, May 14, 2009, and an enlargement of the  
27 Expert Discovery deadline from Friday, May 8, 2009, to Friday, May 29, 2009. These requested  
28 enlargements will not impact the other deadlines.

1 Good cause exists for this Court to exercise its discretion and enlarge the times in which the  
 2 parties have to conduct discovery and designate their experts and reports. The parties diligently  
 3 prepared for and conducted the mediation on February 24, 2009. The parties were diligent in  
 4 assisting the Court in creating a workable Rule 16 scheduling order. Their noncompliance with the  
 5 Scheduling Order’s deadlines occurred or will occur notwithstanding diligent efforts to comply  
 6 because of developments that were not reasonably anticipated at the time of the Rule 16 scheduling  
 7 conference; and the parties are diligent in seeking an amendment of the Scheduling Order once it  
 8 became apparent that the parties could not comply with the existing Scheduling Order.

9 If the Court approves, the Parties would propose the following amended schedule:

EVENT	EXISTING DATE	PROPOSED DATE
Fact Discovery Cutoff	March 6, 2009	May 29, 2009
Designation of Experts With Reports	March 20, 2009	April 17, 2009
Designation of Rebuttal Experts With Reports	April 6, 2009	May 14, 2009
Expert Discovery Cutoff	May 8, 2009	May 29, 2009
Last Day for Hearings on Dispositive Motions	June 9, 2009	June 9, 2009
Final Pre-Trial Conference	July 14, 2009	July 14, 2009
Bench Trial	July 27, 2009	July 27, 2009

21 IT IS HEREBY STIPULATED:

22 Respectfully submitted,

23 JOHANSON BERENSON LLP

24 Dated: March 3, 2009

25 By: /s/ Douglas A. Rubel  
 26 DOUGLAS A. RUBEL  
 27 Attorneys for Plaintiff Cryotech  
 28 International, Inc.

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ROBINSON & WOOD, INC.


Dated: March 3, 2009

By: /s/ Arthur J. Casey  
ARTHUR J. CASEY  
Attorneys for Defendant  
Technifab Products, Inc.

**ORDER**

Good cause thereby appearing the Scheduling Order is amended as proposed.

Dated: March 6, 2009

  
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HOWARD L. LLOYD  
UNITED STATES MAGISTRATE JUDGE

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**Certificate of Service**

I hereby certify that on March 4, 2009, we filed electronically a true and correct copy of **STIPULATION AND REQUEST FOR ORDER MODIFYING SCHEDULING ORDER AND ENLARGING DEADLINES FOR DISCOVERY AND EXPERT WITNESS DESIGNATIONS AND REPORTS.** Notice of the filing was sent by operation of the Court’s electronic filing system to the parties indicated below. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court’s electronic filing system.

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