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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.  
 19

Case No. C08 02921 HRL

Complaint filed June 12, 2008

**MODIFIED STIPULATION AND  
 REQUEST FOR ORDER MODIFYING  
 SCHEDULING ORDER AND  
 ENLARGING DEADLINES FOR  
 DISCOVERY AND SIMULTANEOUS  
 EXPERT WITNESS DESIGNATIONS  
 AND REPORTS AND REBUTTALS,  
 DISPOSITIVE MOTIONS, AND PRE-  
 TRIAL AND TRIAL PROCEEDINGS**

Magistrate Judge Howard R. Lloyd

21 As previously noted in the parties' Stipulation and Request For Order Extending Deadline  
 22 For Dates Outlined in Case Management Scheduling Order as amended by the Court [Doc. No.  
 23 32, filed December 18, 2008] in the parties' Stipulation and Request for Order Modifying  
 24 Scheduling Order and Enlarging Deadlines for Discovery and Expert Witness Designations and  
 25 Reports [Doc. No. 38, filed March 6, 2009], the parties exchanged initial written discovery which  
 26 led to several telephone calls as to how best to exchange information necessary to evaluate the  
 27 case and maintain confidentiality of confidential and proprietary information, trade secrets, and  
 28

MODIFIED STIPULATION AND REQUEST FOR ORDER MODIFYING SCHEDULING  
 ORDER AND ENLARGING DEADLINES FOR DISCOVERY AND EXPERT WITNESS  
 DESIGNATIONS AND REPORTS AND REBUTTALS, DISPOSITIVE MOTIONS, AND PRE-TRIAL AND TRIAL PROCEEDINGS

1 intellectual property. In the course of those discussions, the parties determined and agreed that an  
2 early mediation of the case was indeed possible and perhaps more practical than extended  
3 discovery followed by mediation. After further discussion, the parties agreed that if the Court  
4 would agree to extend the deadlines for discovery cutoff and expert disclosure, the parties would  
5 elect Court Supervised Mediation and work with the Court appointed mediator to establish a  
6 protocol for exchange of documents and information necessary to conduct a meaningful  
7 mediation. [Doc. No. 31.]

8 The Court granted the Parties Stipulation and Request, and modified the Scheduling Order so  
9 the deadlines are currently as follows: Fact Discovery Cutoff – May 29, 2009; Expert Witness  
10 Designations and Reports – April 17, 2009; Designations of Rebuttal Experts and Reports – May  
11 14, 2009; Expert Discovery Cutoff – May 29, 2009; last day for hearings on dispositive motions -  
12 June 9, 2009; Final Pre-Trial Conference - July 14, 2009; and Bench Trial is scheduled for July  
13 27, 2009. Stipulation and Request for Order Modifying Scheduling Order and Enlarging  
14 Deadlines for Discovery and Expert Witness Designations and Reports filed March 6, 2009 [Doc.  
15 No. 38].

16 The parties have commenced "paper" discovery in this case and have attempted to schedule  
17 depositions. Further to its Stipulation and Request, the parties agreed to hold in abeyance the  
18 depositions and completion of full paper discovery responses pending the parties' mediation, which  
19 mediation was held on February 24, 2009, with Mediator Geoff Howard, a court-appointed mediator  
20 [Doc. No. 33, dated January 7, 2009].

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

25 The parties attended mediation on February 24, 2009, however, they were and have been  
26 unable to settle this case. The parties then filed a proposed Modified Stipulation and Request for  
27 Order Modifying Scheduling Order and Enlarging Deadlines for Discovery and Expert Witness  
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1 Designations and Reports, Dispositive Motions, and Pre-Trial and Trial Proceedings [Doc. No. 39,  
2 filed March 27, 2009], which the Court did not act on for reasons that Magistrate Judge Lloyd  
3 explained to the parties during a conference call on April 9, 2009. The parties have once again  
4 recognized based upon the time needed for depositions and paper discovery and related case  
5 management, as well as major surgery that Plaintiff's counsel, David R. Johanson, underwent on  
6 March 25, 2009, which prevents him from travelling by air for approximately three to four weeks,  
7 and the parties' counsel's trial schedules, that additional time is needed for discovery in this case and  
8 for the ultimate Pre-Trial and Trial proceedings. The parties thus request additional time to conduct  
9 discovery and to simultaneously designate expert witnesses and reports and rebuttals, however, they  
10 are unable to do so without an enlargement of the deadlines for discovery and expert witness  
11 designations and reports and rebuttals and dispositive motions. Pursuant to a conference call with  
12 Magistrate Judge Lloyd on April 9, 2009, the parties request an enlargement of the fact discovery  
13 cutoff deadline from Friday, May 29, 2009, to Monday, August 31, 2009, an enlargement of the  
14 Friday, April 17, 2009, simultaneous Expert Witness Designations and Reports deadline to  
15 Friday, October 2, 2009, an enlargement of the Thursday, May 14, 2009, simultaneous  
16 Designation of Rebuttal Experts and Reports deadline to Friday, October 16, 2009, an  
17 enlargement of the Expert Discovery deadline from Friday, May 29, 2009, to Friday, October 30,  
18 2009, an enlargement of the Last Day for Hearings on Dispositive Motions from Tuesday, June 9,  
19 2009, to Tuesday, December 8, 2009, a continuance of the Final Pre-Trial Conference from  
20 Tuesday, July 14, 2009, to Tuesday, January 5, 2009, and a continuance of the Bench Trial from  
21 Monday, July 27, 2009, to Monday, January 11, 2009. Plaintiff's and Defendant's counsel have  
22 agreed to amend the current scheduling order as set forth herein.

23 Good cause exists for this Court to exercise its discretion and enlarge the times in which the  
24 parties have to conduct discovery and simultaneously designate their experts and reports and  
25 rebuttals, as well as to make dispositive motions. The parties diligently prepared for and conducted  
26 the mediation on February 24, 2009. The parties were diligent in assisting the Court in creating a  
27 workable Rule 16 scheduling order. Their noncompliance with the Scheduling Order's deadlines  
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1 would occur notwithstanding diligent efforts to comply because of developments (i.e., Mr.  
 2 Johanson's major surgery and the parties' counsel's trial schedules) that were not reasonably  
 3 anticipated at the time of the Rule 16 scheduling conference; and the parties are diligent in seeking  
 4 an amendment of the Scheduling Order once it became apparent that the parties could not comply  
 5 with the existing Scheduling Order.

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

8 EVENT	EXISTING DATE	PROPOSED DATE
9 Fact Discovery Cutoff	May 29, 2009	August 31, 2009
10 Simultaneous Designation of Experts With Reports	April 17, 2009	October 2, 2009
11 Simultaneous Designation of Rebuttal Experts With Reports	May 14, 2009	October 16, 2009
12 Expert Discovery Cutoff	May 29, 2009	October 30, 2009
13 Last Day for Hearings on Dispositive Motions	June 9, 2009	December 8, 2009
14 Final Pre-Trial Conference	July 14, 2009	January 5, 2010
15 Bench Trial	July 27, 2009	January 11, 2010

1 IT IS HEREBY STIPULATED:

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Respectfully submitted,  
  
JOHANSON BERENSON LLP

Dated: April 16, 2009

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

ROBINSON & WOOD, INC.


Dated: April 16, 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: 4/20/09, 2009

  
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HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

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**Certificate of Service**

I hereby certify that on April 16, 2009, we filed electronically a true and correct copy of **MODIFIED STIPULATION AND REQUEST FOR ORDER MODIFYING SCHEDULING ORDER AND ENLARGING DEADLINES FOR DISCOVERY AND SIMULTANEOUS EXPERT WITNESS DESIGNATIONS AND REPORTS AND REBUTTALS, DISPOSITIVE MOTIONS, AND PRE-TRIAL AND TRIAL PROCEEDINGS.** 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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