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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AVOCET SPORTS TECHNOLOGY,)
INC., ET AL.,)
)
 Plaintiffs,)
)
 v.)
)
 AMER SPORTS CORP., ET AL.,)
)
 Defendants.)
_____)

Case No.: C-08-04264 JW (PSG)

**ORDER GRANTING DEFENDANT
AMER SPORTS CORP.'S MOTION
TO COMPEL**

(Docket No. 89)

Defendant Amer Sports Winter & Outdoor Company moves to compel the re-testing of two "Ski Meter" devices. ("ASWO"). Plaintiffs Avocet Sports Technology, Inc. and Vertical Instruments, Inc. state that the motion is moot because the parties have stipulated to the accuracy of basic data recorded during previous testing of these alleged prior art devices. ASWO, however, disputes that its motion to compel is mooted by the stipulation and seeks to repair any damaged device and conduct further non-destructive testing of any operable device. ASWO also seeks to preclude Plaintiffs from any testing outside of ASWO's presence. On January 11, 2011, Defendant ASWO appeared for hearing. Plaintiffs did not appear for hearing and advised the court that they were submitting their opposition to the motion without oral argument. *See* Submission By Plaintiffs to Motion on the Paperwork of Defendants' Motion to Compel Re Testing filed on January 10, 2011. (Docket No. 97). Having reviewed the papers and considered

1 the arguments of counsel,

2 IT IS HEREBY ORDERED that Defendant ASWO's motion to compel is GRANTED.

3 The devices were first identified by Plaintiffs before the expiration of an extended
4 deadline for the close of fact discovery and after Plaintiffs' 30(b)(6) witness testified that the
5 only prototype of the device had been destroyed. Plaintiffs have not identified any burden in
6 making the devices available for repair and further testing.

7 No later than January 18, 2011, Plaintiffs shall make the two Ski Meter devices available
8 for any necessary repair and non-destructive testing by ASWO. Plaintiffs shall further refrain
9 from any testing outside the presence of ASWO.

10 IT IS SO ORDERED.

11 Dated: January 11, 2011



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14 PAUL S. GREWAL
15 United States Magistrate Judge
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