

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-FILED on 5/1/12

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SYNTHES USA, LLC (f/k/a SYNTHES
(U.S.A.)); SYNTHES USA SALES, LLC; and
SYNTHES, INC.,

Plaintiffs,

v.

SPINAL KINETICS, INC.,

Defendant.

No. C-09-01201 RMW

ORDER SUBMITTING MOTION TO HAVE
CASE DECLARED EXCEPTIONAL ON THE
PAPERS; DENYING MOTION TO
ADDRESS NEW AUTHORITY; GRANTING
MOTION TO CHANGE TIME FOR FILING
OF SPINAL KINETICS' ATTORNEYS' FEES
MOTION

Currently pending before the court are: (1) Synthes' motion for judgment as a matter of law (Dkt. No. 473); (2) Spinal Kinetics' renewed motions for judgment as a matter of law as to damages (Dkt. No. 505) and (3) as to non-infringement under the doctrine of equivalents (Dkt. No. 506); (4) Spinal Kinetics' motion to have this case declared exceptional under 35 U.S.C. § 285 (Dkt. No. 513); (5) Synthes' motion to file a supplemental brief addressing new authority (Dkt. No. 517); and (6) Spinal Kinetics' motion to change time for its filing of a motion for attorney's fees (Dkt. No. 525).

Given the close relationship of the issues, the court finds that it would be most efficient to decide the motion and renewed motions for judgment as a matter of law filed by both parties

1 simultaneously with Spinal Kinetics' motion to have this case declared exceptional. However, given
2 that judgment was not ultimately entered in this case until April 23, 2012, the court is unsure of
3 whether the parties plan to file additional papers in support of a renewed motion for judgment as a
4 matter of law. *See* Fed. R. Civ. P. 50(b) (a party renewing a motion for judgment as a matter of law
5 may file the renewed motion within 28 days of the "entry of judgment"). Accordingly, court orders
6 as follows:

7 (1) The parties must inform the court whether they plan to submit any further briefing
8 concerning their pending post-trial motions within ten (10) days of the date of this order.

9
10 (2) The May 4, 2012 hearing on Spinal Kinetics' motion to have this case declared
11 exceptional under 35 U.S.C. § 285 is vacated. The motion will be deemed submitted on the
12 papers, and will be decided in conjunction with the three pending motions for judgment as a
13 matter of law. If the court later determines that oral argument is necessary on either the
14 JMOL motions or the exceptional case motion, it will contact the parties to schedule a
15 hearing at that time.

16
17 (3) Synthes' motion to address a new authority is denied for failure to comply with Local
18 Rule 7-3(d)(2). Further, the court does not believe that consideration of Synthes' cited new
19 authority is necessary to the resolution of Spinal Kinetics' motion to have this case declared
20 exceptional.

21
22 (4) Spinal Kinetics' motion to change time for the filing of its motion for attorneys' fees is
23 granted. Spinal Kinetics may file a motion for attorneys' fees, to the extent that such a
24 motion is warranted, no later than fourteen (14) days after the court issues an order resolving
25 its motion to have this case declared exceptional.

26
27 DATED: May 1, 2012

28 
RONALD M. WHYTE
United States District Judge