

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 06-cv-02371-MSK-MEH

STEPHEN J. SMITH TRUST, and
STEPHEN J. SMITH, a natural person, individually,

Plaintiffs,

v.

ETHICON, INC., a New Jersey corporation,

Defendant.

ORDER SETTING HEARING UNDER FED.R.CIV.P. 16

THIS MATTER comes before the Court upon a Complaint filed by the Plaintiffs alleging the infringement of a patent. Because there may be a dispute regarding the construction of the patent, a hearing pursuant to Fed. R. Civ. P. 16(b) and D.C.COLO.LCivR 16.1 is necessary.

IT IS ORDERED that:

- (1) A hearing is set for **February 23, 2007 at 3:30 p.m.** in Courtroom A901 of the United States Courthouse located at 901 19th Street, Denver, Colorado. Counsel who will try the case shall attend the hearing.
- (2) No later than **January 23, 2007**, the parties shall meet and confer regarding the contents of the proposed scheduling order pursuant to Fed. R. Civ. P. 26(f).
- (3) On or before **February 13, 2007**, and in conformance with Fed. R. Civ. P. 26(f), D.C.COLO.LCivR 16.1, 16.2 and 26.1, and this Order, the parties shall prepare and submit a proposed scheduling order. The proposed scheduling order shall be in the form specified by D.C.COLO.LCivR Appendix F **except** that:
 - (a) It shall not contain a signature line for a judicial officer.
 - (b) It shall address the following:
 - Whether a hearing is required under *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996).
 - What discovery is necessary at each stage of the litigation.
 - (c) It shall not address the matters set forth in Section 8 (Case Plan and

Schedule), Section 10 (Other Scheduling Issues) or Section 11 (Dates for Further Conferences) of Appendix F.

- (4) At the hearing, the parties shall be prepared to address the issues covered by the proposed scheduling order and any other issues enumerated in Fed. R. Civ. P. 16(c).
- (5) No later than **December 22, 2006**, the Plaintiffs shall serve a copy of this Order on the Defendant with the Complaint, or without the Complaint if the Complaint has already been served on the Defendant, and file a certificate of service with the Court no later than **January 5, 2007**.

Dated this 5th day of December, 2006

BY THE COURT:

A handwritten signature in black ink that reads "Marcia S. Krieger". The signature is written in a cursive style with a distinct dot over the 'i' in "Krieger".

Marcia S. Krieger
United States District Judge