

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MALLINCKRODT INC. and	:	
LIEBEL-FLARSHEIM COMPANY	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C.A. No. 09-228-JJF
	:	
E-Z-EM INC. and ACIST MEDICAL	:	
SYSTEMS, INC.	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

Presently before the Court is a dispute between Plaintiffs Mallinckrodt Inc. and Liebel-Flarsheim Company ("Plaintiffs") and Defendants E-Z-EM, Inc. and Acist Medical Systems, Inc. ("Defendants") over whether Plaintiffs shall be permitted to make a stenographic recording of the inspection of the Empower MR, the accused product in the above-captioned action.

On February 2, 2010 Plaintiffs noticed the inspection, examination and/or testing of the Empower MR pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (D.I. 87, Notice of Service). The Notice of Inspection provided that the inspection "may be photographed, video taped or otherwise video captured," and further, that "'inspect' means to visually examine, study, assess and evaluate the Empower MR, and orally collect information regarding the Empower MR." Plaintiffs re-noticed the inspection, examination and/or testing of the Empower MR on February 18, 2010 (D.I. 109, Notice of Service).

On March 10, 2010, the scheduled inspection date, a dispute arose between the parties because Defendants refused to permit Plaintiffs' court reporter admission to the inspection. Defendants contend that no testimony is called for in the inspection, and that no stenographic record was noticed. Plaintiffs contend that the Notice of Inspection included "orally collect[ing] information regarding the Empower MR," and thus, a stenographic recording is proper.

The Court concludes that a stenographic recording was not contemplated within the scope of the Notice of Inspection, and accordingly, Plaintiffs shall not be permitted to take a stenographic recording during inspection of the Empower MR.

March 30, 2010


UNITED STATES DISTRICT JUDGE