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August 11, 2008

VIA ECF FILING

Magistrate Judge Arthur J. Boylan
 United States District Court
 Warren E. Burger Federal Building
 316 North Robert Street
 St. Paul, MN 55101

***Re: Hysitron Incorporated v. MTS Systems Corporation
 Court File No. 07 CV 1533 ADM/AJB
 M&G No. 15485.2USZA***

Dear Magistrate Judge Boylan:

Following the hearing on MTS' second motion to stay, the United States District Court for the District of Nebraska issued a Memorandum and Order in Ecolab, Inc. v. Paraclipse, Inc., Case No. 8:97CV304. A copy of that Memorandum and Order is attached. This decision is brought to the Court's attention because one of the issues presented is the relevance of claim construction by the Patent Office. In Ecolab, the patent re-issued after reexamination, and in the reexamination process the Patent Office made comments on the scope of the claims. The analysis and decision on this issue is found at page 15 of the Memorandum and Order. The Ecolab court concluded:

Comments made by examiners or administrative law judges during the course of prosecution or reexamination of a patent are inapposite to claim construction in a patent litigation proceeding because the rules of claim construction that apply to patent litigation proceedings are different from those that apply during prosecution or reexamination proceedings.

Minneapolis/St. Paul
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* * * The Patent Office's claim construction standards simply are inapplicable to litigation. (Citations omitted)

Respectfully submitted,

s/Allen Hinderaker

Allen Hinderaker

cc: David P. Pearson, Esq. (w/encl. via ECF Filing)