

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

HYPERTHERM, INC.,

Plaintiff,

v.

AMERICAN TORCH TIP COMPANY,

Defendant.

Civil Action No. 1:05-CV-373-JD

The Honorable Joseph A. DiClerico, Jr.

**STIPULATED ORDER**

It is HEREBY ORDERED THAT:

For the patent trial scheduled to begin before this Court on February 18, 2009, in the presence of the jury or jury panel, either directly or indirectly, and at any time during the jury selection and trial:

- 1) Neither party may reference or seek to introduce evidence relating to the fact that motions *in limine* were filed or granted;
- 2) Neither party may reference discovery rulings of the Court;
- 3) Neither party may assert claims or defenses that have not been plead, or offer evidence, testimony, statements, opinions or arguments to support any unpleaded claims or defenses, or claims or defenses that have been dismissed, although this paragraph is not intended to preclude a party's ability to offer evidence, testimony, statements, opinions, or arguments on those claims and defenses at issue at trial;
- 4) Neither party may seek to introduce expert opinion testimony not disclosed in their respective experts' reports;

5) ATTC, ATTC's counsel, and ATTC's witnesses may not seek to introduce any evidence, testimony, statement, opinion or argument to support any claim or defense that the '510 and '923 Patents are invalid, since this Court has granted summary judgment in Hypertherm's favor of no patent invalidity with respect to the '510 and '923 Patents (Docket No. 279), although this paragraph is not intended to preclude a party's ability to offer evidence, testimony, statements, opinions, or arguments on any other claims and defenses at issue at trial; and

6) ATTC, ATTC's counsel, and ATTC's witnesses may not seek to introduce any opinions of counsel not previously disclosed by ATTC with respect to its "advice of counsel" defense for Hypertherm's charge of willfulness.

SO ORDERED.

Dated: March 4, 2009, 2009

/s/ Joseph A. DiClerico, Jr.  
United States District Judge

cc: Counsel of Record