

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ERGO LICENSING LLP, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket no. 2:08-cv-259-GZS
)	
CAREFUSION 303, INC.,)	
)	
Defendant.)	
)	
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CAREFUSION 303, INC.,)	
)	
Counterclaimant,)	
)	
v.)	
)	
ERGO LICENSING LLP,)	
)	
Counterdefendant.)	
)	
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ORDER SETTING HEARING

On August 3, 2010, the Court held a conference of counsel to discuss setting this case for a *Markman* hearing. In advance of the conference, the parties’ filed a joint status report (Docket # 182). Having reviewed the status report and conferred with counsel, the Court hereby **ORDERS:**

- (1) Without objection, the Court hereby RESERVES RULING on the three *Daubert* motions (Docket #s 133, 142 & 144) currently under advisement. The Court will consider these motions at a later date after the claim construction proceedings are complete.
- (2) With the parties’ agreement, the Court will bifurcate the claims construction in this matter and first construe the following six agreed-upon terms: (1) “set,” (2) “fluid flow sources,” (3) “adjusting means,” (4) “programmable control means/control means,” (5) “data input means” and (6) “flow measuring means” (hereinafter, “First

Round Claims Construction”). As indicated at the conference, the Court anticipates that one or both parties will file a motion for summary judgment following the Court’s decision on the First Round Claims Construction.

- (3) In connection with this First Round Claims Construction, the parties’ briefing is complete. The Court has granted both sides leave to file additional materials to be considered as part of the claims construction record so long as those materials include only existing deposition testimony or other materials previously disclosed to the other side. Defendant shall file any such materials on or before August 17, 2010 at noon. Plaintiff shall file any such materials on or before August 31, 2010 at noon. To the extent either side’s submission exceeds 100 pages, they shall provide a courtesy copy of the filing to the Court.
- (4) The hearing for the First Round Claims Construction is hereby set for October 4, 2010 to be held in Courtroom Three. By agreement, the hearing will be non-evidentiary. At 10:00 AM on October 4, 2010, each side will be allowed approximately 30 minutes to provide the Court with a live tutorial of the technology at issue. At 12:30 PM, the Court will hear argument from each side. At the conference, each side indicated their respective argument could be completed less than two hours. Thus, the Court has reserved four hours for this hearing. To the extent the parties’ intend to make use of any audio/visual equipment at this hearing, they are required to follow the Court’s procedures for reserving and testing such equipment, which can be found on the Court’s website (<http://www.med.uscourts.gov/practices/eep.htm>).

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 3rd day of August, 2010.

Plaintiff

ERGO LICENSING LLC

represented by **JAMES G. GOGGIN**
VERRILL DANA LLP
ONE PORTLAND SQUARE
P.O. BOX 586

PORTLAND, ME 04112
(207) 253-4602
Email: jgoggin@verrilldana.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SETH W. BREWSTER
VERRILL DANA LLP
ONE PORTLAND SQUARE
P.O. BOX 586
PORTLAND, ME 04112
(207) 774-4000
Email: sbrewster@verrilldana.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ELIZABETH M. FRANKEL
VERRILL DANA LLP
ONE PORTLAND SQUARE
P.O. BOX 586
PORTLAND, ME 04112
(207) 253-4522
Email: efrankel@verrilldana.com
TERMINATED: 02/08/2010
ATTORNEY TO BE NOTICED

PETER S. BLACK
VERRILL DANA LLP
ONE PORTLAND SQUARE
P.O. BOX 586
PORTLAND, ME 04112
207-774-4000, ext. 4642
Email: pblack@verrilldana.com
TERMINATED: 01/06/2010
ATTORNEY TO BE NOTICED

SARA ELIZABETH HIRSHON
VERRILL DANA, LLP
ONE BOSTON PLACE
BOSTON, MA 02108
207-253-4638
Email: shirshon@verrilldana.com
ATTORNEY TO BE NOTICED

Plaintiff

UVO HOLSCHER

represented by **JAMES G. GOGGIN**

(See above for address)
ATTORNEY TO BE NOTICED

SARA ELIZABETH HIRSHON
(See above for address)
ATTORNEY TO BE NOTICED

SETH W. BREWSTER
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

CARDINAL HEALTH INC
TERMINATED: 08/19/2009

represented by **ERICA PASCAL**
DLA PIPER LLP (US)
401 B STREET
SUITE 1700
SAN DIEGO, CA 92101
(619) 699-2760
Email: erica.pascal@dlapiper.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

KATHRYN RILEY
DLA PIPER LLP (US)
401 B STREET
SUITE 1700
SAN DIEGO, CA 92101
(619) 699-2842
Email: kathryn.riley@dlapiper.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARC BELLOLI
DLA PIPER LLP
2000 UNIVERSITY AVENUE
EAST PALO ALTO, CA 94303-2215
(650) 833-2254
Email: marc.belloli@dlapiper.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RANDALL KAY
JONES DAY
12265 EL CAMINO REAL

SUITE 200
SAN DIEGO, CA 92130
858-314-1139
Email: rekay@jonesday.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM GOLDMAN
DLA PIPER LLP
2000 UNIVERSITY AVENUE
EAST PALO ALTO, CA 94303-2215
(650) 833-2000
Email: bill.goldman@dlapiper.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM D. HAGEDORN
PRETI, FLAHERTY LLP
ONE CITY CENTER
PORTLAND, ME 04112
(207) 791-3000
Email: whagedorn@preti.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
PRETI, FLAHERTY, BELIVEAU,
PACHIOS & HALEY, LLP
PO BOX 9546
PORTLAND, ME 04112-9546
791-3000
Fax: 791-3111
Email: ghansel@preti.com
ATTORNEY TO BE NOTICED

Defendant

**ALARIS MEDICAL SYSTEMS
INC**
TERMINATED: 01/09/2009

represented by **WILLIAM D. HAGEDORN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

CAREFUSION 303 INC

represented by **ERICA PASCAL**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

KATHRYN RILEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARC BELLOLI
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RANDALL KAY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM GOLDMAN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM D. HAGEDORN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

RANDALL B. WEILL
PRETI, FLAHERTY, BELIVEAU,
PACHIOS & HALEY, LLP
PO BOX 9546
PORTLAND, ME 04112-9546
791-3000
Email: rweill@preti.com
ATTORNEY TO BE NOTICED

Interested Party

CARDINAL HEALTH 303 INC
TERMINATED: 01/09/2009

represented by **WILLIAM D. HAGEDORN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL

(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

CAREFUSION 303 INC

represented by **ERICA PASCAL**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

KATHRYN RILEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARC BELLOLI
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RANDALL KAY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM GOLDMAN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM D. HAGEDORN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

ERGO LICENSING LLC

represented by **JAMES G. GOGGIN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PETER S. BLACK
(See above for address)
TERMINATED: 01/06/2010
ATTORNEY TO BE NOTICED

Counter Claimant

CAREFUSION 303 INC

represented by **ERICA PASCAL**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

KATHRYN RILEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARC BELLOLI
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RANDALL KAY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM GOLDMAN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM D. HAGEDORN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY PAUL HANSEL
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

ERGO LICENSING LLC

represented by **JAMES G. GOGGIN**

(See above for address)
LEAD ATTORNEY
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PETER S. BLACK
(See above for address)
TERMINATED: 01/06/2010
ATTORNEY TO BE NOTICED

Counter Defendant

UVO HOLSCHER

represented by **JAMES G. GOGGIN**
(See above for address)
ATTORNEY TO BE NOTICED

SARA ELIZABETH HIRSHON
(See above for address)
ATTORNEY TO BE NOTICED

SETH W. BREWSTER
(See above for address)
ATTORNEY TO BE NOTICED